Before Tapen Sen, J

PREM KUMAR GHAI AND OTHERS,—*Petitioners*

Versus

Dr.BIR BHAN GARG,—Respondent

CIVIL REVISION NO.4739 OF 2004

13th December, 2004

Code of Civil Procedure, 1908-0.39 Rls 1 & 2- Construction of a marriage palace after obtaining permission from the competent authority and after approval of the site plan by the Town Planner- An owner of Nursing Home complaining that the construction of said marriage palace is in gross-violation of the guidelines and instructions issued by the Government of Punjab-Complaints made by the respondent dismissed by the competent authorities after conducting inquiries- Trial Court also dismissing the application filed by respondent alongwith civil suit restraining the petitioners from constructing the said palace- Ist Appellate Court allowing the application and further directing the petitioners not to hold any function in the said palace though there was no such prayer by respondent- Challege thereto- Another marriage palace at a distance of about 100 feet away from the Nursing Home already existing- Report of the authorities showing that the area was a commercial area and not residential area- Ist Appellate Court failing to consider the elements of prima facie case, balance of convenience & irreparable loss while allowing application under Order 39 Rls.1 & 2 CPC- Order of Ist Appellate Court based on total presumptions, non-application of mind and liable to be set aside.

Held, that the learned Additional District Judge, Faridkot perhaps did not take into consideration that grant of permission for construction etc. lay within the exclusive domain of public authorities and a judicial officer is not expected to deal with the grant of sanction or permission etc. This Court also does not understand as to how and under what circumstances, the Additional District Judge, Faridkot reversed the order of the Additional Civil Judge (Sr. Division), Faridkot on grounds which appear to be presumptive in nature. This Court also does not understand as to and under what circumstances the Additional

District Judge, Faridkot passed an order restraining the petitioners from holding functions when there was no such prayer made by the respondents.

(Para 17)

Further held, that the Additional District Judge, Faridkot has not applied his mind correctly to the facts and circumstances of the case inasmuch as he has not taken into consideration the elements of prima facie case, balance of convenience and irreparable loss, which ought to have been the yardstick on the basis whereof, he should have proceeded to deal with an application under Order 39 Rules 1 & 2 CPC. He should also have been given due regard to the fact as to what was the actual injury that was being committed without entering into presumptions recorded in his order dated 4th September, 2004,

(Para 18)

Further held, that the reasons which appear to have swayed the Additional District Judge, Faridkot in reversing the order of the Additional Civil Judge (Sr. Division) appear to be based on total presumptions and they are in the nature of preventing an event which has not even taken place. Had the report submitted before the competent authorities been of the nature which was indicative of the fact that the area in question was a pure residential, then perhaps the matter would have been different, but the first Court was clearly of the view that the area is not a residential one but a commercial area. This would be all the more evident upon reading the contents of the report brought on record by the respondent himself. In that view of the matter, the reasonings given by the Additional District Judge, Faridkot are, therefore, totally misconceived. That apart, the photographs brought on record by the petitioners herein go to show that the building is complete and as per the petitioner they have spent huge sums of money over the construction of the same. The balance of convenience, therefore, tilts in favour of the petitioners and not in favour of the respondents and that too when the respondent has a case only of presumptive apprehension.

(Para 23)

A.K. Chopra, Sr. Advocate with,

A.S. Narang, *Advocate, for the petitioners.*

Arun Jain, *Advocate, for the respondent.*

JUDGMENT

TAPEN SEN, J.

(1) This civil revision is directed against the judgment passed on 4th September, 2004 (Annexure P-2) by the Additional District Judge, Faridkot reversing the order dated 19th November, 2003 of the Additional Civil Judge (Sr. Division), Faridkot (Annexure P-1).

(2) The facts of this case which are really relevant to be taken note of are that the respondent herein filed a suit at Faridkot against the petitioners wherein he prayed *inter-alia,* for grant of permanent injuction against the petitioners from constructing a marriage palace. Let it be recorded that the plot on which the marriage palace was proposed to be constructed belongs to petitioners herein.

