

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

Civil Writ Petition No.8991 of 2020(O&M)

Reserved on : July 30, 2020

Date of decision: September 03, 2020

Chanan Singh and others

.... Petitioners

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Hardeep Singh Advocate for
the petitioners.

Mr. Sahil Sharma, DAG Punjab.

Mr. Aman Dhir Advocate
for respondents No.5 to 8.

Harinder Singh Sidhu, J. :

1. This writ petition has been filed seeking a direction to respondents No.1 to 4 (official - respondents) to take legal action against respondents No.6 to 8 (Rajwinder Kaur Sarpanch, Gurpreet Singh and Kulwinder Singh) for illegally extracting earth from shamlat land and illegally indulging in mining and selling the sand/soil from shamlat land. Further prayer is that respondents No.1 to 4 be directed to restrain respondents No.6 to 8 to further extract earth from shamlat land and to restrain them from illegal mining and illegal selling the sand/soil.

2. The petitioners state that they are the khewatdars of Village Mallewal, Block Makhu, Tehsil Zira, District Ferozepur. Respondent No.6 is the Sarpanch of the village. Respondent No.8 Kulwinder Singh is her

husband.

3. It is the case of the petitioner that at the time of consolidation, land measuring 238 kanal 3 marla was reserved for common purposes and the same vests with the Gram Panchayat under section 2 (g) of the Punjab Village Common Lands Act, 1961 and the Gram Panchayat is the owner of the said land. Out of this 238 kanal, 99 kanal 6 marla was chahi, agricultural land and has been given on lease to the villagers in auction on yearly basis. The auction money is being used for the welfare of the village.

4. It is alleged that respondent No.6 in connivance with respondent No.7 and 8 and for causing loss to the Gram Panchayat has not auctioned some portion of the shamlat land comprised in khasra No.29//9 (8-0), 29//12 (8-0) and 29//19 (9-0) . In February 2020, respondent No.7 and 8 started extracting the earth from the land in the said khasra Nos. The petitioners complained about this to respondent No.4 and for sometime respondents No.6 to 8 stopped the illegal extraction. However in June 2020, respondent No.6 in connivance with respondent No.7 and 8 again started extracting and excavating the earth in khasra No. 29//9 (8-0), 29//12 (8-0) by using JCB machine. They have illegally extracted the land upto 30 feet to 40 feet and are illegally selling the sand from the said land in huge quantity. It is alleged that respondents No.7 and 8 openly claim that they will continue to extract the earth from and no one can stop them as they have the support of local MLA.

5. It is the case of the petitioners that though the land in the aforementioned Khasra Numbers was *Chahi* but the Gram Panchayat without taking any permission from the competent authority under the East

Punjab Consolidation Act 1948 has changed the nature of land by extracting the earth 30 to 40 feet on the pretext of establishing a pond in the village. The Gram Panchayat has also not taken any permission under the Mines and Minerals Act from the concerned Department as such violated the provisions of law. It is alleged that the Gram Panchayat never passed any resolution for the extraction of land for the purpose of pond and has never taken any permission from the concerned department i.e respondent No.1 and 2.

6. The petitioners submitted application dated 19.6.2020 to the Minister for Rural Development and Panchayat Minister and another application dated 19.6.2020 to the Minister for Mines and Geology. They also submitted application dated 19.6.2020 to the respondent No.3- Deputy Commissioner Ferozepur for taking the legal action against respondent No.6 to 8 and to stop them from further extracting the earth. They submitted application dated 24.06.2020 to respondent No.4 – Block Development and Panchayat Secretary, Makhu but till date no action has been taken on the said applications.

7. In the reply filed on behalf of respondents No.2 to 4 by the Block Development and Panchayat Officer, Makhu, Ferozepur it has been stated that respondent No.5 ie. Gram Panchayat village Mallenwala had passed a resolution for digging up a new pond on the land in question which is situated outside the village on the ground that the existing pond which is situated in the middle of the village is causing a lot of medical difficulties for the villagers and that a child of the village had got drowned in the old pond. The Gram Panchayat also undertook that the sand/soil extracted from the land in question, will be used to fill up the old pond in

the village and to fill the low lying paths. The resolutions dated 15.01.2019 and 20.02.2019 were forwarded to the Additional Deputy Commissioner -cum-ADPC MGNREGA Ferozepur for approval who vide letter dated 12.02.2020 granted approval in accordance with the MANREGA Scheme. A direction was issued to dig the pond to 5.5” feet. It is further stated that when the illegal mining came to his notice in the month of March, 2020 he visited the spot on 09.03.2020 and vide letter dated 13.03.2020 directions were issued to the Sarpanch to stop the extraction of the land immediately. In compliance therewith the Sarpanch stopped extraction. Thereafter vide letter dated 30.06.2020 issued by the SDO-cum- Assistant Mining Officer Ferozepur, it again came to his notice that illegal mining was still going on in the village Mallanwala and that land had been dug upto 10 feet. On this the answering respondent vide letter dated 01/07/2020 directed the village Sarpanch to immediately stop the extraction from the Panchayat land. That very day the extraction of land was stopped. Thereafter once again the SDO- cum- Assistant Mining Officer Ferozepur vide letter dated 09.07.2020 intimated regarding the illegal mining. Vide letter dated 13/07/2020 the village Sarpanch was again directed to submit the report within three days. The answering respondent after physical verification/inspection of the spot on 8.07.2020, vide letter dated 18.07.2020 has requested the respondent No.2- The Director Rural Development and Panchayat to take action against the village ‘Sarpanch under section 20(4) of the Panchayati Raj Act 1994 vide memo dated 18.07.2020 (Annexure R-10/T), which reads as under:-

