

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.5901 of 2017

Date of Decision.02.06.2017

Shamsher Singh and others

.....Petitioners

Vs

State of Punjab and others

.....Respondents

Present: Mr. Arun Jain, Senior Advocate with
Mr. Gurmohan Singh Bedi, Advocate
for the petitioners.

Mr. Sandeep Khunger, Advocate
for respondent No.4.

Mr. Jaivir Chandail, Advocate
for respondent No.6.

Ms. Monica Chhibber Sharma, DAG Punjab.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The petitioners being residents of village Naya Gaon, Nada,
Kaimbwala, Khuda Ali Sher and Kansal have knocked the door of this
Court with the following prayers:-

*“Civil writ petition under Article 226/227 of the Constitution
of India praying for issuance of a writ in the nature of
mandamus directing respondent Nos.1 to 6 to take immediate
actions/steps for the demarcation by affixing permanent
pillars on both sides of proposed roads and ascertaining the
khasra numbers thereof and acquisition required in this
regard and after removing all encroachments to construction
30 mtrs. Proposed roads fully depicted in the Map (Annexure
P-6) and as detailed in para 7 of the writ petition which are*

provided for in the Final Master Plan – 2021 AD notified on 02.01.2009 of Nagar Panchayat Naya Gaon (Annexure P-1).

AND

Further for issuance of necessary directions to respondent No.7 & 8 to demarcate and ascertain the entire area of Patiala Ki Rao Nadi/Choe falling in the area of Punjab & U.T by affixing strong permanent pillars on the both sides of Patiala Ki Rao Nadi/Choe measuring 200 ft. in width as per the Khasra Nos. fully detailed in the Notification dated 04.03.2013 (Annexure P-21) issued under Section 55 Part VII read with Section 3 of the Northern India Canal and Drainage Act, 1873 with the help/assistance of respondent no.5 & 6 and thereafter, remove/demolish all the illegal constructions in their respective areas coming within the said demarcated area of Patiala Ki Rao which is causing obstruction in the natural flow of the stream.

AND/OR

Further for issuance of necessary direction to respondent No.1 to 5 to repair the existing roads in Village Karoran & Nada (NAC Naya Gaon), so as to make them functional, without potholes, black topped afresh and operational without accumulation of water and garbage etc.

AND/OR

Further for issuance of necessary direction to Respondent No.1 to 4 & 9 for laying of sewerage system and setting-up of sewerage treatment plant for village Karoran, Nada, Kansal

(NAC Naya Gaon) which are essential facilities required so as to commensurate to the population of these villages.

AND/OR

For issuance of necessary directions to respondent No.1 to 6 to clear the road by lifting the garbage piled up on the road from behind the Secretariat, Punjab to village Kansal as well as on the road from PGI to Naya Gaon along the Patiala Ki Rao as well as to make a permanent provision for installation of incinerator so as to dispose of the garbage of the above said villages in hygienic and scientific manner.

AND/OR

For issuance of any other writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. G.S. Bedi, Advocate submitted that no development work has ever been taken, despite many representation but nothing was done in spite of the fact that the land is falling within the municipal limits of Nagar panchayat, Naya Gaon. On facing hardships by residents of village Karoran, Gram Panchayat Bari Karoran filed a civil writ petition bearing No.22756 of 2013 (PIL) in respect of problems faced by the residents of the village and this Court vide order dated 28.05.2014 (Annexure P-2) disposed of the writ petition with the following directions:-

“(i) It is for the State Government to proceed to identify the forest land in terms of the parameters laid down by the Hon'ble Supreme Court in Civil Appeal Nos.4682-4683 of 2005 titled

as B.S. Sandhu Vs. Government of India and others, decided on 21.5.2014 based on the revenue record and the test laid therein;

(ii) The notifications would in substance apply only in case the land in question is forest land in the revenue record;

(iii) Insofar as land of the petitioner is concerned, the aforesaid exercise be carried out to take a call on whether what is alleged by the petitioner i.e. it is not forest land is correct or not and a reasoned decision be communicated to the petitioner on or before 03.07.2014, as prayed by learned Additional Advocate General;

(iv) If the land in question is not forest land, then appropriate development works as per the Final Master Plan and Notified Area Committee of Naya Gaon should be undertaken as the claim is that the ground reality is really pathetic on account of all development works having stopped; and

(v) The directions already contained in the order dated 4.3.2014 for action qua construction unauthorizedly carried out on a proposed road and clearance of garbage would be implemented on or before 03.07.2014 with visible photographs.”

