

101

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP-19877-2021 (O&M)****Date of Decision:** October 27, 2022**BALDEV RAJ AND OTHERS**

..... Petitioners

Versus**STATE OF PUNJAB AND OTHERS**

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr.B.S. Jaswal, Advocate and
Mr. Ashok Paul Batra, Advocate for the petitioners.

Mr. Sandeep Jain, Addl. AG, Punjab.

Mr. Munish Jolly, Advocate for
Mr. D.K. Saldi, Advocate for respondent No. 6.

LISA GILL, J.

Petitioners, residents of village Muchhal, Block Tarsikka, have filed this writ petition seeking directions to the respondents to not close the pond reflected at point A of *Aks Shajra*, situated within Lal Dora of the village and further not to divert its water to pond B. Petitioners apprehend that in case pond A i.e. one of the two ponds situated in the village (reflected as pond A and pond B in the site plan, Annexure P1) is closed and water from the village is diverted to pond B, it would result in water logging of the houses alongwith surrounding area of the pond as there would be no channel for outflow of the said water.

While noting the contentions on behalf of the petitioners, it was directed by the Co-ordinate Bench on 30.09.2021 that Status Report be filed by the Block Development and Panchayat Officer, Tarsikka clarifying the entire position especially with regard to the proposed construction of drain from pond A to pond B. It was further directed that apprehension of the petitioners in respect to water logging in pond B, which may affect the residential area as well as agricultural land, be also addressed. Details alongwith the site plan were directed to be placed on record.

Pursuant thereto, affidavit dated 12.10.2021 of BDPO, Tarsikka, was filed with the averments that the drain, which was under construction was meant for disposal of rain water accumulating in the street about 200 feet from pond A, which would also dispose of the water which over flows from pond A or water which flows back from the pond towards the street during rainy season. Certain averments were made regarding the level of pond A and pond B, which was disputed by learned counsel for the petitioners. Prayer for appointment of Local Commissioner addressed by the petitioners was allowed on 16.12.2021, taking in view the specific averments that report dated 12.10.2021 was incorrect in respect to the level of the land at pond A and pond B. Operative part of order dated 16.12.2021 reads as under:-

“ Considering the prayer made in the application, we accept the same subject to deposit of Rs.20,000/- as the fee of the Local Commissioner by the petitioners in the Registry and Rs.30,000/- as security, which would be imposed as costs in case the report of the Local Commissioner goes against the assertion of the petitioners, within a period of one week from today.

Let the Executive Engineer of the concerned Block, District Amritsar, Department of Irrigation, appoint an officer not below the rank of Sub Divisional Engineer, who shall carry out the level assessment with regard to the flow of water from pond 'A' to pond 'B' and thereafter to point 'P' leading to the level at the passage near railway line as well as the agricultural land.

The report be submitted within a period of two weeks from the date of appointment by the Executive Engineer, who shall so appoint the officer on an intimation being sent by the petitioners to the Executive Engineer about deposit of the amount with the High Court Registry along with the copy of the receipt thereof.”

Relevant part of report dated 04.03.2022 (Annexure R1) is reproduced as hereunder:-

“ With reference to the subject cited above, it is intimated that as per the order of Hon'ble court, undersigned has done the leveling at village Muchal on dated 04-03-2022. As per the plan received in which position of pond A, Pond B, Railway Culvert and Point P was marked, the levels have checked. The level sheet is herewith attached for reference. Undersigned has started the leveling work by assuming the bed of culvert beneath railway line as bench mark value (100 feet). It is intimated that on day of checking, the water level of pond A has found as 100.09 feet and water level of pond B has found as 98.94 feet whereas level of point P (Bed level of old Nallah) has found as 102.05 feet. Which shows that in ordinary conditions, water may flow from Point P to pond A through old nallah. In monsoon Season when water level of pond A raises beyond 102.05 feet, the water may start flowing from pond A toward point P through old nallah and further towards pond B through new nallah.