(3) From the pleadings, it appears that the respondent had a grievance to the effect that the petitioners were constructing the said marriage palace in gross violations of the guide-lines and instructions issued by the Government of Punjab and the Chief Town Planner. Other issues were also raised to the effect that the frontage of the site should not be less than 20 metres and that there was neither a parking place nor a certificate from the Punjab State Electricity Board. Other grievances were to the effect that the marriage Palace could only have been situated atleast 500 yards away from the Schools, Colleges and Hospitals so as not to disturb the peace and tranquillity of those areas and especially of the private nursing home belonging to the petitioner known as the "Garg Nursing Home".

(4) The petitioners appeared and stated that the marriage palace had been constructed after obtaining permission and approval from the competent authority and after approval of the site plan by the Town Planner. They also stated that earlier, the petitioners had been running a factory which lasted for almost 30 years dealing with the job of wheat threshing. It was further stated that during all those years, the activity carried out within the precincts of the then factory created great noise by beat of iron and hammers and the petitioner had also employed almost 100 workmen but during that period, the respondents never complained. They also pointed out that another marriage palace known as the "Welkin Marriage Palace" was already in existence at a distance of about 100 feet away form the Nursing

Home and that the respondent was, infact, himself interested to buy the land owned by the petitonres at a throw away price but when the petitioners did not agree to sell it to him, he then approached the Sub-Divisional Magistrate, Moga in the month of May, 2002 making a prayer that the petitioners should be restrained from constructing the marriage palace. An enquiry was conducted by the Tehsildar, Moga who submitted his report to the Sub-Divisional Magistrate reporting *inter-alia* that there could not be any objection to the construction of the said marriage palace. He also reported that due permission etc. had also been obtained.

(5) It is further stated that in June, 2002 the respondent approached the Deputy Commissioner with similar complaints, where-after a Naib Tehsildar of Moga was sent for spot verification. He also submitted a detailed enquiry report to the Sub-Divisional Magistrate, Moga stating that there would not be any noise pollution.

(6) It is thereafter that the respondent filed the suit together with an application under Order 39 Rules 1 and 2 : CPC praying for an order of restraint upon the petitioners restraining them from constructing the marriage palace. According to the petitioners, they have spent huge sums of money towards getting permission etc. and towards construction thereof. The petitioners further stated before the concerned Court that the construction had been going on for the last one year after due permission was taken from the Senior Town Planner, PWD (B&R) and from the Municipal Council, Moga.

(7) After hearing the parties, the Additional Judge (Sr. Division), Faridkot dismissed the application of the respondent (filed under Order 39 Rules 1 and 2 CPC). A copy of the said order has been annexed and marked as Annexure P-1 to this application.

(8) Being aggrieved, the respondent went in appeal before the Additional District Judge, Faridkot, who, by the impugned order (as contained in Annexure P-2) allowed the application under Order 39 Rules 1 and 2 filed by the respondent and set aside the order of the Additional Judge (Sr. Division) which was passed on 19th November, 2003.

(9) The petitioners are, therefore, now aggrieved with the passing of order (Annexure P-2) which according to the learned counsel for the petitioners amounts to restraining them from hoding any function in the building.

(10) The learned counsel for the petitioners also submits that in any event, the impugned order is wholly misconceived inasmuch as the photographs of the building had been brought on record to show that the construction had already been completed. Some of these photographs are also attached with this petition which are marked as Annexure P-4. According to the learned counsel, there was, therefore, no occasion to grant any order of injunction restraining the petitioners from constructing the marriage palace. According to the learned counsel, realising the same the additional District Judge, Faridkot, therefore went a step further and directed that the petitioners shall not hold any function in the said marriage palace.