Emphasis has been made to direction No.(iv) to the effect that in case the land in question is not forest land, then appropriate development works as per the Final master Plan and Notified Area Committee of Naya Gaon had been directed to be undertaken, as the fact is that the ground reality is most pathetic on account of stoppage of all development

works.

By referring to the aforementioned order, Mr. Jain referred to various interim orders passed from time to time i.e. in the aforementioned writ petition dated 11.07.2014, 17.07.2014 and 21.07.2014 (Annexure P-3 colly). As regards the construction of the road, reference has been made to direction No.(v) which reads as under:-

(v) The directions already contained in the order dated 4.3.2014 for action qua construction unauthorizedly carried out on a proposed road and clearance of garbage would be implemented on or before 03.07.2014 with visible photographs.”

As per the Master Plan notified on 02.01.2009 (Annexure P-5) and the layout Plan (Annexure P-6), the State of Punjab in coordination with U.T., Chandigarh was required to be constructed 30 mtrs of proposed road duly depicted in the map for better connectivity, details of which are given in paragraph 7, which reads as under:-

“(i) Road “ABCDEF” starting from village Kaimbwala at Point A, Village Kansal from point B, Village Khuda Ali Sher at Point C, Village Karoran at Point D, and up to Point F in Nada Village, and further it will be connected to village Mullanpur. In this patch A to B in village Kaimbwala in UT and Point C to D in village Khuda Ali Sher in UT needs to be constructed.

(ii) Further road “EGHIJ” starting from village Karoran at point E, from point G at village Khuda Lahora in UT, from point H in village Karoran and further point I to J starting

from village Khuda Lahora upto Madhya Marg along with Patiala Ki Rao is to be constructed.

(iii) Further road "ALN" starting from village Karoran and touching village Kansal at point L and further touching Uttar Marg at point N needs to be constructed.

(iv) Further road "LK" at the back of Secretariat & Rajindera Park needs to be constructed.

(v) Further road "KM" starting from village Khuda Ali Sher and touching Vidya Marg at point M needs to be constructed."

However, no such action has been taken as the residents at present are facing great hardship in reaching to the aforementioned villages by taking longer routes. Even as per the Annexure P-6, in the seasonal rivulet known as "Patiala Ki Rao" depicted in blue colour, huge encroachments have come up, which fact is evident from Annexure P-7 (colly), resulting into a constant threat of flood to the villagers. Even many constructions and encroachments have come up near and under huge pylons carrying 220 KV/High Tension and emission of electromagnetic fields for the high voltage transmission lines passing over the encroachments is posing serious medical problems to the persons living there. It was for this reason that a new road was to be constructed under the pylons and no construction was to be made by both sides of the pylons. Reference has been made to photographs (Annexure P-8 colly) to depict the aforementioned picture.

Many representations by taking the aid of the provisions of Section 55 read with Section 3 of the Northern India Canal and Drainage Act, 1873 have been submitted but nothing yielded any result. Almost 8

years have passed owing to the promulgation of the master plan but fell in deaf ears. Reference has been made to one of the representations dated 14.08.2012 (Annexure P-9) submitted to the Hon'ble Governor, Punjab, Chandigarh and who vide order dated 18.08.2012 (Annexure P-10) issued a direction to examine the matter and take necessary action. Reference has also been made to the order dated 21.07.2014 passed in the aforementioned writ petition, during the presence of the Principal Secretary (Local Self Government), which reads as under:-

“As far as the second aspect is concerned, learned Additional Advocate General has filed an affidavit in Court. It is stated that the case for development is equally slow in both the cases. The Principal Secretary (Local Self Government), present in court, states that though certain aspects have to be attended to, including the acquisition of land for creation of the new proposed road, in the meantime, it will be ensured that there is a functional road without accumulation of water and garbage and towards the said direction, steps will be taken immediately. He undertakes to the Court to do the needful by deputing the relevant officers for the said purpose.”

