

2025:PHHC:062083



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2256-2025 (O&M)

Reserved on: 07.05.2025

Pronounced on: 12.05.2025

LT. COL MOOLRAJ SINGH SARMAL (RETD.) AND OTHERS

. . . . PETITIONERS

Vs.

MANAGING DIRECTOR, AWHO AND OTHERS

. . . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Mr. R.S. Bains, Sr. Advocate, with
Mr. Anmoldeep Singh, Advocate,
for the petitioners.

Mr. Gurpreet Singh, Mr. Mansangat Singh Kohli and
Mr. Aakash Paul, Advocates,
for respondents No.1 & 2.

Mr. Karanvir Singh Kathuria, Advocate,
for respondent No.3.

DEEPAK GUPTA, J.

The present Civil Revision under Article 227 of the Constitution of India read with Section 151 CPC has been filed by the plaintiffs of the case assailing the order dated 05.03.2025 (*Annexure P6*) of learned Additional District Judge, SAS Nagar, Mohali, dismissing the appeal against order dated 15.02.2025 (*Annexure P3*) of learned Additional Civil Judge (Sr. Divn.), SAS Nagar, Mohali, whereby an application under Order XXXIX Rules 1 & 2 CPC seeking temporary injunction was dismissed.

2. The factual matrix of the case, as borne out from the paper book, is that the Army Welfare Housing Organization (AWHO), a society constituted for providing residential units to serving and retired Army personnel and their widows, purchased 23 acres of freehold land from M/s Ansal Properties & Infrastructure Ltd. (hereinafter 'Ansal'), out of a total of

180 acres in Sector 114, Mohali. AWHO constructed 1048 flats thereon, later known as Harbhajan Vihar.

3. The plaintiffs (35 in numbers), who are flat owners and members of Harbhajan Vihar Owners Welfare Association, filed a suit seeking a permanent injunction to restrain AWHO from installing a compact-type Sewage Treatment Plant (STP) of 500 KLD and 150 KLD at designated sites within the society. The plaintiffs alleged that such installation is in violation of the master plan, lacks statutory approvals from GMADA, RERA, and environmental authorities, and does not have the consent of the majority of apartment owners as mandated under the Punjab Apartment Ownership Act, 1995 and the Real Estate (Regulation and Development) Act, 2016 (RERA).

4. The learned Trial Court, upon consideration of the submissions and documents, dismissed the plaintiffs' application for ad interim injunction on 15.02.2025. The First Appellate Court affirmed the said order on 05.03.2025. Out of the 35 original plaintiffs, only 8 have approached this Court in revision.

5. Learned Senior Counsel for the petitioners contended that the installation of the new STP without the prior written consent of a majority of apartment owners violates the statutory provisions governing apartment ownership and planning regulations. It is further argued that such installation will result in alteration of common areas and create environmental and health hazards.

6. Per contra, learned counsel for the respondents submitted that the original STP constructed by Ansal is severely under-capacity, outdated, and non-functional. Moreover, Ansal has been declared insolvent and is in no position to maintain or upgrade the existing STP. It was in this context that the Board of Governors of AWHO, comprising the Chief of Army Staff and other senior officials, resolved to install a dedicated STP for Harbhajan Vihar. Pursuant to this decision, tenders were floated, and a contract was awarded to M/s S.R. Paryavaran Engineers Pvt. Ltd. on 21.10.2024. It is submitted

further that 80% of the work on the new STP has already been completed and ₹2.6 crores out of ₹7.13 crores has been paid to the contractor. Halting the project at this stage would not only cause substantial financial loss but may also attract arbitration claims. It was also argued that out of 1048 residents, only 44 attended the residents' meeting convened with prior notice, and 37 of them expressed support for the installation of the STP. Hence, the requirement of majority consent stands substantially satisfied, especially given the apathy of the remaining residents.

7. It is well established position of law that the relief of temporary injunction under Order XXXIX Rules 1 & 2 CPC is discretionary in nature as well as equitable. It is based on well-established principles of '*prima facie* case', 'balance of convenience' and 'irreparable injury'. Besides, the scope of interference by a Revisional Court under Section 115 CPC or under Article 227 of the Constitution of India is narrow and circumscribed by the specific statutory parameters. The Revisional Court can intervene, only when the Court below has exercised a jurisdiction not vested in it by law; or it has failed to exercise a jurisdiction so vested; or it has acted in exercise of a jurisdiction illegally or with material illegality. Mere errors of fact or law are not sufficient grounds for interference. The Revisional Court does not sit as a Second Appellate Court and is not empowered to re-appreciate the evidence brought on record, unless the decision is perverse or suffers from a jurisdictional error. Where both the Courts below have concurrently rejected an application after considering the well-established principles of '*prima facie* case', 'balance of convenience' and 'irreparable injury', the Revisional Court will not substitute its own discretion merely because another view is possible. It will interfere only if the findings are perverse, arbitrary or have caused miscarriage of justice.

8. Reference in this regard can be made to ***Shiv Kumar Chadha etc. Vs. Municipal Corporation of Delhi and other, 1993 SCC (3) 161***; wherein Hon'ble Supreme Court emphasized that granting or refusing injunction is within the discretion of the Court and such discretion should not be

interfered with lightly. In ***Wander Limited and another Vs. Antox India Pvt. Limited, 1990 Supp. (1) SCC 727***, Hon'ble Supreme Court held that Appellate and Revisional Courts should be slow in interfering with the discretionary orders, unless they are unreasonable or perverse. Taking similar view in ***Rukmini Amma Saradamma vs Kallyani Sulochana And Others, 1993 (1) SCC 499***, it has been reiterated by Hon'ble Supreme Court that a Revisional Court cannot interfere unless the order suffers from jurisdictional error or material irregularity.

9. In the present case, both the Courts below have concurrently found that:

- The existing STP is insufficient and dysfunctional, and its continued use poses serious health hazards to the residents.
- AWHO's proposal to install a new STP is in the public interest, driven by health and environmental imperatives.
- Majority consent was sought and obtained to a reasonable extent, as evident from the residents' meeting records.
- Considerable investment has already been made, and substantial progress has been achieved in construction, thereby tilting the balance of convenience heavily in favour of the respondents.

10. The contention that the installation constitutes alteration of common areas without statutory consent is devoid of merit in the present context, as the proposed STP occupies only about 100 sq. meters out of 23 acres and is a temporary, non-intrusive installation aimed solely at safeguarding public health.

11. Upon due appraisal of the record, this Court is of the view that the concurrent findings of the Trial Court and the Appellate Court are neither perverse nor arbitrary, nor do they suffer from jurisdictional infirmity. There is no ground made out for interference in the exercise of revisional jurisdiction.

11. In view of the foregoing discussion, the present Revision Petition stands **dismissed**. Pending applications, if any, also stand disposed of.

12.05.2025

Vivek

**(DEEPAK GUPTA)
JUDGE**

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>