

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4952 of 2019

Date of decision: 15.01.2020

Gulzar Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present: Mr.V.K.Jindal, Sr.Advocate with
Mr.Gopal Soni, Advocate for the petitioner.

Ms.Kirti Singh, DAG Haryana.

Ms.Nupur Chaudhary, Advocate for respondent No.5.

RAKESH KUMAR JAIN, J.(Oral)

The petitioner is a resident of village Rewar, Tehsil Narwana District Jind. He has prayed for issuance of a writ in the nature of mandamus to direct respondents No.1 to 4 to protect the *Gair Mumkin* Pond/Johar comprising in Khewat No.1, Khatauni No.84, Khasra No.125 (22-16), 126/2 (65-0), 127/1 (0-6) as per the jamabandi for the year 2013-14 from being changed for any other purpose by raising illegal construction by the private respondents.

The petitioner has averred that the land in question falls within the definition of *Shamlat deh* being a pond, in view of Section 2(g) (4) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act') and deemed to have been vested in the Gram Panchayat

which cannot be utilised even for the benefit of inhabitants of the village in violation of Section 5 read with Rule 3 of the Punjab Village Common Lands (Regulation) Rules, 1964. It is submitted that the land in question is recorded as *Gair Mumkin Pond/Johar* in the jamabandi for the year 2013-14. The private respondents started raising construction of a marriage palace (*Janjghar*) on some part of the aforesaid land in question. Some other villagers, namely, Pargat Singh, Avtar Singh and Satpal Singh filed a suit for permanent injunction against some of the co-villagers who are raising construction by changing the nature of the land in question from *Gair Mumkin Johar* to a *Janjghar* in civil court at Narwana. In the said suit, the statement was suffered by the defendants therein that they are not raising any construction over the suit property nor they shall raise any construction in future. In view of the said statement, they were restrained from raising any construction over suit property till further orders. Thereafter, the petitioner has filed this writ petition invoking the provisions of the Act and Rules for seeking direction to respondents No.1 to 4 who have to protect the land of *shamlat deh* in village from being changed or used for any other purpose without any utilisation plan prepared by the Gram Panchayat. In this regard, counsel for the petitioner has submitted that on a complaint made to the Sub Divisional Magistrate, Narwana, an enquiry was conducted in which it has been found that the land in question is a pond/Johar and the construction is going on it.

At the time of preliminary hearing, the Court had directed the

who was further directed to file status report in respect of the contentions raised in the writ petition. The Deputy Commissioner, Jind filed status report dated 19.03.2019 in which he has averred that report from the BDPO Ujhana/Narwana was received on 18.03.2019. It is further averred that a report from Tehsildar, Narwana was also obtained as per which pond exists on land measuring 22 Kanals 4 Marlas out of the land measuring 22 Kanals 16 Marlas comprising in Khasra No.125 as per which it was averred as under:

- “1. In Khasra No.125 (22-16), a pond exists on 22 kanal 04 marla, a Majar of Peer Baba and a Room exists in 12 Marla.
2. In Khasra No.126/2 (65-0), a Community Centre is being constructed in about 12 kanal by a committee of the proprietors of the village with the consent of almost all the villagers including the father of the petitioner who has also contributed Rs.15,500/- for the construction of the Community Centre to be used by all communities of the village.
3. In Khasra No.127/1 (0-6) an Anganwari Centre exists in 6 Marla.”

The Gram Panchayat filed its reply through its Sarpanch in which it is averred that there are other construction over the disputed land, namely, water reservoir constructed by the Public Health Engineering Department, State of Haryana, Temple (within 4 kanal), *Anganwari* Centre (6 marla) and *Majar of Peer Baba* and the remaining land is lying vacant. It is further averred that on the request of the villagers, a resolution was passed by the Panchayat on 24.4.2018 for raising construction of a *Janjghar* on the vacant land in question and a

General House meeting of the entire village was also called on 01.01.2019 in which the petitioner and his father had participated and contributed for the purpose of construction. It is further averred in the reply that as per Rule 3(2) and (xiii) the land of *Shamlat deh* vested in the Gram Panchayat can be used by the Panchayat for Panchayat Ghar, *Janjghar* or village Chaupal.

In rebuttal, counsel for the petitioner has submitted that the resolution dated 24.04.2018 (Annexure R-5/1) on which the reliance has been placed by respondent No.5 says that the land in question does not belong to the Panchayat which is factually incorrect and has further submitted that nothing has been brought on record by respondent No.5 that at any point of time any utilisation plan was prepared and approval was sought from the Government for using *shamlat deh* land for any other purpose for which it was reserved even if it is for the benefit of the inhabitants. It is further submitted by the petitioner that otherwise land of the pond/Johar cannot be used for any other purpose and cannot be changed. In this regard, he has, however, referred to the decision of the Supreme Court in the case of ***Hinch Lal Tiwari Versus Kamala Devi and others 2001(6) SCC 496, Meghwal Samaj Shiksha Samiti Versus Lakh Singh and others 2011 (4) SCC (Civil) 670, Jagpal Singh and others Versus State of Punjab and others 2011(11) SCC 396*** and a Division Bench judgment of this Court in the case of ***Bhale Ram (now deceased) through his LR-Mahabir Versus The Director Panchayat, Haryana 2018(3) RCR(Civil) 953.***

able assistance, have perused the record carefully.

Respondent No.5-Gram Panchayat has solely relied upon resolution dated 24.04.2018 to justify the conversion of the land reserved for pond (common purpose) for the construction of *Dharamshala/Janjghar*. A close perusal of the said resolution shows that the Panchayat has mentioned in the said resolution that the land in dispute does not belong to Panchayat whereas the land in question falling in Khewat No.1, Khatauni No.84, Khasra No.125 (22-16), 126/2 (65-0), 127/1 (0-6) is recorded as *Gair Mumkin* pond in the jamabandi for the year 2013-14 and as per Section 2(g)(4) of the Act, the land reserved as pond shall vest in the Panchayat being *Shamlat deh*. Thus, the foundation of the case of respondent No.5 is very weak as the Gram Panchayat in the resolution dated 24.04.2018 has mentioned that the land in dispute does not belong to the Gram Panchayat. Moreover, respondent No.5 has not produced on record any utilisation plan having approval of the Government for the purpose of changing the nature of the land in question (which is already being used for common purpose) merely because some part of the pond is dried, will not make the land of the pond available for the purpose of its use till it is recorded in the revenue record much less the *jamabandi* as *Shamlat deh*.

Thus, in view of the aforesaid discussion, we are of the considered opinion that it is a fit case in which a direction can be issued to respondents No.1 to 4 to protect the land of which the nature is being changed from pond to a *janjghar* in the absence of the settled principles

4 are directed to protect the nature of the land as *Gair Mumkin* pond/Johar which comprises of Khewat No.1, Khatauni No.84 Khasra No.125 (22-16), 126/2 (65-0), 127/1 (0-6) as per jamabandi for the year 2013-14.

(RAKESH KUMAR JAIN)
JUDGE

15.01.2020
Meenu

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No