Despite that no action has been taken. Resultantly, contempt petition bearing No.831 of 2015 was filed, wherein, this Court vide order dated 7.10.2015 issued the following direction:-

“(iv) If the land in question is not forest land, then appropriate development works as per the Final Master Plan and Notified Area Committee of Naya Gaon should be undertaken as the claim is that the ground reality is really

pathetic on account of all development works having stopped;”

Heaps of garbage are lying on the road i.e. starting point is behind the Secretariat, Chandigarh to village Kansal and there is no provision of lifting the same. Similar is the situation from PGI to Naya Gaon along with Patiala Ki Rao. Therefore, a permanent solution is required to dispose of the said garbage by way of installing and burning of the garbage incinerators. He submitted that during the proceedings of the contempt petition, Executive Officer, Nagar Panchayat, Naya Goan filed an affidavit that the Director, Town Planning Wing, Local Government, Punjab is to notify the development plan for Zone D & E and this Court was given assurance after having taken instructions from the then Deputy Commissioner, Mohali for ensuring the compliance of the mandate of the Court, realizing the gravity of the situation, this Court issued the direction regarding the proposed roads, demarcation of the encroachment, much less, to remove the encroachment from the roads and to repair the existing roads and laying of sewerage lines along with setting up of Sewerage Treatment Plant (STP). Even a contempt appeal was filed before the Division Bench and the Division Bench vide order dated 06.05.2016 (Annexure P-16) granted liberty to the petitioner to approach the authority concerned by way of “representation” and for expeditious redressal of grievance as regards the pathetic conditions. Accordingly, a legal notice dated 3.2.2017 (Annexure P-17) was sent to the Additional Chief Secretary, Department of Local Government, Punjab and also a representation dated 01.02.2017 was submitted to the Hon'ble Governor of Punjab and Administrator, U.T., Chandigarh vide Annexure P-18.

Reference has also been made to the order dated 27.09.2012 (Annexure P-20) passed in CWP No.1934 of 2010 titled as “Court on its own motion Vs. State of Punjab” whereby the respondents have been directed to set up an STP and lying of sewerage system in village Naya Gaon within a period of three years but so far nothing has been done. He submitted that for removal of encroachment of aforementioned seasonal rivulet i.e. Patiala Ki Rao, civil writ petition bearing No.10331 of 2012 was filed and respondent No.8 herein had referred to notification dated 04.03.2013 (Annexure P-21) issued under Section 55 of the Northern India Canal and Drainage Act whereby the Executive Engineer had been authorized to remove the obstruction in the smooth flow of water. In view of the aforementioned notification, vide order dated 16.07.2013 (Annexure P-22), the writ petition was disposed of but yet no action has been taken, resulting into filing of the contempt petition by the residents of village Nada and Naya Gaon. Till date entire area of Patiala Ki Rao Nadi/Choe flowing through the area of Punjab as well as U.T., Chandigarh measuring 200 ft. in width has not been demarcated by respondent No.7 with the help and assistance of respondent No.8 by affixing strong permanent pillars on the both sides of Patila Ki Rao as per the khasra numbers fully detailed in the notification dated 04.03.2013 (Annexure P-21), thus, urges this Court for appropriate directions.

The aforementioned writ petition has been contested by the respondents i.e. the Municipal Council, Naya Gaon, District SAS Nagar (Mohali)-respondent No.4 and Deputy Commissioner, Mohali-respondent No.5 represented through Mr. Sandeep Khunger, Advocate and Ms. Monica Chhibbar Sharma, DAG, Punjab respectively.

