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

CWP-8363-2016 (O&M)

Date of decision : 22.05.2017

Gram Panchayat Village Nurpur Bet and others

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Rahish Pahwa, Advocate
for the petitioners.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

Mr. Ashok Kumar Bazaz, Advocate
for respondent No.3.

Mr. Gautam Dutt, Advocate
for the applicant/respondent Nos.4 to 7 in CM-1306-2017.

AMIT RAWAL, J. (ORAL)

CM-7719-CWP-2017

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed.

Rejoinder to the reply filed on behalf of respondent No.3 is taken on record subject to all just exceptions.

CM-1306-CWP-2017

The present application under Order 1 Rule 10 CPC has been moved for impleading the applicants, namely, Gram Panchayat Rajaap, Gram Panchayat Bokra Dogra, Ludhiana-I, Gram Panchayat Kapoor Singhwala, Ludhiana and Gram Panchayat Shohlay Ludhiana-II as

respondent Nos.4 to 7, on the premise that few of the Gram Panchayats/petitioners, namely, Gram Panchayat Nurpur Bet, Ludhiana, Gram Panchayat Bagan Kalan, Ludhiana, Gram Panchayat Rasulpur Patti, Ludhiana and Gram Panchayat Razapur Patti, Ludhiana, have sought the quashing of the scheme dated 29.09.2014, whereby on 5 acres of land, the Municipal Corporation, Ludhiana is setting up a Scientific Carcass Plant at Nurpur Bet (hereinafter called 'the Plant'), which according to them, would be unhealthy and would not be environmental-friendly, much less, endanger the life of the future generation, owing to the fact that the few of the Gram Panchayats, namely, Gram Panchayat Dollon, Gram Panchayat Manowal and Gram Panchayat Bholewal Jadid, submitted the complaints (Annexure A-1, A-2 & A-3), whereby adjacent to their land, some persons have been carrying out unauthorized business of 'Hadda Rodi' i.e. disposal of the carcass of the dead animals (at unauthorized places) and the aforementioned area is being frequented by the stray dogs and causing pollution in the environment etc.

He further submits that the contents of the application be treated as written statement on their behalf.

Notice of this application.

Ms. Rahish Pahwa, Advocate accepts notice on behalf of the non-applicant/petitioners and submits that they are not the necessary party and urges this Court for dismissal of the application.

I have heard the learned counsel for the parties and appraised the paper book and of the view that in order to appreciate the controversy, particularly, when there is a scheme which is being sought to be quashed, it would be appropriate to implead the applicants, aforementioned, as

respondent Nos.4 to 7.

Accordingly, the application is allowed and the aforementioned applicants are ordered to be impleaded as respondent Nos.4 to 7 and the contents of the application be treated as a written statement on their behalf.

CWP-8363-2016

The petitioners have sought the quashing of the Scheme submitted, vide letter dated 29.09.2014 (Annexure P-2) of respondent No.3/Municipal Corporation, Ludhiana and with further prayer for issuance of a writ in the nature of Mandamus directing the respondent No.3/Municipal Corporation, Ludhiana not to pursue any further activity for installation of the Plant in the revenue estate of Village Nurpur Bet on the pleadings that respondent No.3/Corporation, in order to resolve the issue of disposal of dead animals, was looking for some suitable area, but it was not able to install such a plant within the limits of Municipal Corporation, because of the numerous objections and oppositions raised by local inhabitants and in order to resolve this issue, respondent No.3 had purchased an agricultural land measuring 51 kanals 1 marla comprised in Khewat No.444/440, Khatoni No.519, Khasra No.68, Killa No.13 (8-0) in 1 kitta, Khewat No.676/668, Khatoni No.779, Khasra No.63, Killa Nos.2, 3, 4, 5, 6/1, 7, 8, 12/2 in total 8 Kittas, situated within the revenue estate of Nurpur Bet, District Ludhiana and as per jamabandi for the year 2009-10, respondent No.3/Corporation is the owner of the land. Vide letter dated 29.09.2014 (Annexure P-2), respondent No.3/Corporation had taken a decision to install a carcass utilization plant and sanctioned the grant of ₹ 6 Crores for said purpose. Various steps, in this regard, have been taken i.e. No Objection Certificate from Punjab Pollution Control Board etc. as

evident from the letter dated 16.01.2015 (Annexure P-3).

