

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-8221-2015

Decided on : 14.05.2015

Jagdev Singh

.... Petitioner

VERSUS

State of Haryana and others

..... Respondents

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: **Mr.Arvind Kumar Yadav, Advocate, for the petitioner.**

Mr.D.Khanna, Addl.A.G., Haryana,for respondents No.1 to 3.

Mr.Tejinder K. Joshi, Advocate, for respondent No.4.

RAJIVE BHALLA, J. (ORAL)

The petitioner prays for issuance of a writ of certiorari, quashing order dated 30.12.2014 (Annexure P-3), passed by the Deputy Commissioner, Rewari.

Rejoinder filed on behalf of the petitioner, in Court today, is taken on record.

Counsel for the petitioner submits that an old pond measuring 273 kanals and 17 marlas exists in Khasra No.54/4. The Gram Panchayat-respondent No.4, in collusion with respondents No.2 and 3, wanted to change the nature of the pond and convert it into a stadium. The petitioner, therefore, filed CWP-9973-2013 “Jagdev Singh Vs. State of Haryana and others”, which was disposed

of by directing the Gram Panchayat to ensure that the pond is recharged and maintained. The Deputy Commissioner, Rewari, has vide the impugned order granted permission to the Gram Panchayat to change the nature of Khasra No.54/4, a gair mumkin pond (johar), into a stadium. It is further submitted the Gram Panchayat has not prepared a land utilisation plan, as required by Rule 3 of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter referred to as the “Rules”) (as applicable to the State of Haryana) and, therefore, cannot alter the user of the land. It is prayed that as a pond is the lifeline of a village, the respondents should be restrained from constructing a stadium and the order passed by the Deputy Commissioner, granting approval, may be set aside.

Counsel for respondent No.4-Gram Panchayat submits that the entire land of Khasra No.54/4 is not a pond. A major part of the land is charand (a grazing ground). The Gram Panchayat has prepared a land utilisation plan vide Resolution No.6 (Annexure R-2). The Deputy Commissioner, approved the plan but declined permission to change the user of Khasra No.54/4, without prior approval. As a consequence, the Gram Panchayat filed an application before the Deputy Commissioner, for approval. By way of the impugned order, the Deputy Commissioner has granted approval. Counsel for the Gram Panchayat states, on instructions, that the Gram Panchayat shall not construct the stadium on any part of the pond. The stadium shall be constructed on land other than the

land of the pond.

We have heard counsel for the parties and perused the impugned order.

A water body is essential for and integral to agrarian societies. The diversion of the land of a water body for other purposes, therefore, cannot be countenanced. The necessity of saving, maintaining and recharging water bodies that have fallen into the disuse cannot but be emphasised. A reference in this regard may be made to observations of the Hon'ble Supreme Court in “**Hinch Lal Tiwari Vs. Kamala Devi**”, 2001 (6) SCC 496.

The petitioner asserts that the Gram Panchayat, under the garb of constructing a stadium/playground is diverting land reserved for a gair mumkin johan (pond), for a stadium and apart from the fact that the land reserved for a pond cannot be diverted to any other use, the Gram Panchayat has not prepared a land utilisation plan.

We cannot possibly cavil but, in fact, wholeheartedly agree with the submission by counsel for the petitioner, that Gram Panchayat cannot be allowed to divert the land of a water body for other purposes but the plea that the Gram Panchayat has not prepared a land utilisation plan, is factually incorrect. A perusal of Annexure R-2, reveals that the Gram Panchayat has prepared a land utilisation plan, as required by Rule 3 of the Rules. The Deputy Commissioner after initially declining approval has granted approval for change of the user of land in Khasra No.54/4, for constructing a stadium but as

counsel for the Gram Panchayat has made a categorical statement that the Gram Panchayat shall not divert any part of the land reserved or used as a pond for construction of the stadium, we restrain the Gram Panchayat from using any part of the land reserved or used as a gair mumkin johar for construction of a stadium and if any such construction has been raised on any part of the gair mumkin johar, direct the Gram Panchayat to remove the construction so raised, forthwith.

A perusal of the documents on record, however, reveals that Khasra No.54/4, measuring 243 kanals and 17 marlas, is a gair mumkin pond and a charand (grazing ground). The revenue record does not delimit the exact dimensions of the gair mumkin pond or the grazing ground. It would, therefore, be necessary to direct the Deputy Commissioner, Rewari, to examine the entire revenue record, particularly the record prepared during consolidation to determine the exact dimensions of the gair mumkin pond and after demarcating the area of the pond ensure that no part of pond is used for any purpose other than a water body and in case the pond is dry, to ensure that the pond is recharged, cleaned and used for storage of water.

The Gram Panchayat may construct the stadium on land other than the land reserved for or used as a pond. The Gram Panchayat, however, has not delimited the area of the stadium, as in its reply it has merely averred that the area of stadium shall not

exceed six acres, without identifying the exact area, whether by khasra numbers or boundaries.

The Deputy Commissioner, Rewari, shall while delimiting the area of the pond call upon the Gram Panchayat to delimit and identify the exact area of six acres where it proposes to construct a stadium and after doing so ensure that no part of the gair mumkin pond is used for construction of the stadium.

The writ petition is disposed of with these directions. A copy of the order be forwarded to the Deputy Commissioner, Rewari, for compliance.

**[RAJIVE BHALLA]
JUDGE**

14.05.2015
Shamsher S.Sabharwal

**[AMOL RATTAN SINGH]
JUDGE**