(11) The learned counsel submits that this is perverse and could not have been passed inasmuch as there was no such prayer made by the respondent, as his only prayer was for an injunction restraining the petitioners from constructing the marriage palace and not from holding functions therein. According to him, by passing such an order restraining the petitioners from holding any function in the marriage palace, the Additional District Judge has over-stepped his jurisdiction and has deprived the petitioners from earning their livelihood in total violation of the constitutional right guaranteed under the Constitution of India.

(12) Mr. Arun Jain learned counsel appearing for the respondent has submitted that there can be no peaceful co-existence of a marriage palace and nursing home which is run by the respondent. According to him, the plot of the petitioners adjoins the Nursing Home and residence of the respondent on the Northern and Western sides. On the Eastern side of the plot of the petitioners there is a commercial property and an abandoned sheller of one Bihari Lal and thereafter, there is a residential colony, which is called as the "Friends Colony". On the Southern side of the plot of the petitioners, there are residential plots and on the Western side, there are some residential colonies. There is also an S.D. Senior Secondary School and S.D. Model School where, about 2500 students are studying. he further states that when the respondent came to learn that the petitioners were going to construct a marriage palace in gross violations of the guidelines and instructions issued by the Government of Punjab and Chief Town Planner, Punjab the respondent and other residents approached the Deputy Commissioner, Moga and requested him not to grant any sanction for

the construction of the said marriage palace, but the petitioners, without obtaining any sanction and No objection certificate from the District Magistate, Moga, started constructions, which was against the Rules as according to the General Guidelines, construction of a building for marriage palace, the frontage of the site should not be less than 20 metres whereas the frontage of the alleged marriage palace was only 36 feet. They further stated that there was no parking place with the petitioners. A certificate from the Punjab State Electricity Board was to be obtained and the marriage palace should be situated at least 500 yards away from Schools, Colleges and Hospitals. According to the respondent, the construction of the said marriage palace will disturb the silence zone, which was necessary for Schools and Hospitals. The Nursing Home of the respondent came within the definition of a Hospital and that opposite to the same, there was the office of the Deputy Commissioner and of Judicial Courts. The respondent apprehended that the marriage palace, once constructed, there would be playing of music, beating of drums or exhibition of any mimicry, musical or other performances/acts which would attract crowd. There would be noise pollution. Alcohol would be served and there was likelihood of mishappenings. All these things these would disturb the peaceful atmosphere, which was necssary for the School and Hospital and the respondent would suffer an irreparable loss.

(13) Mr. Arun Jain, learned counsel, further submits, with reference to his application bringing on record Annexures R-1 to R-5, that the frontage of the site should not be less than 20 metres and that the same cannot be situated in a thickly populated residential area and that no marriage palace should have direct access on the National/State Highway/Major District road.

(14) According to Mr. Arun Jain, the provisions of regulation 3(5) of the Noise Pollution (Regulation and Control) Rules, 2000 have also been violated in as much as the same stipulates that an area comprising not less than 100 meters around hospitals, educational institutions and Courts may be declared as silence area/zone for the purpose of these Rules.

(15) According to Mr. A.K. Chopra learned senior counsel appearing for the petitioners the frontage of the area is more than 100 feet and the marriage palace is situated 500 feet away from the road. He also submits that the area in question is not a residential

area at all and while granting permission, the public authorities made intensive research and gave their reports clearly showing that the area was commercial in nature in as much as there was Atta Chakki, Godowns, Petrol Pump, Welkin Marriage Palace and so on and so forth. He further submitted that in view of the fact that the permission was granted by the local authorities who are competent to do so, there can be no scope in coming to the conclusion that there has been any violation of the circular (s)/guidelines of the Government. It is further stated that in any event the impugned order is wholly without jurisdiction.