Ms. Rahish Pahwa, learned counsel appearing on behalf of the petitioners submits that the site earmarked by respondent No.3/Corporation is situated within the revenue estate of Village Nurpur Bet and surrounded by the revenue estates of Villages and the petitioners acquired the knowledge of the aforementioned fact as per the news item published in the news paper and approached respondent No.3/Corporation not to install the plant and ultimately, sought the information under the Right to Information Act, 2005 by acquiring knowledge that the present place, which is being used as 'Hadda Rohri' meant for disposal of the dead animals without adopting scientific method, is the best suitable place for installation of the said plant as there is enough open space all round because of unhabitated nor any agricultural activity being carried out. In fact the area purchased by respondent No.3/Corporation is the territorial area of Gram Panchayat having a governance of self-government known as Gram Panchayat within the meaning of Section 2(ZA) of the Punjab Panchayati Raj Act, 1994 (for short 'the 1994 Act'). Article 243(G) of Chapter IX stipulates the powers, functions and responsibilities of Panchayat to be determined by the legislature of the State. The 1994 Act came into force w.e.f. 21.04.1994, which is a complete code. By virtue of Seventy Fourth Amendment Act, 1992, part IX-A was incorporated in the Constitution Of India, for establishment of municipalities. The subject of dead animals is governed by the Municipal Solid Waste (Management and Handling) Rules, 2000 (for short 'the 2000 Rules'), formulated by the Ministry of Environment and Forests, while exercising the powers conferred under the provisions of Environment Protection Act, 1986 and Rule 4 of the 2000 Rules casts the

responsibility on every municipal authority to ensure the implementation of these rules within their territorial area (emphasis supplied), which reads as under:-

"Rule 4 (1)- Every municipal authority shall, within territorial area of municipality, be responsible for implementation of the provisions these rules, and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid waste."

By referring the aforementioned rule, she further submits that the municipal authority cannot go beyond the municipal limits from the point of collection of waste to its final disposal. In other words, Rule 4 of the 2000 Rules puts a complete embargo/ban for not extending its area of operation outside its limits. Though, prior to the enactment of the Punjab Municipal Corporation Act, 1976 and amended upto 1994 (for short 'the 1976 Act'), the erstwhile Municipal Committee could fix the places for removal of offensive matter within municipal limits i.e. as per Section 278 of the 1976 Act. Sub-Section 3 of Section 278 of the 1976 Act mandates that the Commissioner shall make adequate provisions for preventing such receptacles, depot, place, dustbin vehicles and vessels from becoming sources of nuisance. The Infectious and Contagious Diseases in Animals, Act, 2009, came into force w.e.f. 25.08.2009 and the main object of the 2009 Act is to eradicate the infectious and contagious diseases affecting animals, namely, prevention of outbreak or spreading of such diseases from one state to another. In order to suffice international obligations for facilitating the import and export of the animals, animals products and other related issues and the violation of their, enables the Department of Animal

Husbandry, Dairying and Fisheries, to prosecute the violators. The petitioners consisting of four villages are situated at a distance of 1-2 kms from the site earmarked for the aforementioned plant. A school having approximate strength of 1200 students and a fact that enough number of workers working day and night therein, are also situated at a very short distance, besides there is a Mandir, namely, Shiv Dham, which is ½ km from the site endangering the life of the inhabitants, resulting into, violation of Article 21 of the Constitution of India, as Right to Live in a clean and healthy environmental, is fundamental right, thus, in view of the aforementioned facts, the scheme is liable to be set aside.

Respondent No.3/Municipal Corporation through Senior Veterinary Officer, has filed the reply raising numerous preliminary objections qua maintainability of the present writ petition, by submitting that apprehension of the petitioners is totally ill-founded and misconceived.

Mr. Ashok Kumar Bazaz, learned counsel appearing on behalf of respondent No.3/Corporation submits that the Government of India before enacting the 2000 Rules, highlighted the need of disposal of carcasses of dead animals in a scientific manner, as per Clause 5.5.9 of the Manual, which reads as under:-

"In most of the cities the animals dying of unnatural death are carried away to outskirts of the city limits by the people who perform the job of dehiding of the carcasses. After dehiding these carcasses are left in open. Vultures and other animals feed on meat of the carcasses. This entire activity is nuisance to the aviation industry and hazard for public health. The carcasses utilization plant which is run by adopting the dry rendering plants should be provided at all major towns to process the dead animal carcasses in a

scientific manner. These plants should process the Solid waste generated from the slaughter houses as well as the places of illegal slaughter. The products of rendering the plants are widely used as meat/bone meal etc. The slaughter Houses waste can also be subjected to Biomethanation as resources of energy."

Department of Animal Husbandry, Ministry of Agriculture, Government of India is providing substantial financial assistance for setting up the Slaughter Houses and the Carcass Utilization Plants. The details including the guidelines are given in the Annexure 5.2."