As per the written statement filed on behalf of respondent No.5- Deputy Commissioner, Mohali, the Sub Divisional Magistrate, Kharar vide letter dated 17.05.2017 constituted a Committee of six members consisting of Sh. Raghvir Singh, Kanungo Circle, Mullanpur Garibdas, Indiver, Kanungo Circle, Kurali, Patwari Circle Nada, Patwari Circle Karoran, Patwari Circle Rani Majra, Patwari Circle Kansal to conduct the demarcation of the area in dispute and submit a detailed report. On receipt of the same, demarcation report dated 24.05.2017 (Annexure R-5/1) was submitted to the office of respondent No.4 and 7 i.e. Executive Officer, Nagar Panchayat, Naya Gaon and Chief Engineer, Department of Irrigation (Drainage), Punjab wherein it has been mentioned that choe alongside the road falling in village Nada has been shown in blue colour and houses constructed on the side of choe alongside the road have been shown in yellow colour. Similarly in village Kansal, khasra numbers referred to therein, pillars have been erected and demarcation of next village Karoran Hadbast No.350 was started and the roads falling in these khasra numbers have been marked as red and therefore, the present writ petition be disposed of.

Mr. Sandeep Khunger, learned counsel appearing on behalf of respondent No.4 submitted that the construction of the road has to be done in consonance with the Master Plan and for that land is required to be acquired as the area where the road has been proposed is owned by private land owners, therefore, action in that direction is required to be initiated at the level of State of Punjab.

As regards the removal of the encroachment from the area falling in the Patiala Ki Rao Nadi/Choe, the Irrigation Department has

already issued notification dated 04.03.2013 (Annexure P-21) and Executive Engineer, Water Management, Investigation Division, Rupnagar has been authorized in this regard to take suitable action against the encroachers. The Municipal Council has been provided the manpower much less the machinery for the said purpose as required by the concerned Executive Engineer. However, certain persons have approached this Court by filing the writ petitions, details of which have been given in paragraph 3 wherein an interim order has been granted.

With regard to repair of the existing roads falling within the municipal area, it has been submitted that repair of the roads and other development works are going on and the Municipal Council, Naya Gaon is making continuous effort to maintain the roads and to execute other development works. In this regard, reference has been made to copies of works as Annexure R-4/1.

As regards the set up of the Sewerage Treatment Plant, it has been submitted that the same has to be done by the Punjab Water Supply & Sewerage Board. In fact, there was some dispute with regard to place for setting up of STP. Accordingly, the resolution No.330 dated 16.7.2013 was passed by the Nagar Panchayat, Naya Gaon, which was rejected by the Local Government holding therein that the STP has to be set up on the land which is earmarked for setting up STP in the Master Plan, as earlier it was stated to be a *shamlat deh* land. Reference has been made to the copy of the proceedings dated 23.09.2013 as Annexure R-4/2. Letter dated 24.09.2013 (Annexure R-4/3) has also been addressed by the office of the Nagar Panchayat, Naya Gaon to the Managing Director, Punjab Water Supply and Sewerage Board, Ropar stating therein that process for acquisition of the

land for setting up STP be initiated in view of the setting aside of the Resolution, which reads as under:-

“Office of the Nagar Panchayat, Naya Gaon, Distt. SAS Nagar

Ref No.1073

Dated 24.09.2013

To

*Managing Director
Punjab Water Supply and Sewerage Board,
Ropar.*

*Subject: Regarding acquisition of land for setting up of S.T.P
at Nagar Panchayat, Naya Gaon.*

Regarding the subject cited above, it is requested that a resolution No.330 dated 16.7.2013 was passed by Nagar Panchayat Naya Gaon for acquisition of land for setting up STP. The Hon'ble Director has passed the order that the matter has been considered at the level of the Government and it has been decided that the land reserved for setting up S.T.P in the master plan is appropriate to be acquired for setting up for S.T.P. In this regard, the Hon'ble Director Local Government Department Punjab, Chandigarh has set aside the resolution No.330 dated 16.7.2013 passed by Nagar Panchayat Naya Gaon under Section 236 of the Act.

In the light of the above orders it is requested that the process be initiated for acquisition of the land so that appropriate reply be given before the Hon'ble Punjab and Haryana High Court. This be treated as most urgent and this office be informed of the action taken from time to time.