(16) Having gone through the rival contentions of the parties, there are some observations and/or findings both by the Additional Civil Judge (Sr. Divison), as also by the Additional District Judge, Faridkot, Paragraphs 8 & 10 of the judgment dated 19th November, 2003 passed by the Additional Civil Judge (Sr. Division), Faridkot are, therefore, relevant to be quoted which read thus :

Para-9

"After going through the record and considering the argumetns of the learned counsel for the parties and law cited by the learned counsel for the parties, I find that the plaintiff has not come to the Court with clean hands. he gave a wrong site plan intentionally to misguide the Court and to take a discretionary relief. He wrongly filed a site plan and the presence of the Welkin Marriage Place, which is in existence about 22 Karams away from the Nursing Home has been intentionally withheld. The Court of Shri Tarsem Mangla, PCS, Additional Civil Judge (Senior Division), Moga has to send a Local Commissioner namely Shri Sanjeev Dhir, who gave the report that as per the spot, site plan of the plaintiff is wrong and the site plan of the defendants is correct. I find that this was material withholding the information to the Court which disentitled the plaintiff from seeking the injunction. (emphasis added)

Para-10

Now coming to the other aspect of the case, I find that the area is not a residential area, but a commercial area. There is a Sheller of Bihari Lal, there is a Petrol pump, Geeta Cinema,

Vacant Plots, Gaushala, Agency of Maruti, Denting and Painting shop and in front of the property of the plaintiff, there is office of Public Health, Deputy Commissioner's Complex and Nestle Club. All these things goes to show that this area is not a residential area. In fact, it is a commercial area. The defendants in their written statement have taken a specific plea that earlier there was a Thresher Manufacturing Unit and all the times there was noise of hammers and cutting of the iron. The plaintiff never objected that business and due to some reasons the business was abandoned and the place was used for the building of the marriage palace. In the replication, this fact has not been controverted and it has been admitted that there is a Welkin Marriage Palace, but that is about 24 feet away. Now coming to the permissions, I find that the defendants took permission from the Municipal Committee, Moga. The photo copy of the same is on the record. Further Executive Engineer, C.P.W.D., Ferozepur granted sanction to them with conditions. Similarly, the Senior Town Planner, Ludhiana granted the sanction for the construction of the marriage palace with the conditions. Over and above, the Deputy Commissioner on the report of the Sub-Divisional Magistrate has sanctioned the construction of the marriage palace. So, in the present scenario, I find that the suit is pre-mature. The plaintiff has not come to the Court with clean hands. He has intentionally withheld the presence of Welkin Marriage Palace in his plaint and site plan only to take injunction order from the Court by misleading the facts. All the Civil Authorities after considering the situation have granted the permission. As per the judgment cited by the learned counsel for the defendants i.e. **Ouseph** *versus* **Thomas and Kuldip Singh** *versus* **Subash Chander Jain and Other** *(Supra)* the case is pre-mature and level of the noise noise is yet to be determined. Loud noise will be restricted by the Civil Authorities. However, the defendants shall abide by the rules and regulations and they will keep the noise level down, so as the recovery of the patients shall not be disturbed". (Emphasis added).

The aforesaid observations or findings of the learned Additional Civil Judge (Sr. Division), Faridkot shows :—

(a) that a wrong site plan was filed by the respondent.

(b) that the respondent did not refer to the existence of the Welkin Marriage Palace which was in existence only abot 22 Karams away from his Nursing Home ;

(c) that a local Commissioner gave a report to the effect that the site plan filed by the respondent was incorrect and that the site plan filed by the petitioner was true ;

(d) that withholding of such information and giving an incorrect site plan amounted to withholding material information from the Court.

(e) that the area was not a residential area but a commercial area ;

(f) that the petitioners took due permission from the Municipal Councial, Moga ;

(g) that the petitioners were granted sanction by the Executive Engineer, C.P.W.D. ;

(h) that the Senior Town Planner, Ludhiana granted sanction for the construction of the marriage palace;

(i) that the Deputy Commissioner on the report of the S.D.M. sanctioned the construction of the Marriage Palace ; and

(j) all civil authorities after considering the situation granted permission.

