

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 27 of 2022

Date of Decision: June 30, 2023

Sandeep Kumar & others

...Petitioners.

Versus

Meena & others

..Respondents.

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹ Yes

For the Petitioners: Mr.B.N. Sharma, Advocate.

For the Respondents: Mr.R.K. Khidtta, Advocate.

Vivek Singh Thakur, J.

Present petition, under Article 227 of the Constitution of India, has been preferred against judgment dated 28.12.2021, passed by Additional District Judge(II), Shimla, District Shimla, H.P., in Civil Miscellaneous Appeal No.7-S/14 of 2021, titled as *Meena and others vs. Sandeep Kumar & another*, whereby order dated 07.04.2021, passed by Civil Judge, Court No.6, Shimla, H.P., in CMA No.50-6 of 2021 in Civil Suit RBT No.49-1 of 2021, titled as *Sandeep Kumar & another vs. Meena & others*, has been modified to the extent that interim injunction shall not operate against the respondents in respect of acquired width area and set back area of the tenanted premises but shall be operative only with respect to tenanted suit premises.

2. I have heard learned counsel for the parties and have also gone through the material placed before me.

¹ Whether reporters of the local papers may be allowed to see the judgment?

3. Petitioners/plaintiffs' case is that petitioner No.1 is in business of sale of tyres and is doing his business under the name and style of M/s Punjab Tyres and as per requirement and demand of business, he has installed machines of wheel balancing and wheel alignment of vehicles of his customers, who purchase tyres from him. Petitioner No.2 is a Motor Mechanic running his business under the name and style AVN Motors and he used to repair defective vehicles and also does denting and painting of the vehicles.

4. Petitioners have preferred a Civil Suit for permanent prohibitory injunction against the respondents-landlords claiming that they are duly inducted tenants by the respondents, by way of agreement, over the suit property since 2013 and they are paying agreed rent and dues related to the suit property, but in order to pressurize them to pay unreasonable higher rent, respondents are creating hurdles, hindrance, obstacles and obstruction in front of the suit property by parking their vehicles and installing iron angles and chain causing total blockade to the access to the shops taken on rent by them, which is affecting their business adversely. Alongwith the suit, an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure (in short 'CPC) has also been filed seeking interim injunction against the respondents restraining them from interfering in the suit property and not to create any type of hindrance or obstruction in front of the shops under tenancy.

5. Application has been contested by the respondents on the ground that petitioners have no right to use premises for carrying different businesses and they are doing unauthorized activities in the set back as well as on the acquired width of the road, which is not permissible. By filing the suit, they are trying to legalize their unauthorized activities. It is further case of the respondents that iron angles have been fixed by them at the time of construction of the building before giving shops on rent, as these were necessary for protection of the building from vehicles passing on the road. Further that, petitioners have no right to use the vacant space in front of the building because no one can be allowed to carry out business in the set back of the road and there is sufficient space to enter the respective shops of the petitioners. Whereas, respondents have every right to park their vehicle in front of their building. It has further been stated that as per agreement, petitioners have taken shops on rent for carrying out business of 'sale of tyres' and 'sale of spare parts' and carrying of repair works or wheel alignment was never part of the agreement and rent agreement is very clear that the shops were not rented out for the said purpose.

6. It has further been contended on behalf of the respondents that as per rent agreement, petitioners have agreed not to do any act or thing which in opinion of owner may be a nuisance or annoyance, disturbance to the owner or the other occupiers of the other shops of the building or in the neighbourhood and also not to erect or permitted to be erected,

on the said premises, any addition or alteration, whatsoever without first obtaining sanction in writing of the landlord. Therefore, it has been contended that petitioners are not entitled for interim injunction at least injunction, with respect to the set back and acquired width area of road.

7. Trial Court vide order dated 07.04.2021 had observed that it was quite natural that when the respondents had rented out premises to the petitioners for carrying out particular business, they were well aware that set back of area of acquired width area of road will be used by the petitioners to carry out their business. Trial Court had restrained the respondents from interfering, obstructing, creating any hindrance in any manner themselves or through their agents etc. in the free ingress or egress of the applicants-petitioners in connection with their business over space/passage to the shops under reference in present litigation.

8. Being aggrieved by the injunction order passed by the Trial Court, respondents preferred Appeal against the said order and the appeal was allowed partially by the Additional District Judge(II) Shimla vide impugned judgment dated 28.12.2021, whereby it has been ordered that injunction order shall not operate with respect acquired width area of the road and the set back area of the tenanted premises.

9. It has been submitted on behalf of the respondents that shops were rented out on the basis of agreement for five years and currency of agreement has expired and tenancy on

the basis of the said agreement cannot be considered to be continuing, and even if tenancy is considered to be continued on the basis of the said agreement, then also, as per agreement shops were rented out for carrying out business of 'sale of tyres and spare parts', but not for doing wheel alignment or wheel balancing of vehicles and/or doing repair works, denting and painting of the vehicles. It has further been submitted that the set back area or acquired width area of the road was never part of the tenanted premises or subject matter of rent agreement and, therefore, no right can be claimed by the petitioners on the said area for carrying out their business or other activities, which were never permitted or allowed by the owner either by giving separate consent or through rent agreement. Therefore, it has been contented that order passed by the Additional District Judge is legal, valid and justified.