The answering respondent(s)/Corporation vide its Resolution No.4647 dated 09.11.2000 (Annexure R-3/1), had purchased 21 acres of land in Village Nurpur Bet for setting up of the Municipal Solid Waste Treatment Plant and owing to the fact that before the commencement of the aforementioned Rules, the Municipal Solid Waste was being disposed of by traditional method of dumping of solid waste at two different sites, which were initially situated outside the Municipal limits, but owing to the extension of the limits of the Municipal Corporation, the sites came within Municipal limits. 'Hadda Rori' was situated at Village Ladowal i.e. a site situated outside the Municipal limits, and by adopting old traditional method, carcasses of dead animals were disposed of i.e. the method of de-hiding the dead animals and leaving them in open to become a feed of vultures, meat-eating birds and animals. The aforementioned concept is a continued source of nuisance, much less, emission of the foul smell and polluting ground-water also environment. It is, in this background of the matter, the respondent No.3/Corporation vide order dated 08.11.2005 (Annexure R-3/2) decided that carcass of all dead animals will be conveyed,

deposited and disposed of at a Municipal Carcass Disposal Site, set up at Village Nurpur Bet and in this regard, vide letter dated 02.07.2012 (Annexure R-3/3), the Punjab Pollution Control Board had on the basis of the complaints received from the residents of area of Village Ladhawal, requested the Deputy Commissioner for removal of 'Hadda Rori' or shifting it, at some appropriate place and it had also issued a notice under Section 33-A of the Water (Prevention & Control of Pollution) Act, 1974, to one Parshottam, who was carrying out the illegal activity of 'Hadda Rori', Parshottam has also filed a civil suit for injunction and the same is pending, but the pendency of the suit has nothing to do with the present case. Vide Resolution No.171 dated 20.12.2014 (Annexure R-3/5), a proposal for setting up of the "Carcass Utilizations Plant" was approved as the provision of Section 278 of the 1976 Act, puts an obligation upon the Corporation to make adequate provisions for preventing receptacles, depots, places, dustbins, vehicles and vessels, much less, final disposal of solid waste and also of the disposal of carcass of the animals in view of the Infectious and Contagious Diseases in Animals Act 2009. Respondent No.3/Corporation, vide order dated 16.01.2015 (Annexure P-3/6), requested the Punjab Pollution Control Board for issuance of 'No Objection Certificate' for setting up the aforementioned plant and simultaneously, also approached the District Town Planner, vide letter dated 19.01.2015 (Annexure R-3/7) for change of the land. Moreover, respondent No.3/Corporation, vide letter dated 17.07.2015, has also invited the open bids and in such process, appointed G.K. Sen & Associates, Kolkata, as Project Management, Consultant, which has submitted a detailed project report (Annexure R-3/8).

The site, in question, is situated at a distance is between 1000-2500 meters

from the aforementioned four villages, and the location of school is at a distance of 1500 meters, whereas Mandir Shiv Dham is at a distance of 900 meters. In this regard, Tehsildar, Ludhiana (West) has issued a certificate dated 09.01.2015 (Annexure R-3/9) certifying that no *pucca* house of permanent construction is situated within a radius of 100 meters from the plant site, therefore, there is no likelihood of any nuisance, thus, information provided and pleaded in the present writ petition is wholly misplaced and ill-founded, thus, urges this Court for dismissal of the writ petition.

The objection with regard to the dismissal of the writ petition on the ground of delay latches has also been raised inasmuch as as much as that, the land was purchased in the year 2009, whereas the present writ petition has been filed in 2016, besides the aforementioned objection, Mr. Bazaz has also referred to the provisions of Section 4(1) 44(c), (e) and 45 (zc) of the 1976 Act, to contend that respondent No.3/Corporation is empowered and conferred upon the responsibilities to take a suitable measure, in this regard.

He further submits that the site presently used for disposal of carcasses of dead animals at Village Ladhowal, is also situated outside the municipal limits and therefore, suggestion of the petitioners that the site is best suited, is totally against their own argument, in essence, the petitioners cannot approbate and reprobate, as the provisions of Sections 183, 192, 193 and 215 of the 1976 Act, empower the Municipal Corporation even to go beyond the municipal limits for the benefit of the public at large.

The aforementioned written statement has been rebutted by Ms. Pahwa, by filing a replication, stating that the distances given in the written statement are wrong as measurement of the same was not done in the

presence of the petitioners.