As against the aforesaid findings of the learned Additional Civil Judge (Sr. Division), Faridkot on 19th November, 2003, the Additional District Judge, Faridkot passed the impugned judgment and paragraph 13 reads thus :

> "That the learned lower court while arriving at the impugned decision had held in para 09 that the site plan of the plaintiff is wrong and that the site plan of the defendants is correct and further that the area is not a residential area, but a commercial area zone are matters which are not at supportive on the file. The mere fact as has been observed by the learned lower court that the Deputy Commissioner has sanctioned the construction of the

marriage palace was not a justifiable ground for the Court to have based its observations and as it was expected the Court was supposed to independently access the case of the parties and thus to come to a totally judicious decision into the matter, rather than be swayed by such acts of the public authorities. Furthermore, it was not desirable for the Court to have observed at this stage that the case of the plaintiff was premature as at this very level claim of the plaintiff and other nuisance was yet to be determined finally. That reiterating the principles set up in **John Rylands and Jehu Horrocks** *versus* **Thomas Fletcher's case** even in view reported in Ram Lal's case *(ibid)* cited on behalf of the appellants, counsel our own Hon'ble High Court had held that actionable nuisance are of multiple varieties ; and they include unreasonable noises or vibrations and other causes which are responsible for personal inconvenience resulting in interference with one's quiet enjoyment. In the very nature, it is not possible to lay down absolute standards. It is always a question of decree whether interference with comfort or convenience is sufficiently serious to constitute a nuisance. In our modern society and in the machine age, every one must put up with certain amount of discomfort resulting from legitimate activities of one's neighbour. In the Courts, the old maxim *sic utere tuo, ut alienum non laedas-so* use your own property as not to injure your neighbour, and the homely phrases "give and take" "live and let live" are indicative of the principles which are borne in mind, but these do not serve exact yardstick for it is not possible to measure the extent of the discomfort of annoyance. It is generally conceded, that in determining the question whether a nuisance has been caused, a just balance must be struck between the right of the defendant to use property for his own lawful enjoyment, and the right of the plaintiff to the undisturbed enjoyment of his property. In order to be actionable, a nuisance must materially interfere with the comfort or convenience of ordinary persons judged by the standards of an average man. The substantial extent of discomfort has to be determined not merely with reference to the plaintiff, but from the plaintiff's premises irrespective of his position in life, age or state

of health. So, on the basis of these observations the courts are to see if such an interference must be an inconvenience materially interfering with the ordinary comfort physically of human existence nor merely according to elegant or dainty modes of habits of living but according to plain and sober and simple notions as the law favours not the wishes of the dainty and that in determining whether an actionable nuisance exists, the degree or the extent of the annoyance or the inconvenience is to be considered for what may amount to a nuisance in one locality may in another place and under different surroundings be deemed unobjectionable and reverting back to the instant case it is a matter of common knowledge that during functions in a marriage palace there would in all eventuality be noise of loud speakers, vehicles and together with the merry makers indulging in the event and as the site plan placed on the record reveals the vehicles of the visitors would certainly be an additional nuisance which would not only cause inconvenience or annoyance to the hospital authorities, the patients, their attendants and the public at large visiting the hospital and as has been the law laid down in **Dhannalal's case** *(ibid),* even a source of constable nuisance if abnormal or unusual can be considered if it interferes with one's physical comfort and more so such a discomfort attains all the more proportions when as is usually seen that functions at marriage palaces have no convenient timings and normally go on at odd hours. So, the arguments of the respondents' counsel that the defendants are making a reasonable use of their own property is inconsequential and ineffectual and further refutes the arguments that the locality where the marriage palace is being raised is a noisy locality being on the G.T. Road as well as industrial area zone as it does not bestow upon the defendants to add substantially noise levels prevalent in the area and therefore, it cannot be considered that the acts of the defendants are reasonable as regards their neighbour, the plaintiff and even the contention that the defendants were carrying on the construction of the marriage palace since a long time does not allow the defendants of acquisition of such a right by prescription. Since as has been the ratio laid down in **Raj Singh's case** *(ibid)* relied upon by the appellants, the case of the plaintiff

