

Civil Revision No. 4068-2015

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

Civil Revision No. 4068-2015

Date of Decision: 08.01.2016

Gram Panchayat, Mundhal Khurd

... Petitioner(s)

Versus

Sandeep Kumar and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Akshay Kumar Goel, Advocate,
for the petitioner.

Mr. Jagjeet Beniwal, Advocate,
for respondent Nos.1 and 2.

Mr. Ramesh Kumar, AAG, Haryana.

Paramjeet Singh Dhaliwal, J.

Instant writ petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 21.04.2015 passed by learned Addl. District Judge, Bhiwani whereby appeal preferred by respondent Nos.1 and 2-plaintiffs against the order dated 09.01.2015 passed by the trial Court, has been accepted and the petitioner and proforma respondent Nos.3 to 6 have been restrained from carrying out any construction on the suit land.

I have heard learned counsel for the parties and perused the

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record.

Learned counsel for the petitioner vehemently contended that the lower Appellate Court has wrongly set aside the order passed by the trial Court. The lower Appellate Court has failed to properly consider the judgment dated 22.11.2012 rendered by this Court in CWP-3221-2011, titled as '*Rajpal and another vs. State of Haryana and others*'; the provisions of Section 5(1) of the Punjab Village Common Lands (Regulation) Act, 1961 and the provisions of Rule 3(2) (xxiv) of the Punjab Village Common Lands (Regulation) Rules, 1964. The lower Appellate Court has also lost the sight of the fact that *gair mumkin johar* comprised in khasra no.287 was being used by the Gram Panchayat for the construction of water works so that pure and clean drinking water could be supplied to the inhabitants of the village. The purpose of water works and *gair mumkin johar* is one and the same. Even construction of stadium on the area of 6½ acres out of 12 comprised in khasra no.287 is for the benefit of the inhabitants of the village. The State Government had already sanctioned an amount of ₹180.50 lacs for the construction of water works and ₹54,72,030/- have already been incurred till the month of March, 2015 by the Department of Public Health, Haryana.

Per contra, learned counsel for respondent Nos.1 and 2 supported the impugned order and relied upon the judgment dated 22.11.2012 rendered by a Division Bench of this Court in *Rajpal's case (supra)* to contend that *gair mumkin johars* or water bodies, are not to be

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diverted to any other use, and are, in fact, required to be protected cleaned and recharged.

I have considered the rival contentions of learned counsel for the parties.

By filing the civil suit, respondent Nos.1 and 2-plaintiffs sought the relief of permanent injunction that petitioner-defendant No.3 and proforma respondents-defendant Nos.1 to 2 and 4 and 5 be restrained from raising any type of construction on the land of *gair mumkin johar* and also from construction any water tank and stadium over the same or changing the nature of the land of the *gair mumkin johar* in khasra no.287 measuring 96 kanals as per jamabandi and *Sharat Wajib-ul-urz*.

Admittedly, the construction is being raised for establishing water works to provide drinking water to the inhabitants of the village after obtaining sanction from the government. It is also admitted fact that amount has also been sanctioned for the purpose of construction of water works and a part of amount has already been spent on it. The resolution was also passed on 02.06.2011 for providing land measuring 660' x 792' from khasra no.287 to the State of Haryana for construction of second water works for welfare, development of the village and for its inhabitants.

However, it is more important that material resources of the community like forests, tanks, ponds etc. which are nature's gift, should

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be protected and saved enabling the people to enjoy a quality life as provided under Article 21 of the Constitution. The Division Bench of this Court in ***Rajpal's case (supra)*** has held as under:

“We have heard counsel for the parties and perused the paper book. Admittedly, the land, in dispute, is a gair mumkin johar (a pond). In these times of falling water levels and scarcity of water, the Government and the Gram Panchayat are duty bound to ensure that water bodies are protected, cleaned and if deficient in water, recharged. A paragraph from a judgment of Hon'ble Supreme Court in Hinch Lal Tiwari vs. Kamala Devi and others, (2001) 6 SCC 496, where a similar controversy came up for consideration, needs to be reproduced so as to remind the State of Haryana as well as the Gram Panchayat of their obligation towards society as well as their duty to preserve water bodies. A relevant extract from the judgment reads as follows:

“13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under article 21 of the Constitution. The government, including the Revenue Authorities i.e. respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.”

We, therefore, direct the Director, Development and Panchayat, Chandigarh to reconsider the matter and

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direct the government to ensure that in future gair mumkin johars or water bodies, are not diverted to any other use, and are, in fact, protected, cleaned and recharged.”

Following the law laid down by the Division Bench of this Court in *Rajpal's case (supra)*, I do not find any illegality or perversity in the impugned order.

Dismissed.

However keeping in view the fact that ₹54,72,030/- have already been incurred for the construction of water works till the month of March, 2015 by the Department of Public Health, Haryana, permission is granted to construct the water works over one acre of land only.

08.01.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge