

2011 M L D 129

[Lahore]

'Before Nasir Saeed Sheikh, J

HAQ NAWAZ---Petitioner

Versus

MACHHIA and 5 others---Respondent

C.R. No. 1360 of 2003, decided on 24th August, 2010.

Specific Relief Act (I of 1877)---

---Ss.42 & 54---Civil Procedure Code (V of 1908), O.XXXIX, Rr.1, 2--Suit for declaration and permanent injunction with the prayer that the order passed by Sub-Divisional Canal Officer be declared illegal and without lawful authority---Plaintiff also filed an application for the grant of temporary injunction---Defendants contested suit on the ground that the impugned order had been implemented before institution of the suit---Trial Court accepted application for the grant of temporary injunction---Appeal filed by defendants was allowed by the Appellate Court---Validity---Record revealed that suit was instituted by plaintiff on 30-2-2001 after implementation of the impugned order dated 24-1-2001---Appellate Court had rightly found that the restraining order should not have been issued by the Trial Court in view of the peculiar circumstances of the case---Plaintiff could not point out any illegality in the impugned order---Petition was dismissed by High Court.

Hafiz Khalil Ahmed for Petitioner.

Munir Ahmed Khan Zai for Respondents.

ORDER

NASIR SAEED SHEIKH, J.---This Civil Revision is directed against the order dated 19-6-2003 passed by the learned Additional District Judge Jhang whereby an appeal against the order dated 19-12-2002 passed by the learned Senior Civil Judge Jhang granting an application for temporary injunction in favour of the petitioner was accepted and the order appealed against dated 19-12-2002 was set aside.

2. Briefly stating the facts of the case are that the petitioner instituted a suit before the Senior Civil Judge Jhang seeking a declaration that the order dated 24-1-2001 passed by the Sub-Divisional Canal Officer, Sub-Division, Jhang the defendant Ne.6 is illegal, without lawful authority and against the facts and is based upon mala tides and be set aside. A decree for

permanent injunction was also prayed for restraining the implementation of the impugned order dated 24-1-2001 during the pendency of the suit. Along with the suit an application for grant of temporary injunction was moved by the petitioner restraining the respondents from implementing the, order dated 24-1-2001 during the pendency of the suit.

3. The suit was contested by the respondents who submitted their written statement dated 8-3-2001. It was specifically contended by the respondents that the order dated 24-1-2001 has been implemented before the institution of the suit. The learned Senior Civil Judge accepted the application for the grant of temporary injunction vide order dated 19-12-2002 in favour of the plaintiff.

4. An appeal was preferred by the respondents which came up for hearing before the learned Additional District Judge Jhang who accepted the appeal vide order dated 19-6-2003.

5. This Civil Revision is directed against the order dated 19-6-2003 passed by the learned Additional District Judge.

6. It is contended by the learned counsel for the petitioner that the learned ADJ acted against the facts present on the file and illegally set aside the order dated 19-12-2002.

7. On the other hand learned counsel for the respondents has contended that main reason prevailing with the learned ADJ for 'setting aside the order dated 19-12-2002 of the learned Senior Civil judge was that the order dated 24-1-2001 stood implemented at the spot on 30-1-2001 whereas the suit was instituted on 3-2-2001. It was thus held by the learned ADJ that before the institution of the suit the order stood implemented therefore the prayer for restraining the respondent from implementing the order dated 24-1-2001 cannot be entertained.

8. I have heard the arguments of the learned counsel for the parties.

9. The learned Additional District Judge in paragraph No.6 of the impugned order dated 19-6-2003 held that the allegations of mala fide on part of a public officer have to be proved through some evidence and unless and until the allegations of mala fides are established the presumption of truthfulness is attached to all the official acts. It was further held by the ADJ that the plaintiff of the suit prayed for restraining order against the implementation of the order dated 24-1-2001 which order stood implemented on 30-1-2001. It is a matter of record that the suit was instituted by the petitioner on 30-2-2001 after the implementation of the order dated 24-1-2001 and the learned ADJ rightly observed that the restraining order should not have been issued by the Senior Civil Judge in view of the peculiar circumstance. The learned counsel for the petitioner could not point out any illegality in the impugned order. The civil revision is without any merits and is dismissed with no orders as to costs.

M.U.Y./H-25/L

Revision dismissed.