Ms. Pahwa further submits that the petitioners are genuinely concerned with the installation of the plant at the proposed site and the provisions of Section 278 of the 1976 Act, is being misconstrued and misinterpreted as there is no such provision in the Act, enabling the Corporation to fix the places beyond the municipal limits.

In rebuttal, an additional affidavit on behalf of Municipal Corporation dated 24.04.2017, has also been filed through Mr. Bazaz, along with letter dated 31.03.2017 (Annexure R-3/10) and proceedings dated 30.11.2016 (Annexure R-3/11) i.e. decision accorded by the Additional Director of Factories for Director of Factories, Punjab, regarding approval of the site for setting up of the aforementioned plant. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Division Bench of this Court in **"Karamjit Singh and others V/s State of Punjab and others" 2014 (2) RCR (Civil) 382**, wherein while referring to the 2000 Rules regarding problem of the Pollution Board, Ludhiana, the Division Bench of this Court had disposed of the writ petition, with the following directions:-

(1) The concessionaire, who has been given 51 acres of land for setting up of Municipal Solid Waste Management Plant in pursuance of agreement dated 30.11.2011 shall complete the process of installation and operation of such Plant expeditiously preferably within one year from today.

(2) The Respondents shall obtain all clearances and/or no objections etc. where ever required except that it shall not be necessary to obtain no objection from Airport Authority/ DGCA;

- (3) The Municipal Corporation, Ludhiana or the concessionaire shall make arrangements for erection of the boundary wall, if already not done so, to protect the garbage from spilling on road or the adjoining properties and to restrict the entry of unauthorized persons in the garbage area;*
- (4) The concessionaire will do spray of herbal sanitizer daily on regular basis at the Jamalpur dump site to prevent any environmental hazard and to retard the foul smell;*
- (5) Fogging of melathene will also be done every week of Jamalpur dump site to kill the insects and flies;*
- (6) The concessionaire will not burn the garbage or allow anyone to burn the garbage at Jamalpur dump site;*
- (7) A green belt along the entire boundary of the Jamalpur plant/dump site, will be ensured by growing of dense tree and shrubs for fresh air for the purpose of greenery and healthy environment at that area;*
- (8) The fully covered vehicles shall be used for shifting of waste to avoid foul smell and preventing from scattering the same as well as keep it environment friendly;"*

Ms. Pahwa, in reply thereto, submits that the aforementioned directions, even, remotely are not connected with the controversy raised in the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the grievance of the petitioners, in the present writ petition, is fully ill-founded and misplaced and same is hereby rejected/repelled, for, the pith and substance of the arguments of Ms. Pahwa is that respondent No.3/Corporation cannot go beyond its limits to establish the aforementioned plant by purchasing the land in the Village Nurpur Bet. The purchase of land has not been challenged by the petitioners, much less,

the resolution passed from time to time and as well as, no objection certificates, even given by the various authorities i.e. Punjab Pollution Control Board, District Town Country Planer, Director of Factories, much less, appointment of the Consultant.

It would be apt to reproduce the provisions of Sections 183, 192, 193 and 215 of the 1976 Act, which reads as under:-

"183. Power to construct additional works. - If the Corporation is of opinion that the works and other properties for the time being vested in it for the purpose of water supply, drainage and sewage disposal are inadequate for the purpose of sufficient supply of water or for the purpose of proper drainage and efficient disposal of sewage under this Act, it may take steps in accordance with the provisions of this Act for the construction of additional works, whether within or without the local limits of the Corporation and for the acquisition of additional properties for such works.

192. Power to lay mains. - (1) The Commissioner may lay a main whether within or without the local limits of the Corporation-

(a) in any street; and

(b) with the consent of every owner and occupier of any land not forming part of a street, in, over or on that land, and may, from time to time, inspect, repair, alter or renew or may at any time remove any main so laid whether by virtue of this section or otherwise:

Provided that where a consent required for the purpose of this sub- section is withheld, the Commissioner may, after giving the owner or occupier of the land a written notice of his intention so to do, lay the main in, over or on that land even without such consent.

(2) Where the Commissioner, in exercise of the powers

under this section lays a main in, over or on any land not forming part of a street or inspects, repairs, alters, renews or removes a main so laid down in, over or on any such land, he shall pay compensation to every person interested in that land for any damage done to, or injurious affection of that land by reasons of the inspection, laying, repair, alteration, renewal or removal of the main.

