

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

105

CWP-3536-2020

Date of Decision:22.11.2022

Mahant Ganga Dass Chela

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

**Present: Mr. Lupil Gupta, Advocate,
for the petitioner.**

Mr. Saurav Verma, Addl. A.G., Punjab.

**Mr. Neeraj Yadav, Advocate,
for respondent Nos.5 to 7.**

VINOD S. BHARDWAJ , J.(Oral)

Prayer in the instant civil writ petition filed under Articles 226/227 of the Constitution of India, 1950 is for issuance of a writ in the nature of mandamus directing the respondents to relay the interlocking tiles to save the historical old Samadh of Baba Raghveer Das since work of laying pucca street by the Nagar Panchayat does not take account of the ground level. Resultantly, the level of Samadh has been lowered causing water logging.

It has been alleged in the present writ petition that the Samadh is situated over an area measuring 03 kanals 19 marlas within the Lal Dora of village Kotha Guru. It is contended that the same is now in possession of

the disciple Ganga Ram. He submits that the Nagar Panchayat has been laying interlocking tiles to make the streets pucca. The level of the street is now more than the level of the Samadh premises as a result whereof the rainy water/street water enters into the Samadh premises. Some photographs have been appended along with the present writ petition as (Annexure P-5). He further submits that representations have been submitted with the civil authorities, District Bathinda and favouring no response, the present writ petition has been filed.

Short reply by way of affidavit of Sh. Mukesh Singla, Executive Officer, Nagar Panchayat Kothaguru, District Bathinda on behalf of respondent Nos.5 to 7 had already been filed wherein following preliminary submissions have been noticed :-

“3. That it is most respectfully submitted that the property in which the Dera is situated has 4 gates and people/followers/disciples use all four gates for entry and exit in the Dera. The level of the area near three gates is at par with the level of connecting/adjoining streets, but on the side fourth gate i.e. spot in question, the level of ground inside the Dera is low from the main road. That said small portion of land inside Dera is lower in level than others portions of Dera itself. It is due to that reason, water, if any, enters inside. It is relevant to mention here that the assertion of petitioner that level of the street is being raised due to interlocking tiles is wrong. The level of street is at par with all other connecting streets.

4. That it is also relevant to mention here that the assertion of the petitioner that water enters the area of Samadhis is also wrong. The area of Samadhi is at a considerable distance from the small portion of land where water enters. And even that water has an exit system and the same goes out from a outlet

situated in Dera itself. Also the area of Samadh is protected by walls built by Dera itself and in no case water can enter the area of Samadh. The photographs of the gates of Dera, streets and Samadh area is annexed here as Annexure R-5/1.

5. *That is also relevant to mention here that there are many houses in the street near the gate in question. Level of all the adjoining houses is at par with the level of street and only in some portion of Dera, the level of land is lower than street. And the answering respondents cannot be faulted for that. Also the residents of the street have filed a civil suit (CS 318/2020) titled as Sukhjiwan Singh etc. Versus Dera Sant Raghuvir Dass etc.” seeking permanent injunction against the answering respondents from removing the interlocking tiles and the same is pending adjudication before Ld. Courts at Phul, District Bathinda for 22.09.2020. Therefore, apparently the dispute is between the residents of the street and Dera, due to which Dera is not levelling up the small portion of land, where the water enters, if any.”*

I have heard the learned counsel for the respective parties and have gone through the documents appended along with the present writ petition.

The present petition fails to establish that the level of Dera was higher than the street level and has been lowered due to the work. In the absence of any such pleading, it cannot be stated with surety that the level of the street was lower and that the same is being raised to the detriment of the Dera. Further, a specific stand of the respondents is that the level of the street has been kept intact and the interlocking tiles had caused no variance in the general level of the street. Besides, it has also been pointed out that a suit is pending before the civil court regarding the matter and the said fact is not being disclosed by the petitioner at the time of filing of the present writ

petition.

On a pointed query as to whether any vested statutory or fundamental right of the petitioner stands violated, the petitioner has not been able to refer to any provision to support his claim. He has also failed to point out any violation of the bye laws/regulations laid down by the Department of Panchayati Raj/PWD (B&R) as regards the level of the streets. There is no allegation of malice or mischievous against any person.

Consequently, at this juncture, there is nothing to hold that the water logging at the Dera is a result of the laying of interlocking tiles or that the general level of the Dera has been lowered as a result of the aforesaid development activity undertaken by the Nagar Panchayat or that the work is in violation of any guidelines issued by the competent authority. Besides, no rejoinder controverting the reply of respondents was filed. All these are disputed questions of facts and cannot be gone into by this Court in writ jurisdiction. Since civil suit is already pending, the petitioner would be at liberty to raise all such pleas by way of a counter claim before the Civil Court.

The present writ petition is accordingly dismissed.

The petitioner however would be at liberty to take recourse to his remedy(ies) in accordance with law.

November 22, 2022
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No