

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 859 of 1998 (O&M)
Date of decision: 14.01.2015

Balbir Sharma

... Petitioner

versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Mani Ram Verma, Advocate, for the petitioner.

Mr. Keshav Gupta, Assistant Advocate General, Haryana.

Mr. Surinder Gandhi, Advocate,
for the respondent-Gram panchayat.

K.Kannan, J.

The petitioner has filed the writ of mandamus to direct the respondent authorities to acquire the land for disposal of sewerage water and further direct the maintenance of sewerage system by constructing inlets in laying sewerage pipelines. The petitioner claims to be a Lawyer practicing in the District Court at Bhiwani and is spirited by public interest to ensure that his village is properly maintained and the life, limb, health, property and environment of the whole village is saved from the danger of total neglect. The petition had been originally filed against the State of Haryana and the state functionaries at the District level. The Gram Panchayat is arrayed as respondent No.4 and subsequently, on an oral plea by the petitioner, the Deputy Commissioner Bhiwani had been made a party.

At an early hearing, on 01.05.2014, this Court had considered the reply of the Deputy Commissioner, Bhiwani, that the finances in the account of the Gram Panchayat were insufficient and the existing drainage and sewerage systems were non-functional. The

Court had also recorded the fact that the technical committee had been constituted to explore the possibility of revival of existing sewerage/drainage system and would also consider the feasibility of operation of sewerage/drainage system.

The additional affidavit filed by the Deputy Commissioner brings out the fact that sewerage/drainage system had been laid in the year 1971-72 but it could not be put to use and it could not be effective for the existing population in the catchment. The system already in place is not sufficient to cope with the present demand. The administration has also given a plan of the total habitation of the land and the levels of total catchment area.

It is very clear from what has brought out in the reply that the civic facilities in the village are not adequate at all. There cannot be a mere general direction that all civic amenities shall be duly addressed. If on account of the neglect of civic amenities, there exists any nuisance, it should be properly dealt with. In Municipal Council, Ratlam Vs. Vardhichand, AIR 1980 SC 1622, the Hon'ble Supreme Court was considering at defence by Municipal Authority that they did not have adequate funds for laying sewerage lines. The Hon'ble Supreme Court rejected the contention and found that right to life means right to good health and environment and observed that the municipal authority cannot plead want of funds as a justification for its own laches. The magisterial power available under Section 133 of the Code of Criminal Procedure, 1973, the Hon'ble Supreme Court held, would extend to direct the proper restoration of amenities to prevent abatement of nuisance. I do not think it would be possible for this Court to monitor on day to day basis on how the facilities could be extended and how the sewerage system could be installed afresh. It requires planning to be undertaken depending on the resources which the Panchayat is able to garner by levies and grant from the State. Respondent No.5 as the head of the District Administration shall convene meeting of the representatives of the Gram Panchayat and

chart out a plan of action for laying sewerage lines and budget them properly and secure appropriate funds through local levies and government grants. The process shall be undertaken in right earnest and the plan shall be drawn up and put in place within a year. If there persists no action on on their part and the public health is seriously affected by neglect of the State, the petitioners will have an independent right to seek for redressal in the manner known to law. As of now, beyond the direction to establish a sewerage system that can take care of the health concerns, no other relief is possible in this writ petition. Empowerment of local bodies under the Panchayati Raj Act, was to foster local development by allowing for participation of the villagers themselves and a system of elections was a method of setting up the democratic process of allowing the local issues to be suitably addressed at the grass root level itself. If after 20 years after the passing of the Act we are confronted with poor local amenities and an intervention should be sought through the Court in a writ petition, I only hope that public spirited individuals such as the petitioner who is an Advocate knows how to change the power structure of the Village by appropriate democratic process through elections and make their representatives accountable. It is the responsive local bodies that can empower the Bharat which still lives in the villages and not in cities.

With all these exhortations, case shall come to an end, but the process as directed must continue.

14.01.2015
Kumud

(K.KANNAN)
JUDGE