

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

CWP-3094 of 2017

Date of Decision:- 17.02.2017

Khamanon Welfare Association

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. Dinesh Sharma, Advocate, for the petitioner.

S.S.Saron, J.

The present Public Interest Litigation under Article 226 of the Constitution of India has been filed by Khamanon Welfare Association through its President Sh. Kulwinder Singh for issuance of writ, order or directions in the nature of mandamus directing the respondents to immediately remove and stop all kinds and types of encroachments and ongoing constructions in the municipal ponds situated in Khamanon Kalan area of Khamanon town, District Fatehgarh Sahib.

According to the petitioner, the first pond in the town starts along the Mandir Road in front of the office of Nagar Panchayat, Khamanon (respondent No.5) and then, turns towards the east side along the road going towards the cremation grounds. The second pond, it is stated, is located along the road in front of the offices of the Block Development and Panchayat Office, Khamanon; office of Block Veterinary Hospital, Khamanon and Ayurvedic Dispensary Khamanon. The third pond is stated to be located on the rear side of the Agriculture Cooperative Society, Khamanon.

A further direction has been sought in the nature of mandamus directing the respondents that after removing all encroachments, earth, bricks and other material used for encroachments on these ponds to further redefine the area of these ponds and restore them to their original position and character by constructing a complete boundary walls around the above stated ponds No.1 and 2 and also reconstruct the broken boundary wall of pond No.3 so that future encroachments may be prevented.

We have heard learned counsel for the petitioner and perused the record.

The petitioner has alleged that ponds in Khamanon town have been encroached upon. However, no particulars have been mentioned as to who has encroached upon the ponds. Photographs in respect of the ponds have been appended from which it cannot be said that these pertain to the ponds that are stated to have been encroached upon. Besides, nothing can be made out as regards the encroachments. No revenue record has been placed on record to show as to under which authorities do the ponds in question vest i.e. whether these vest in the State Government, the Municipality or the Gram Panchayat etc.

An application is stated to have been filed by the petitioner through his learned counsel under the Right to Information Act asking the Block Development and Panchayat Officer-cum-Public Information Officer, Khamanon as to who are the owner of pond. The particulars of the pond for which information was sought have not been placed on record. The Block Development and Panchayat Officer in his reply vide letter dated 02.09.2015 (Annexure P-5) addressed to the learned Advocate for the petitioner stated that in response to his application dated 12.06.2015 by

which it had been asked as to who was the owner of the pond till 1996-97, it is informed that Block Khamanon was established in the year 1994 and the Nagar Panchayat Khamanon was constituted in the year 1996. During this period this Pond was under the Khamanon Panchayat. Thereafter, this area has been coming under the Nagar Panchayat, Khamanon. It is stated that in terms of Section 2 (g) (2) to 2 (g) (4) of the Punjab Village Common Lands (Regulation) Act, 1961 ('1961 Act' - for short) the common places of the village are owned by the concerned Panchayat. The copy of the Act has been attached with the reply.

On a specific question asked by the Court as to whether the three ponds, which are stated to be encroached upon, fall in the area of the Nagar Panchayat, Khamanon or the concerned Gram Panchayat, he is unclear. It is stated that the land falls within the *Lal Lakir* of the village and therefore, is within the *abadi deh* for which no record is available.

It may be noticed that in case the land vests in the concerned Gram Panchayat, the petitioner is to seek his remedy under the 1961 Act; besides, in respect of encroachments on municipal land, the petitioner has a remedy under Section 172-A of the Punjab Municipal Act, 1911 ('1911 Act' – for short). In para No.13 of the petition that has been filed, it is submitted that the petitioner has no other remedy of appeal or revision or other efficacious remedy available except filing this present petition. However, as already noticed, in respect of encroachments, the petitioner has his remedies under the 1961 Act and/or the 1911 Act subject to the condition as to in whom the ponds in question vest, that is, whether under the Nagar Panchayat, Khamanon or the Gram Panchayat concerned. This exercise is to be carried out by the petitioner Association itself before approaching the

appropriate Court or Forum. This Court is not to conduct an inquiry as to who is the owner and custodian of the ponds and to whom do they vest. Besides, the persons who are stated to have encroached the ponds are not mentioned and whether they have any right to contest the claim of encroachments which right would be available to them.

The petition has been filed by the Khamanon Welfare Association which was registered on 20.01.2017, the memorandum of its article of association and the objects it seeks to pursue are not placed on record. Besides, it is not shown as to who are the members of the petitioner Association and whether the petitioner has the backing of the other members to file the present petition. Besides, whether the petitioner Association has the necessary funds to indulge in this litigation. These requirements are liable to be shown in view of the Supreme Court observations in Bhartiya Homoeopathy College, Bharatpur v. Students' Council, (1998) 2 SCC 449. A Division Bench of this Court in Ajaib Singh and another v. State of Punjab and others, (2013 - 4) PLR 367 *inter alia* emphasized that a petitioner filing a PIL has to specifically disclose his credentials and his direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit. The expression “specifically disclose his credentials”, it was held, must, naturally, imply that he has to set forth what he does for his living, what public interest he has been espousing, the work done by him in that behalf, the particulars of any matter preferred by him as PIL earlier on which the Court has passed orders, etc. It cannot imply merely writing a sentence that a person is residing in the State, is public-spirited and is, thus, filing a PIL. The Registry of the Court was directed to ensure strict compliance with the Maintainability of Public

Interest Litigation Rules, 2010 ('PIL Rules' – for short) which are applicable in the matters of PILs. It was said that the Registry would return petition styled as PIL with objection (s) unless these parameters were specified. In fact there was a mandate on the Registry as per Clause 7 of the aforesaid PIL Rules to verify the antecedents of the persons, Societies or Associations who invoke jurisdiction on the cause of public interest and, if they are not satisfied with the antecedents, to return the petition. The Registry had raised the objections when the PIL was filed. However, it is recorded by Sh. Kulwinder Singh, petitioner that these had been complied with. In the affidavit dated 15.02.2017 that has been filed by the petitioner, it is stated that the petitioner has no direct or indirect personal motive or interest involved in the case. It is also stated that that deponent is a retired Army person and the residents had elected him to raise their grievances on behalf of public, touching the common interest of the public. It is further stated that the Association was registered on 20.01.2017 but it has no regular income and solely works on the donations of the members of the Association and any donation that might be obtained from the concerned government or authority. The said affidavit does not disclose as to what public interest the petitioner-Association has been espousing, the work done by it in that behalf, the particulars of any matter preferred by it as PIL earlier on which the Court had passed orders. Therefore, for the present and on the basis of material as placed on record, the petitioner-Association is unable to show its *locus standi* to file a PIL.

In the circumstances, for want of clear facts as to the ownership of the ponds in question, the authority in which the ponds vest and also the fact that other remedies are available to the petitioner-Association; besides,

the fact that the petitioner-Association on the basis of material placed on record for the present is unable to show its *locus standi* to file the petition, it would be just and expedient to hold the same to be misconceived and accordingly dismiss the same.

Accordingly, the writ petition is dismissed. However, liberty is given to the petitioner-Association to avail other remedies available under the law and carry out other amendments in accordance with law so as to establish its *locus standi* in future to file a PIL.

(S.S.SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

February 17, 2017
mohan/amit

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No