

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

CWP No.12656 of 2016 (O&M)
Date of decision: February 07, 2017

Gram Panchayat Bhanderi

----Petitioner

Versus

State of Haryana and others

----Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.Anand Singh, Advocate
for the petitioner.

Mr.Ankur Mittal, Addl. AG, Haryana.

Mr.Rajbir Sehrawat, Advocate
for respondents No.5 to 8.

HARINDER SINGH SIDHU, J.

The petitioner, who is the Sarpanch of village Bhanderi has filed the present petition praying for directions to the respondents to stop construction work on the fertile land which has been reserved for purpose of construction of water-house (*Jalghar*) pursuant to resolution No.5 dated 20.9.2013 (Annexure P-1) passed by the Gram Panchayat.

On 11.2.2008, a resolution was passed by the Gram Panchayat Bhanderi seeking to reserve certain land of village Bhanderi for construction of water-house (*Jalghar*). However, it appears that there was no progress in that direction. On 20.9.2013, the then Sarpanch passed a resolution to allot the same

Kanal), 34//24/2 (2 Kanal 8 Marla), 34/25 (8 Kanal), 45/5 (8 Kanal), 46/1 (8 Kanal), 46/2 (8 Kanal) measuring 50 Kanal 18 Marla, for construction of water-house (*Jalghar*) for the public health department.

It is alleged by the petitioner that this land is fertile and fit for cultivation and was a source of income for the village Panchayat. Hence, instead of this land, some waste common land of the Panchayat ought to have been earmarked for construction of the water house. It is averred that taking note of the grievance raised by the residents of the village regarding the allotment of fertile land for construction of the water tank, the newly elected Panchayat Members, within days of taking oath, passed resolution dated 26.4.2016 (Annexure P-2), proposing to give waste Common land for this purpose instead of the cultivable land. This resolution was forwarded to the Deputy Commissioner, Sonapat through the Block Development and Panchayat Officer, Kathura. As this resolution was not passed according to the Rules, the office of the Deputy Commissioner instructed the BDPO, Kathura that it be cancelled and a fresh resolution be passed by the Panchayat as per Rules. The BDPO was also asked to give a report as to whether the transfer of the said land is in the interest of the Panchayat. Thereafter, the Panchayat passed resolution dated 12.5.2016 (Annexure P-4), in which it was resolved that if the water-house is constructed on the land mentioned in the earlier resolution dated 20.9.2013 (Annexure P-1), the Panchayat would incur financial loss. Hence, the Panchayat thought it appropriate that land measuring 49 Kanals 17 Marlas, Khasra/Muraba/killa No.76/3/25 comprising in Khewat No.269 Chalu, Khatauni No.363 Chalu is more appropriate for construction of the water-house. The BDPO visited the site on 18.5.2016 for

he concluded that the land mentioned in resolution dated 20.9.2013 is very fertile and there would be great loss to the Gram Panchayat if this land is used for construction of water-house. He also opined that it would be in the interest of the public to construct the water-house in the land reserved by the newly elected Gram Panchayat.

As despite this report and the resolution of the Gram Panchayat, construction work was started on the earlier earmarked fertile land, the petitioner filed this writ petition seeking directions to the official respondents to take action in terms of the resolution dated 12.5.2016 (Annexure P-4) and the report of the BDPO dated 19.5.2016 (Annexure P-5).

In the written statement filed on behalf of respondents while praying for dismissal of the writ petition, it has been stated that vide resolutions dated 11.2.2008 and 20.9.2013, the Gram Panchayat had reserved the land mentioned therein for construction of independent water-works at village Bhanderi, so that the people of the village could get good quality of water regularly. On the basis of this resolution, after getting consent of the Irrigation Department, sanction was received to draw water from Butana Distributory (RD 81,000R). A tender was allotted for construction of the project and the contractor has started work on the land so reserved and has completed 10% of the project work till now. The total project cost is ₹ 1.61 crores and more than ₹ 10 lacs have already been spent on the project. If at this stage, the project is shifted to another piece of land, it would cause huge loss of public money. It is further stated that the land which is now proposed to be reserved by the Gram Panchayat for construction of the water house is recorded as *Gair Mumkin Johar* in the revenue records. On receipt of the

sought a report from the Sub Divisional Officer (C), Gohana regarding feasibility of shifting the land for water house at village Bhanderi. In his report dated 16.6.2016, prepared after spot inspection and after discussion with the people of the village, it has been concluded that the land which was reserved for water house by the Gram Panchayat vide its earlier resolutions dated 11.2.2008 and 20.9.2013 was more suitable for independent water works, as it was near Butana Distributory. Both the new sites proposed by the Gram Panchayat vide its resolution dated 12.5.2016 are not feasible. The first site comprising land in Khasra No.74 measuring 114 Kanal 1 Marla, being *Gair Mumkin Johar/Talab* could not be used for any other purpose. The alternative site, which is land comprised in Khasra No.76/3/25 measuring 49 Kanal 17 Marlas, though, it is recorded as *Kumarwala* in the revenue records, but on checking the old revenue records, the land was found to be *Kumharwala Johar*. Hence, this too cannot be used for water-house. Moreover, this site being at the tail end of Baroda Minor was otherwise not feasible as there would be water shortage rendering the project useless. The report acknowledged that though the current site comprises fertile land, but it is more suitable for construction of the water house as it is near Butana Distributory and the alternative sites now proposed are not feasible.

Ld. Counsel for the petitioner argued that the petitioner is not against the construction of the water works and its only concern was that the fertile land, which was a source of regular income for the Gram Panchayat should not be used for the water works, instead, a barren piece of land, which was not being put to any productive use, should be utilized for the purpose.

Having heard Ld. Counsel for the parties, we are of the view that

there is no merit in the present petition.

Undoubtedly, Ld. Counsel for the petitioner is correct in his assertion that the land being used for construction of the water house is more fertile than the one proposed by it through the resolution dated 12.5.2016, but as has been clearly recorded in the report of the Sub Divisional Officer (C), Gohana, that both the alternative sites now proposed for the water-house cannot be diverted for the said use as the same are recorded as *Gair Mumkin Johar/Talab* and *Kumharwala Johar*, respectively. Hon'ble the Supreme Court in ***Hinch Lal Tiwari v. Kamala Devi*, (2001) 6 SCC 496.*****Jagpal Singh v. State of Punjab*, (2011) 11 SCC 396** has stressed that lands reserved for village ponds ought not to be diverted for any other use. Moreover, the SDO(Civil), Gohana in his report has indicated that the site earlier proposed, though fertile, is more suitable for the water works as it is near the Butana Distributory. The second alternative site, now proposed, being at the tail end of Butana Minor is otherwise not feasible as there would be water shortage rendering the project of no use. After due consideration of all aspects, including the concerns of the petitioner, the project has been sanctioned, contract has been allotted, construction work has commenced and about 10% work is complete.

Thus, we find no merit in the petition and the same is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 07, 2017

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Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No