“To,

The Director,

*Department of Panchayat and village Development
Punjab*

Letter No. 1161 dated 18.07.2020.

*Subject:- Regarding illegal mining on the village Panchayat
land Mallenwala, Makhu, District Ferozepur.*

*In reference to the letter memo no.150-152/l Mining
dated 30.06.2020, letter no. 167-168/court case dated
07/07/2020 issued by the SDO-cum- Assistant District Mining
officer Zira, Ferozepur and in continuation of this office memo
no. 1019 dated 01.07.2020 & letter memo no. 1104 dated
13/07/2020.*

*Subject to the cited above and the letter under reference
you are hereby informed that Gram Panchayat wants to
excavate the Shamlat land of the village and pond so that the
drainage of dirty water could be done in proper way and the
dirty water which is standing at the Shamlat land that could be
drained through pipe line and the resolution in this connection
was passed on 20.02.2019 and the Additional Deputy
Commissioner vide letter memo no. 2783 dated 12.02.2020 has
granted the approval for digging the land/pond in question to
the depth as 5. 5” in accordance with the MANREGA Scheme.
But, vide your office letter memo no. 150-52/1 - Mining dated
30.06.2020 you have intimated that there is a mining to the
depth of 10 feet accordingly, while taking action in the matter
vide this office memo No.1019 dated 01.07.2020 the Gram
Panchayat Mallenwala has been directed to stop the illegal
mining. Again in response to your office memo No.167-
68/Court case dated 09.07.2020, vide this office memo
No.1104 dated 13.07.2020 the village 'Sarpanch' was again
directed to stop the illegal mining and copy of the same was
also forwarded to the SDO Panchayati Raj 'Zira' for
submission of the report within three days.*

*But, now after physical inspection of the spot it has been
found that the extraction of land for making pond has not been*

done in accordance with the instructions issued by the Government. It has also been written to the mining department that the access digging up the pond to be accessed in accordance with the rules and regulations as framed by your department.

The 'Sarpanch' Village Mallenwala has dug up the pond beyond the instruction/limit and caused the revenue loss. By doing so he directly misused his position hence, it is recommended that village 'Sarpanch' to be prosecuted under Section 20(4) of the Punjab Panchayati Raj Act, 1994.

Enclosure: copy of the ref. Letter.

*Sd/-
Block Development & Panchayat Officer,
Makhu, Ferozepur
Dated 18.07.2020”*

8. Respondents No.5 to 8 in their reply have stated that the old pond in the village was in the center of the village and it was surrounded by many houses. The said pond was causing a lot of medical difficulties for the villagers. Further, a child of the village also got drowned in the old pond. Hence the Gram Panchayat passed a resolution for digging up a new pond on the land in question, as it is on the outskirts of the village. The said resolution was approved by respondent No.3- The Deputy Commissioner, Ferozepur. It is further stated that the sand which has been extracted from the land in question, has been used to fill up the old pond in the village. The allegations with regard to selling of the sand has been denied. They have also denied that any monetary loss is caused to the Gram Panchayat. It is stated that only a meager amount was fetched by the Gram Panchayat by auctioning of the land in question. Further, the said act has not caused any damage to the shamlat land and was not in

contravention to any provision of law.

9. Having heard Ld. Counsel for the parties and having perused the replies of the respondents it is clear that after physical inspection of the spot it has been found that the extraction of land for making pond has not been done in accordance with the instructions issued by the Government. Approval for digging the land/pond in question was only to the depth as 5.5” in accordance with the MANREGA Scheme. But spot inspection revealed that there was mining to the depth of 10 feet. The Block Development and Panchayat Officer – Respondent No. 4 has thereby concluded that the Sarpanch Village Mallenwala has dug up the pond beyond the instruction/limit and caused the revenue loss. By doing so she directly misused her position. He has accordingly recommended to respondent No.2 that village Sarpanch to be prosecuted under Section 20(4) of the Punjab Panchayati Raj Act, 1994.

10. In the light of the aforesaid, this petition is disposed of with a direction to respondent No.2 to take action on the recommendation of respondent No.4 expeditiously in accordance with law. The official respondents are further directed to ensure that no extraction from the land in question is permitted beyond what has been approved by Respondent No.3.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 03, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No