10. No material has been placed before me to controvert the plea of the respondents that suit premises were rented out for 'sale of tyres' and 'sale of spare parts' and business of wheel balancing and alignment of tyres of vehicles and doing repair works, denting or painting, is not part of the agreement. From the plea taken that as per requirement and demand of the business, plaintiff No.1 had to start wheel balancing and wheel alignment of the vehicles of his customers, who purchase tyres from him also indicative of the fact that primary business of the petitioners was 'sale of tyres'.

11. Business of 'sale of tyres' can be done with facility of wheel alignment and wheel balancing of vehicles, and also without such facility. Such activity is not a mandatory part of business of sale of tyres. Every seller of tyres does not have such facility. To enhance the sale of tyres such activity may be done as an ancillary business to the main business of sale of tyres, and wheel alignment may also be combined business of any person. But for the purpose of adjudication of present matter, wheel balancing and wheel alignment of vehicles cannot be considered as a part of original business for which the suit premises was agreed to be rented out which is only sale of tyres and, business of sale of tyres does not mandatorily include additional business of wheel balancing and wheel alignment.

12. Similarly 'sale of spare parts' does not include business of repair works, denting and painting. All these business activities may be related and ancillary to each other, dependable on each other but repair works, denting and painting is not essential part of the business of sale of spare parts. Every spare parts seller does not have facility of repair work, denting and painting. Business of selling of spare parts can be run without such business and, therefore, mentioning of business of spare parts in the rent agreement has to be construed limited to business of selling spare parts only, but not inclusive of other ancillary activities like repair works, denting and painting.

13. For doing sale of tyres or spare parts, utilization or user of set back of the building or acquired width area of the road is not required.

14. Set back is a common area of the building available to all occupants of the building as well as facilitating adjacent building to have open area for air, light etc. Similarly acquired width area of the road is also common use area for the occupants of building and adjacent building's occupants as well as other road users or public at large. This area cannot be claimed as an area available for using by the building owner or tenants or other occupants of the building adjacent to the said area. Therefore, landlord cannot extend exclusive right of user of set back of the premises rented out for user of the tenants for exclusive use of the tenants. No doubt set back can be used but without altering the said area and also such permission cannot be for doing such activity which negates the purpose of leaving the set back. So far as acquired width area of the road is concerned, it is a common area available for using to all including general public and at no stretch of imagination such area can be part of rent agreement.

15. In case user of set back area is requirement of the purpose for which premises is rented out alongwith vacant acquired width area of the road, then specific clause may be there in rent agreement for permission for doing such business in the said area, but such permission may not be exclusive of all other right holders, but shall be inclusive permitting the tenant to

carry on permissible activities in the said area, but with right to user by others, including owner, other occupants of the building as well as public at large having right to use the said area but without altering the said area.

16. There is another aspect of the matter that suit premises in the main suit as well as in the application for interim stay are rented shops which have been rented for running business of sale of tyres and spare parts. Injunction cannot be granted qua the property which is not part of the agreement, much less suit and the application filed therewith. Therefore, interim injunction cannot be made operative beyond the rented premises particularly with respect to the set back and acquired width area of the road which is not part of the rent agreement. There may be a case where nature of the business or purpose for which premises is rented out, in ordinary course, there may be necessity of user of such area for enjoyment of tenancy and, thus, tenant may have right to have injunction against the person causing interference or hindrance in enjoyment of the tenanted property and in such eventuality, in peculiar circumstances, injunction may be ordered accordingly. However, in such a situation also, no exclusive right, in exclusion of others, including owner and other occupants or public at large as the case may be, having right to enjoy and utilize such area, can be granted/ordered in favour of the tenants. In case of arrangements providing specific area to each occupant of the building out of the total set back area, there may be an

injunction order in favour of such petitioners and against others, who are interfering such enjoyment of his right, but not in any other eventuality.

17. It is also pertinent to apt to record that any illegal or void condition of agreement cannot be basis of passing an order or decree of injunction on the basis of that. Parties to the agreement shall have legal right and entitlement to grant and to receive or enjoy any right, property or any other subject matter of the agreement. An illegal contract cannot be an instrument for deriving any right in favour of any party. No one has right to rent out the acquired width area of the road to anyone and in some cases to include set back area in the rent agreement permitting to install machinery or raise any structure or changing nature and dimension of the set back and acquired width area of the road. It shall definitely be antithesis of the purpose for leaving set back area and providing acquired width area of road. Landlord cannot grant such permission which renders purpose of set back redundant. Tenant also shall not have right and/or cannot put the area of set back to utilize in such a manner which defeats purpose of providing set back area.

18. In present case, user of set back area or acquired width area of the road is not subject matter of the rent agreement and is not required at all for running business of sale of tyres or spare parts for which premises have been rented out.

19. In view of above discussion, in the peculiar facts and circumstances of the present case, I do not find any illegality or

irregularity in the impugned order passed by the Additional District Judge(II), Shimla, whereby it has been directed that injunction order shall not operate against the respondents in respect of acquired width area of road and set back area of tenanted premises. Accordingly, petition is dismissed and interim order dated 02.02.2022 stands vacated. No order as to costs.

Pending application(s), if any, also stand disposed of.

(Vivek Singh Thakur),
Judge.

June 30, 2023
(Purohit)