

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 2nd OF MAY, 2024

MISC. PETITION No. 794 of 2024

BETWEEN:-

**MOHD JAVED KHAN S/O LATE SHRI LALLA
KHAN, AGED ABOUT 28 YEARS, R/O DHANPURI
POLICE STATION DHANPURI TEHSIL BUDHAR
DISTRICT SHAHDOL (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI AMIT SAHANI - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH THE COLLECTOR SHAHDOL
DISTRICT SHAHDOL (MADHYA PRADESH)**
- 2. MUNICIPAL COUNCIL DHANPURI
THROUGH CHIEF MUNICIPAL OFFICER
MUNICIPAL COUNCIL DHANPURI PS AND
POST DHANPURI TEHSIL BUDHAR
DISTRICT SHAHDOL (MADHYA PRADESH)**
- 3. MOHD. FIROJ S/O LATE SHRI LALLA
KHAN, AGED ABOUT 38 YEARS, R/O
DHANPURI PS DHANPURI TEHSIL BUDHAR
DISTRICT SHAHDOL (MADHYA PRADESH)**
- 4. MOHD. AJAD S/O LATE SHRI LALLA KHAN,
AGED ABOUT 36 YEARS, R/O DHANPURI PS
DHANPURI TEHSIL BUDHAR DISTRICT
SHAHDOL (MADHYA PRADESH)**
- 5. MOHD. ABRAR S/O LATE SHRI LALLA
KHAN, AGED ABOUT 31 YEARS, R/O
DHANPURI PS DHANPURI TEHSIL BUDHAR
DISTRICT SHAHDOL (MADHYA PRADESH)**

6. **ISHRAT PARWEEN S/O LATE SHRI LALLA KHAN, AGED ABOUT 26 YEARS, R/O DHANPURI PS DHANPURI TEHSIL BUDHAR DISTRICT SHAHDOL (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.1 BY SHRI MOHAN SAUSARKAR – GOVERNMENT ADVOCATE AND RESPONDENT NO.2 BY SHRI SAURABH SUNDAR - ADVOCATE)

This petition coming on for orders this day, the court passed the following:

ORDER

The certified copies of the order sheets of proceedings of RCSA No.34/2023 provided by counsel for petitioner are taken on record.

2. This petition under Article 227 of Constitution of India has been filed against the order dated 08.02.2024 passed by Additional Judge to the Court of District Judge, Budhar, District Shahdol in MCA No.05/2023 by which application filed by respondent No.1 under Order 39 Rule 4 CPC has been allowed and the temporary injunction order dated 30.06.2023 passed by Second Civil Judge, Junior Division, Budhar, District Shahdol in RCSA No.34/2023 has been set aside.

3. It is submitted by counsel for petitioner that petitioner filed a suit for declaration of title and permanent injunction along with an application under Order 39 Rule 1 and 2 of CPC. Notices were issued to the defendants. Since, none appeared for the State, therefore by order dated 29.03.2023, the State was proceeded *ex-parte*. Thereafter, the defendants sought time to file written statements. Ultimately, on 20.06.2023, the defendant No.1/respondent No.1 filed written

statement as well as reply to the application under Order 39 Rule 1 and 2 of CPC.

4. The case was fixed for hearing on an application file under Order 39 Rule 1 and 2 of CPC and by order dated 30.06.2023, the application was allowed and the defendants were restrained from interfering with the possession of the petitioner either by themselves or through their agents. However, a note was also appended to the said order that the petitioner shall start leading his evidence within a period of two months, failing which the **trial Court may reconsider the order of temporary injunction.**

5. It is undisputed fact that respondent No.1 did not challenge the order passed under Section 39 Rule 1 and 2 of CPC and it appears that the Municipal Council, Budhar, District Shahdol was satisfied with the findings and the restrain order issued by the trial Court. Thereafter, the case was fixed for 07.07.2023 and on that date the counsel for respondent No.2/State filed an application under Order 9 Rule 7 of CPC for setting aside *ex-parte* proceedings and the case was fixed for 28.07.2023 for consideration of the said application. On 28.07.2023, the *ex-parte* proceedings against the State was set aside. The defendants No. 3 to 5 also filed their written statements. The petitioner also filed an application under Order 1 Rule 10 of CPC and the case was fixed for 07.08.2023. On 07.08.2023, the State/defendant No.2 filed reply to the application under Order 39 Rule 1 and 2 of CPC as well as written statement. Further, the defendant No.1 and 2 expressed that they do not want to file reply to the application filed under Order 1 Rule 10 of CPC and accordingly the case was fixed for 25.09.2023 for

filing written statement by the remaining defendants as well as reply to the application filed under Order 1 Rule 10 of CPC.

6. The manner, in which the order dated 07.08.2023 was written, it is clear that the trial Court did not go through the previous order sheets.