is certainly one that of an actionable plea and certainly entitles the plaintiff to have the right to keep at bay such a nuisance through the intervention of a Court by injuncting into the acts of the defendants and as such with due respect to ratio laid down in **Kuldip Singh's case** *(ibid)* relied upon by the respondents counsel does not come to the rescue of the defendants in this case and commensurate with the law laid down in Shammughavel Chettier's case *(ibid)*, and as has been discussed above the apprehension of the plaintiff is certainly not unfounded and uncalled for and is reasonable well protected under the law. The learned lower court considering the case of the parties had certainly run into an error by holding that it was yet pre-mature to hold that there was or there was not any cause to injunct, since the plaintiff had approached the court under the provisions of Sections 37 and 38 of the Specific Relief Act and on fulfilment of the three necessary ingredients as detailed in this statutory requirement considering of *prima facie* case, balance of convenience and irreparable loss the Court are certainly entitled to act in favour of the applicants. The arguments that the marriage palace has already been constructed does not subvert in any manner the claim and relief being sought by the plaintiff as it is well writ large on the record that this raising of the marriage palace has been undertaken during the pendency of the suit and the courts are well within their rights in appropriate cases to mould the relief in such eventuality and therefore, there is no cause of action for user of the marriage palace is totally ill-founded and without any merits. That the plaintiff appellant has been successful in covering his case for the grant of relief under the provisions of Sections 37 and 38 of the Specific Relief Act, therefore, in view of the same and keeping in view the fact that the parties are yet to lead their evidence, it would be appropriate to hold and direct the parties to maintain status *quo* over the construction of the marriage palace and running of the marriage palace by not holding any function and as such the appeal filed by the appellants is accepted with no costs and the application under order 39 Rules 1 and 2 read with Section 151 of the CPC is allowed and the order of the learned lower court under appeal is hereby set aside."

This Court does not understand as to how an observation has been made by the learned Additional District Judge, Faridkot to the effect that merely because the Deputy Commissioner had sanctioned the construction of the marriage palace, the same was not a justifiable ground for the Court to have based its observations. This Court also does not understand as to how the learned Additional District Judge, Faridkot makes an observation that, " it was expected the Court was supposed to independently assess the case of the parties and thus to come to a totally judicious decision in to the matter, rather than be swayed by such acts of the public authorities".

(17) The learned Additional District Judge, Faridkot perhaps did not take into consideration that grant of permission for construction etc. lay within the exclusive domain of public authorities and a judicial officer is not expected to deal with the grant of sanction or permission etc. This Court also does not understand as to how and under what circumstances, the learned Additional District Judge, Faridkot reversed the order of the Additional Civil Judge (Sr. Division), Faridkot on grounds recorded in paragraph 13 which appear to be presumptive in nature. This Court also does not understand as to and under what circumstances the Additional District Judge, Faridkot passed an order restraining the petitioners from holding functions when there was no such prayer made by the respondent.

(18) This Court after having gone through the contents of paragraph 13 of the impugned judgement is clearly of the opinion that the Addditional District Judge, Faridkot has not applied his mind correctly to the facts and circumstances of the case in as much as he has not taken into consideration the elements of *prima facie* case, balance of convenience and irreparable loss, which ought to have been the yardstick on the basis whereof, he should have proceeded to deal with an application under Order 39 Rules 1 and 2 CPC. He should also have given due regard to the fact as to what was the actual injury that was being committed without entering into presumptions recorded in his order dated 4th September, 2004.

(19) Mr Arun Jain, learned counsel for the respondent, places reliance in the case of **Dhannalal and another** *versus* **Thakur Chittarsing Mehtapsingh, (1)** He submits, with reference to paragraph 16 thereof that mere grant of permission/licence in starting of flour mill should not be construed to be a licence encouraging a person to commit nuisance.