193. Power to lay service pipes etc. - (1) *The Commissioner may, in any street, whether within or without the local limits of the Corporation, lay such service pipes with such stopcocks and other water fitting as he may deem necessary for supplying water to premises and may, from time to time, inspect, repair, alter or renew and may, at any time, remove any service pipe laid in a street whether by virtue of this section or otherwise.*

(2) Where a service pipe has been lawfully laid in, over or on the land not forming part of a street, the Commissioner may from time to time enter upon that land and inspect, repair, alter, renew or remove the pipe or lay a new pipe in substitution thereof but shall pay compensation for any damage done in the course of such action.

215. Rights of user of property for aqueducts, lines etc. -

(1) The Commissioner may place and maintain aqueducts, conduits and lines of mains or pipes or drains over, under, along or across any immovable property whether within or without the local limits of the City, without acquiring the same, and may at any time for the purpose of examining, repairing, altering or removing any aqueducts, conduits or lines of mains or pipes, or drains, after giving a reasonable notice of his intention so to do, enter on any property over, under, along or across which the aqueducts, conduits or lines of mains or pipes or drains have been placed:

Provided that the Corporation shall not acquire any right other than a right of user in the property over,

under, along or across which any aqueduct, conduit or line of mains or pipes, or drain is placed.

(2) The powers conferred by sub-section (1) shall not be exercisable in respect of any property vested in the Government or under the control, or management of the Government or railway administration or vested in any local authority save with the permission of the Government or railway administration or the local authority as the case may be, and in accordance with any bye-law made in this behalf:

Provided that the Commissioner may, without such permission, repair, renew or amend any existing works of which the character or position is not to be altered if such repair, renewal or amendment is urgently necessary in order to maintain without interruption the supply of water, drainage or disposal of sewage or is such that delay would be dangerous to health, human life or property.

(3) In the exercise of the powers conferred upon him by this section, the Commissioner shall cause as little damage and inconvenience as may be possible, and shall make full compensation for any damage or inconvenience caused by him. "

On cumulative reading of the aforementioned provisions, it reveals or leaves no manner of doubt that respondent No.3/Corporation, for the purpose of carrying out its activity for managing aqueducts, conduits and lines of mains or pipes or drains over, under, along or across any immovable property, whether within or without the local limits of the City, has the powers, therefore, argument of Ms. Pahwa, not establishing the waste plant within municipal limits is wholly misplaced and the same is hereby rejected.

The specific distances between 1000-2500 meters and of a

school and Mandir *ibid*, have not been specifically rebutted in the rejoinder, except by vague denial that the distances are not correct. No concrete evidence to belie the aforementioned statement has been placed on record. Even otherwise, the earlier traditional method of de-hiding and disposal of the carcass of the dead animals being done in Village Ladhowal, which was also outside the limits of municipal corporation. The respondent Nos.4 to 7 have also submitted the complaints Annexure R-A1 to A3 i.e. existing place for disposal i.e. 'Hadda Rori' has been creating nuisance and a source of pollution also platform of spread of various diseases, as stray dogs, meat-eating birds and animals converge at the area and excrete and birdshit are also source of spread of the diseases. The plant has been set up in a scientific manner for the disposal of the animals carcass. Once the authorities have given no objection certificates, the petitioners cannot possibly have any objections, but rather it appears to be a personal battle between the two sets of villagers the one impleaded and the petitioners. In such battle, development work for the purpose of implementation of Swachh Bharat Scheme cannot be put at rest and residents or public, made to suffer.

It has come across in many cases that acts of the Corporation or the State for the better environment and for welfare of the citizens, are being hampered and impeded with the intervention of the local residents, for settlement of the personal egos and sometimes capitalization of the situation and the Court should be wary/circumspect in causing interference, rather the writ petition should be dismissed by imposing exemplary cost.

Already the matter with regard to the spread of pollution and its prevention, has been taken care of by Division Bench's judgment cited supra

i.e. with regard to the taking the preventive measures for setting up the Solid and Waste Management Plant and not with regard to the carcass of the animals. Respondent No.3/Corporation had already spent a lot of money in purchasing the land, but the the petitioners have made all possible efforts in creating hurdles, rather acted as stumbling block in installation of the plant by obtaining the interim injunction way back on 03.05.2016 and almost one year has elapsed in this manner.

As an upshot of my reasoning/finding, the grievance of the petitioners is totally ill-founded and do not call for interference, much less, does not fall within the realm of 'Judicial Review' under Article 226 of the Constitution of India.

Accordingly, the present writ petition is dismissed.

Though I intended to impose the cost, but I refrain myself as it is only the Gram Panchayat, which has come forward and not the individual, though, apparently it looked that the present litigation approximately is at the instance of the persons, who are carrying on the business of 'Hadda Rori/Rodi'.

22.05.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**