7. From order sheet dated 28.07.2023, it is clear that defendants No.3 to 5 had already filed their written statement. In spite of that by order dated 07.08.2023, the case was fixed for filing of written statement by the remaining defendants whereas the defendant No.1/Municipal Council had already filed its written statement on 20.06.2023, the defendants No.3 to 5 had filed their written statement on 28.07.2023 and the defendant No.2 had filed its written statement on 07.08.2023 and there are only six defendants in the suit.

8. Be that whatever it may be.

9. On 25.09.2023, the defendant No.1/Municipal Council, Budhar, District Shahdol filed an application under Order 39 Rule 4 of CPC on the ground that since the petitioner has failed to lead evidence within two months of passing of the temporary injunction order, therefore the temporary injunction order is liable to be recalled. Although, the said application was rejected by the trial Court by order dated 17.10.2023 but the Appellate Court has allowed the appeal and has set aside the order dated 17.10.2023 passed by trial Court and consequently has also set aside the order of temporary injunction date 30.06.2023.

10. The only question for consideration is as to whether the petitioner had failed to lead evidence within two months from the date of passing of the temporary injunction order dated 30.06.2023 or not.

11. This Court has already mentioned the dates on which case was taken up by the trial Court. The aforesaid observation is based on the certified copy of the order sheets provided by the counsel for petitioner during the course of hearing. As already pointed out the temporary injunction was passed on 30.06.2023 and thereafter the case was taken up on 07.07.2023 and thereafter the case was fixed for 28.07.2023 and thereafter, it was fixed for 25.09.2023. The period of two months from the date of temporary injunction order would have come to an end on 30.08.2023. When the trial Court was aware of the fact that there is already a condition in the order dated 30.06.2023 that in case if the petitioner/plaintiff fails to begin his evidence within a period of two months, then the order of temporary injunction is liable to be reconsidered, then why the trial Court fixed the case on 25.09.2023 is beyond the understanding of this Court.

12. In fact, the trial Court should have either decided the application filed under Order 1 Rule 10 of CPC on 07.08.2023 itself because on the said date, the defendants No.1 and 2 had already expressed that they do not want to give reply to the said application or should have fixed some nearer date so that issues could have been farmed much prior to 30.08.2023.

13. Thus, it is clear that the trial Court was completely negligent and casual in handling the case. It is well established principle of law that no one can be made to suffer on account of the mistake of the

Court. When the case was not listed prior to 30.08.2023 and on 07.08.2023 the case was adjourned for 25.09.2023 and even the issues were not framed by the trial Court, then it was not possible for the petitioner to lead evidence.

14. Under these circumstances, the Appellate Court should not have recalled the temporary injunction order dated 30.06.2023. It appears that the Appellate Court was swayed away by the submissions made by the counsel for the defendant No.1 that construction of *Nala* is in progress and 80% has been constructed. The Appellate Court lost sight of the fact that the only controversy before it was as to whether the petitioner/plaintiff had failed to lead evidence within a period of two months or not and instead of deciding the question as to whether the petitioner was negligent or not went ahead and decided the application primarily on the basis of merits of the case. It is really surprising that on one hand the Municipal Council, Budhar, District Shahdol was raising hue and cry about the delay in construction of *Nala* but on the other hand they conveniently sat on the temporary injunction order and did not assail the same. Even during the course of arguments, counsel for respondent No.1 tried to convince this Court that the petitioner is an encroacher and the temporary injunction is likely to cause inconvenience. However, the counsel for respondent No.1 was not in a position to reply as to why the respondent No.1/defendant No.1 did not challenge the order dated 30.06.2023 passed by the trial Court under Order 39 Rule 1 and 2 of CPC. Thus, if any water logging takes place, then only the Municipal Council, Budhar, District Shahdol would be responsible and none else.

15. Considering the totality of the facts and circumstances of the case, this Court is of considered opinion that the Appellate Court committed a material illegality by reversing the order dated 30.06.2023 passed by the trial Court under Order 39 Rule 1 and 2 of CPC.

16. *Ex consequenti*, the order dated 08.02.2024 passed by Additional Judge to the Court of District Judge, Budhar, District Shahdol in MCA No.05/2023 is hereby **set aside**.

17. From the various order sheets of the trial Court, it appears that the trial Court is giving lengthier dates just for filing of reply and arguments on the interlocutory applications. Once, the trial Court itself had made it clear that the plaintiff must begin his evidence within a period of two months from the date of temporary injunction, then it is duty of the trial Court to ensure that all the interlocutory applications are decided well within time and should frame the issues without any further delay.

18. It is submitted by counsel for petitioner that issues have not been framed so far. Accordingly, trial Court is directed to decide all the pending interlocutory applications by the next date positively and no adjournment shall be granted to any of the party either to file reply or to argue on those applications. The trial Court shall positively frame issues before starting of the summer vacations.

19. The petitioner shall be under obligation to begin his evidence immediately after the summer vacations and in case if the petitioner fails to begin his evidence within a period of two months from 01.07.2024, then the temporary injunction order dated 30.06.2023 shall

automatically stand recalled and no further order in that regard would be required.

20. With aforesaid observation, the petition is finally **disposed of**.

(G.S. AHLUWALIA)
JUDGE

VB*