(1) AIR 1959 Madhya Pradesh 240

(20) The foregoing judgment referred to by the learned counsel for the respondent does not apply to the facts and circumstances of this case because in that case, the plaintiff-respondent had his house situated at a distance of 8/9 feet from the flour mill and he was greatly distressed with the working of the said flour mill because of the smoke, vibrations and the nuisance that interfered with their physical comforts.

(21) In the instant case, this Court has already noticed that apart from the fact that the area itself was a commercial area and not a residential area, the report submitted by the Naib Tehsildar before the Sub-Divisional Magistrate stated that there would be no noise pollution in relation to the concerned marriage palace. That apart, this Court takes notice of the findings recorded bythe Additional Civil Judge (Sr. Division) on 19th November, 2003 to the effect that the respondent intentionally did not file the correct site plan so as to prevent the Court from having knowledge of the fact that there was a marriage place already in existence within 20 karams away from the Nursing Home. Moreover, the reasons which appear to have swayed the Additional District Judge, Faridkot in reversing the order of the Additional Civil Judge (Sr. Division) appear to be based on total presumptions and they are in the nature of preventing an event which has not even taken place, such as, the happening of nuisance etc, playing of music, beat of drums, exhibition of mimicry, service of alcohol drinking during marriage parties etc. Had the report submitted before the competent authorities been of the nature which was indicative of the fact that the area in question was a pure residential, then perhaps the matter would have been different, but the first Court was clearly of the view that the area is not a residential one but a commercial area. This would be all the more evident upon reading the contents of the report marked Annexure R-4 brought on record by the respondent himself. In that view of the matter, the reasonings given by the Additional District Judge, Faridkot are, therefore, totally misconceived.

(22) Mr. Arun Jain, learned counsel for the respondent then relied upon the judgment passed in the case of **Shanmughavel Chettiar and others** *versus* **Sri Ram Kumar Ginning Firm (2)** I am afraid, the aforementioned judgment also does not come to the

(2) AIR 1987 Madras 28

rescue of the respondent in as much as in that case the plaintiff had constructed a building to locate a Ginning Factory and the defendant therein had purchased a land for purposes of starting a brick-kiln. According to the plaintiff, the brick-kiln would have rsulted in hardship since he had to store the cotton and use the vacant site for drying the cotton before ginning and there was likelihood that the brick-kiln would bring about hazard of fire in his ginning factory.

(23) Consequently, the judgment cited by Mr. Jain, cannot be made applicable to the facts and circumstances of the present case. That apart, the photographs brought on record by the petitoners herein (Annexure P-4) go to show that the building is complete and as per the petitioners, they have spent huge sums of money over the construction of the same. The balance of convenience, therefore, tilts in favour of the petitioners and not in favour of the respondent and that too when the respondent has a case only of presumptive apprehension.

(24) Finally the fact that the building is now a stark reality, having been fully constructed, the direction made in the impugned order restraining the petitioners from holding functions, was outside the scope of the application that was filed under Order 39 Rules 1 and 2 CPC. This compels this Court under Article 227 of the Constitution to interfere. To that extent, therefore, the judgement relied upon by Mr. Jain learned counsel for the respondent in the case of **Sarpanch etc** *versus* **Ramgiri Gosavi and another (3)** does not come to the aid of the respondent becuase this Court is satisfied that the impugned order is totally unjustified and causes a grave miscarriage of justice to the petitioners.

(25) Consequently, this Court [illegible]ion but to set aside the order dated 4th September, [illegible] (Annexure P-2) passed by the Additional District Judge, Faridkot. The civil revision application is accordingly allowed. There shall, however, be no order as to costs.

R.N.R.

(3) AIR 1968 S.C. 222

7147/HC—Govt. Press, U.T., Chd.