

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

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**CWP-9275-2019 (O&M)**  
**Date of Decision: 27.02.2020**

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Shakti Singh

..... Petitioner

Vs.

State of Haryana and others

..... Respondents

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**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN**  
**HON'BLE MR.JUSTICE ASHOK KUMAR VERMA**

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Present: - Mr.K.S. Virk, Advocate,  
for the petitioner.

Mr.Samarth Sagar, Addl. A.G. Haryana.

Ms.Savita Rana, Advocate, for respondent No.5.

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***RAKESH KUMAR JAIN, J. (ORAL)***

The petitioner has prayed for the issuance of a writ in the nature of mandamus to direct the respondents herein not to change the nature of land falling in Rect. No.40, Killa No.25 (1-14), Rect. No.41, Killa No. 4/3 (1-19) reserved for public toilets, Rect. No.51 Killa No.5 (4-10) reserved for gair mumkin baithak and Rect.No.51 Killa No. 88 (20-4) reserved for gair mumkin johar.

Learned counsel for the petitioner has submitted that the land utilization plan was prepared on 26.1.2019 and the resolution was passed on 02.02.2019 for the purpose of changing the nature of the land which is being used for the common purposes but it is not mentioned in the utilization plan that for what purpose the said land is going to be used. It is also submitted that the petitioner, in particular, is aggrieved against the action of the respondents in constructing a road even on the periphery of the pond falling in Mustatil No.51,

Killa No.88 (20-4). It is also submitted that the road is being constructed by the Gram Panchayat at the instance of the present Sarpanch to connect it with his rice sheller.

After notice, respondents No.1 to 4 have filed their reply in which the following averments have been made: -

*“That briefly stated the facts of the case are that the land comprised in Rect. No.40, Killa No.24 (1-14), Rect. No.41 Killa No.4/3 (1-19), is ownership of the Gram Panchayat and the same has been reserved for public toilets (Gair Mumkin Tatiya). The Public toilets which are situated in above said land are no more required because the village came in ODF (Open Defecation Free). Now every house of the village Uncha Samana have toilets. In spite of toilets in every house and the toilet situated in the above said land, there are 4-5 places in the village Uncha Samaba, where common Public toilets are still situated, but all these toilets are not being used because a toilet is situated in every house of the village. On 26.1.2019, the Gram Panchayat Uncha Samana has prepared the Land Utilization Plan of its land and has changed the nature of the above said land, and has decided to construct the Gram Sachivalya over the said land, keeping in*

*view the policy of the Government, in the interest of the general public. The Gram Panchayat is fully competent to change the user of its land in the interest of general public. Besides this the land comprised in Rect. No.51, Killa No.5 (4-10) has been kept reserved as Gair Mumkin Johar (pond) in the revenue records, which is also ownership of the Government. As per the instructions and guidelines of the Government, the Model Ponds is to be developed over the land reserved for pond and according to the said proposal of Model Pond, the pucca walking track, lights, benches, gazibo, swings for kids, and instruments for open gym etc. is to be constructed. It is also pertinent to mention here that one Raj Kumar resident of Village has also filed a civil suit titled as Raj Kumar Versus Gram Panchayat Uncha Samana, in the court of Sh. Harleen Pal Singh Ld. Civil Judge (Junior Division) Karnal, with respect to the land comprised in Rect. No.51, Killa NO.88 (20-4) and the Hon'ble Court has dismissed the stay application of the said Raj Kumar. The petitioner has absolutely no right, title or interest to restrain the Gram Panchayat from*

*handing the nature of its land for the benefit of the inhabitants of the village.”*

An affidavit was also filed by the BDPO, Karnal on 8.11.2019 in which the following averments were made: -

*“11. That the pond will have semi peripheral street (Annexure R4/7). This street is approximately 4 acres in length.*

*a. One acre length of the street falls under killa NO.51//4, which is the land of panchayat and earlier seems to be under encroachment.*

*b. Once acre length of the street falls under killa No.40//24, which is the land of panchayat and earlier seems to be under encroachment.*

*c. Once acre length of the street, in continuation of the above two acres is on the banks of the pond under killa number 0//88 of the pond.*

*d. Another one acre length of the curved street is in continuation of the above three acres is on the banks of the pond under killa number 0//88 of the pond.*

*15 That the street will be approximately 20 feet wide. There will a partitioned area for installation of solar lights, street lights, growing of trees, sewerage lines for outlet of*

*village dirty water and dividers for parking of vehicles etc, which would also be approximately 20 feet in width.”*

Counsel for the petitioner has failed to point out any illegality insofar as the provisions of the rules are concerned as even according to him Rule 3 of the Punjab Village Common Lands (Regulation) Rules, 1964 [for short ‘the Rules’] is not applicable but he has still agitated that the land/johar could not have been used for the purpose of construction of road.

On the other hand, counsel for the respondents have unitedly submitted that the land in dispute, insofar as toilets are concerned, is being used for the purpose of construction of the Village Secretariat (Sachivalya) because open defecation in the villages is being discontinued by the Government of India by opening public toilets and are making the villages as model villages which are open defecation free. Therefore, the public toilets (gair mumkin tatiya) is no more required and has been put to a genuine use of constructing Gram Sachivalya. It is also stated that as per the averments made in the first reply dated 16.7.2019, land falling in Rect. No.51, Killa No.5 (4-10) reserved for gair mumkin baithak (common place for resting and tethering of cows and buffalos) is not being put to any other purposes and is not a part of the present project of the Gram Panchayat. It is also submitted that the averments made in para 2 of the reply dated 14.10.2019, reproduced hereinabove, referring to Rect. No.51, Killa No.5 (4-10) is actually pertaining to Rect. No.51, Killa No.88 (20-4) because the roads etc. are on the periphery of the pond and for the purpose of its beautification. It is further submitted that the pucca walking track, lights, benches, gazibo, swings for kids, and instruments for open gym are being constructed on the periphery of the pond which will not only develop the pond

but also enhance its utility. It is also submitted that the allegation of the petitioner is not correct that the road is being constructed for the purpose of connecting the rice sheller of the Sarpanch or his family members.

We have heard learned counsel for the parties and after examining the available record, are of the considered opinion that in the explanation given by the respondents in their reply, which has been noticed hereinabove, we do not give any reason to issue a mandamus as prayed for by the petitioner and hence, the present petition is hereby dismissed.

**(RAKESH KUMAR JAIN)**  
**JUDGE**

**(ASHOK KUMAR VERMA)**  
**JUDGE**

**27.02.2020**

*Vivek*

*Whether speaking /reasoned* : *Yes/No*  
*Whether Reportable* : *Yes/No*