Sd/-

*Executive Engineer
Nagar Panchayat, Naya Gaon”*

However, during the interregnum, new Act i.e. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been enacted and as per the provisions of Section 10-a of the Act, exemption was required from the said Act. The

matter was considered by the Government and vide notification dated 27.8.2015 (Annexure R-4/5), exemption from the provisions of Chapter-II and III of the Principal Act has been granted. Certain villagers have filed writ petition challenging the initiation of the acquisition proceedings and this Court vide order dated 12.12.2016 (Annexure R-4/6) has granted status quo regarding demolition. Regarding lifting of the garbage, Municipal Council, Naya Gaon has executed an agreement with Mars Envirotech Ltd. for lifting the garbage from the area of Municipal Council, Naya Gaon, thus, endeavour has been made to take all possible steps to comply with the direction as already been given in the aforementioned orders.

I have heard learned counsel for the parties and appraised the paper book. The plight of the residents of the aforementioned villages at the hands of the State is writ large. Despite numerous directions extracted above and as well as the filing of the contempt petition, its machinery has not taken any steps. In case, some steps have been taken, the persons have resorted to protection of their legal right by availing the legal remedy but the fact remains that once demarcation report has been submitted to the office of respondent No.4 and 7 and the Executive Engineer has been assigned the job of removing encroachments, the written statement is bereft of what steps are being taken to prevent further encroachment, its removal and construction on the aforementioned choe and therefore, it is necessary for this Court to issue a direction to the Executive Engineer, Water Management, Investigation Division to ensure that no further encroachment is done and in the absence of stay by any encroacher, necessary steps for removing the encroachment be taken within a period of two months from the date of receipt of certified copy of this order, failing which the petitioner

shall be at liberty to avail the remedy of implementation of the order in competent court of law.

As regards the set up of the Sewerage Treatment Plant, the place is identified in the Master Plan. There is already a writ petition pending and subject to the outcome of the writ petition, necessary action with regard to setting up of the Sewerage Treatment Plant (STP) will be taken.

Regarding the repairing of the roads, explanation given but the fact remains that encroachment on the side of the road has not been removed and there is no averment with regard to any stay granted by this Court. Therefore, I deem it appropriate to issue directions to the Municipal Council and as well as the Local Government and U.T. Administration to remove the encroachment on the side of the road in the area starting from Village Naya Gaon, Khuda Ali Sher onwards to Kansal, Kaimbwala and repair the roads strictly in accordance with Master Plan 2021 i.e. width etc. Let this exercise be done within a period of six months from the date of receipt of certified copy of this order.

As regards the lifting of the garbage, the photographs (Annexure P-7) are testimony to the fact that plastic bags and other garbage is littered and scattered on the road. The Local Government has not made any arrangement for providing suitable garbage bins so that the same is not littered on the roads or here and there. Copy of the reply is bereft as to what steps are taken for lifting/management of the garbage except an agreement. Therefore, I deem it appropriate to ensure lifting of the garbage and installing the incinerators for disposition of the garbage in most legal and appropriate manner, as has been done in Chandigarh. To do the needful, let

this exercise be done within a period of five months from the date of receipt of certified copy of this order.

Demarcation report has been submitted to respondent No.4 and 7, therefore, appropriate steps be taken in coordination with the U.T. Administration to remove the encroachment on the side of the road and as well as the choe as indicated in the aforementioned report. Let this exercise be done within a period of five months from the date of receipt of certified copy of this order.

Since demarcation has been done, the respondents are directed to affix strong pillars on both sides of Patiala Ki Rao measuring 200 ft. in width as per the khasra numbers duly notified in notification dated 04.03.2013 (Annexure P-21) with the help and assistance of respondent No.5 and 6 and also take appropriate steps to demolish the illegal construction where there is no interim stay in the respective areas and prevent further encroachment. Let necessary steps also be taken for acquisition of land.

I am impelled to issue strong and stringent directions as despite order dated 28.05.2014, no steps in this regard have been taken except inter-se communications, therefore, in case, the aforementioned directions are not complied with, officers at the helm of affairs shall be held personally liable in accordance with law.

The writ petition stands disposed of with the above directions.

(AMIT RAWAL)
JUDGE

June 02, 2017
Pankaj*