

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

**Civil Writ Petition No. 15380 of 2016 (O&M)
Date of Decision: 30.01.2019**

Mandeep Singh and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Mr. Anurag Chopra, Advocate
for the petitioners.

Ms. Anu Pal, Deputy Advocate General, Punjab
for respondent Nos. 1 to 3/State.

Mr. J.S. Bhandohal, Advocate
for respondent No. 4-Gram Panchayat.

JASWANT SINGH, J.

1. By instant petition under Article 226 of the Constitution of India, the petitioners are seeking direction to respondent to refrain from constructing cremation ground at Khasra No. 78 (1-10) and further direction to respondents to construct cremation ground in Khasra No. 15//20/2 (0-18) which has been reflected as *gair mumkin shamshan bhumi* as per revenue record.

2. The petitioners/residents of Ballo Majra are owners in possession of land and houses adjoining to land wherein cremation ground is being constructed. The grievance of petitioners is that burning of corpses is not only source of constant and continuous air pollution but also smell and stench arise from burning of corpses. There is a Government Elementary School, Gurudwara and peer of worship besides residential

houses of petitioners so proposed cremation ground should be shifted to a location which is prescribed in the revenue record.

3. Counsel for the petitioners contended that the respondents are bound to shift cremation ground to location as prescribed in the revenue record and it is against Punjab Village Common Land (Regulation) Act, 1961 as well Punjab Municipal Act, 1911 to continue cremation at present location.

4. This Court vide order dated 06.03.2018, appointed Ms. Shalini Verma, Advocate as Local Commissioner to visit disputed location and submit her report. As per her report dated 19.03.2018, she visited village Ballo Majra on 17.03.2018 and inspected the site in question as well as proposed site. In her report, she has confirmed that site in question has been used for cremation for quite long time and even petitioners had purchased their land much later since the land is used for aforesaid purpose. The proposed land is also adjoining to residential units carved out by TDI City so shifting of cremation to propose site would open pandorabox of litigation. The Government has already released grant for renovation of the cremation ground.

The respondent also submitted report of District Development and Panchayat Officer who in his report has pointed out that the petitioners constructed their houses about 15 years ago whereas land in question has been used for cremation much earlier to construction of these houses. Originally, the *abadi* of the village was confined to Khasra No. 34 which expended up to Khasra No. 78 where cremation ground is located. Land comprised in Khasra No. 15//20/2 which is assigned for cremation ground has never been used for said purpose and it is used as play ground. The

proposed land is adjoining to locality developed by TDI Infra Tech Ltd.

5. The conceded position emerging from record and arguments of counsel is that villagers are using land in question as cremation ground for a quite long time whereas petitioners have constructed their houses about 15 years back. The petitioners were very much aware of cremation ground when they constructed their houses. The petitioners remained silent during this entire period. The present site is not meant for cremation as per revenue record and site proposed by petitioners is meant for cremation.

6. Having, scrutinized record of the case and hearing arguments of both the parties, this Court is of considered opinion that present petition is bereft of merits and deserves to be dismissed.

7. The petitioners have attempted to paint a picture as if a new cremation ground is going to be constructed near to their dwelling unit which is factually incorrect. Local Commissioner as well District Development and Panchayat Officer in their reports have candidly confirmed that villagers are using site in question for cremation since time immemorial, whereas petitioners have constructed their houses about 15 years back and they were much aware about the existence of cremation ground. The petitioners just for their personal gains are trying to shift cremation ground from present location to location shown in the revenue record. Even though, it is true that as per revenue record site in question is not meant for cremation ground, however, the Court cannot ignore the fact that villagers are using site in question for cremation for a long time and except petitioners, villagers are not interested to shift the cremation ground to proposed location rather they are objecting and proposed location may create further litigation.

In such circumstances, there is no question to direct respondents to shift cremation ground from its present location. The Deputy Commissioner, Mohali appeared in this Court and assured to take appropriate steps to solve the problem and Ms. Anu Pal, Deputy Advocate General, Punjab has informed the Court that Administration is going to take appropriate measures including raising walls and erecting chimney to protect interest of nearby residents. The State is even otherwise duty bound to look into and protect health issues of the residents. The Administration cannot turn their blind eyes if residents are suffering on account of pollution or smell. The Administration is **directed** to carry out the revnovation work with necessary environmental safeguards within six (06) months from the date of receipt of certified copy of this order.

In view of above observations, the present petition deserves to be dismissed and accordingly **dismissed**.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

January 30, 2019

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<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>