The water level of pond B on day of checking has found as 98.94 and level of agriculture land near to pond B has found

as 99.46 feet and 99.55 feet. The bed level of railway line culvert is 100 feet and level of land near to culvert has found as 100.68 feet and 100.34 feet. It shows that the water may accumulate in the surrounding field near to pond B before passing the culvert beneath the railway line.”

In view of the said report, time was afforded to the respondents to suggest ways and means for clearing the said water if there be any water logging due to overflow of pond B.

Affidavit dated 19.04.2022 of Executive Engineer, Jandiala Division, UBDC, Amritsar was filed with the following suggestions:-

“ 4. That after inspecting the site, it is found that there are nearly 8 number of ponds in and around the village. The pond A is bigger pond from all other ponds and is inside the village. The water of major houses of villages outfalls in the pond A. It is submitted that:-

- a) Immediate cleaning of Pond A is required as the capacity of Pond A is full as on date. There are Island visible in the middle of pond A which is required to be removed for immediate relief and to restore the pond in its original capacity.
- b) Seechewal Model/Thapar Model may be adopted in this village.
- c) For longer run, proper master plan of all the ponds in and around the village is required to be chalked out for disposal of the waste/rainy water.
- d) For permanent solution of this problem, a joint project may be prepared by Water Supply and Sanitation Department, Panchayati Raj Department, Drainage Department and Soil Conservation Department, Punjab.
- e) It is also suggested that the excess waste/rainy water may be disposed off in the Khilchian Drain (which is

approximately 3 KM from village Muchal) by gravity or pumping along the railway line.”

While taking note of the suggestions, it was observed in order dated 19.04.2022 passed in this writ petition that the exercise in question has to be carried out by the respondents in collaboration and in consultation with the department concerned, therefore, it was directed that the exercise be carried out under the supervision of Deputy Commissioner, Amritsar with the District Development and Panchayat Officer, Amritsar and a comprehensive plan be worked out with the Gram Panchayat being associated with the effort/drill.

Status Report dated 21/23.05.2022 by way of affidavit of Deputy Commissioner, District Amritsar, Punjab was filed in Court on 23.05.2022 with the following order being passed in this writ petition:-

“ In compliance with the order passed by this Court on 19.04.2022, status report by way of an affidavit of the Deputy Commissioner, District Amritsar, Punjab dated 21/23.05.2022 has been filed in Court. It has been stated therein that in pursuance to the order passed by this Court, the Departments concerned including the Gram Panchayat were taken on Board and it has been decided that the detailed project report shall be prepared by the XEN Panchayati Raj, Amrtisar, which will be done in phases looking at the onset of the monsoon season. The details with regard to the project has been mentioned in para 2 onwards. It has been stated that the detailed project report has been submitted by the Executive Engineer, Panchayati Raj. The de-watering of pond (A) has already commenced and it is expected that once the pond is de-watered, the cleaning of the slit can be undertaken after the sludge has settled and dried.

In Paras 4 to 6, it has been stated as follows:-

“4. It has been targeted that the entire cleaning project along with the making of chambers as per the Thapar Model should be completed before the onset of this monsoon season, 2022. However, in case this project is not completed by the time the monsoon season commences and heavy rain leads to flooding of pond (A) then the stretch which is currently not connected out of the entire stretch connecting pond A and B which is roughly around 80' Ft to 100'ft shall be temporarily dug up and connected to ensure that at least for this monsoon season, the excess water does not flood the village Abadi. As regards the concerns of the farmers surrounding pond (B) of their field being flooded it has been discussed that the natural flow of water is north to south and in any case all the water that collects during monsoon follows the trajectory and passes through those fields. Furthermore, to allay their concern embankment of pond (B) towards their fields shall also be raised further so that the water does not flood their fields in the first instant.

5. During discussion it was also brought out that some Railway lands lying adjoining to the railway line is currently being cultivated by unknown persons whereas, this land is supposed to act as a buffer Zone and can also be used to channelize the water to ensure that it is temporarily stored while it moves through its natural flow. Therefore, it has also been decided that if the monsoon is heavy and there is flooding in the village as well as the fields then this stretch of railway land will be dug up to ensure that the water moves out of both Pond (A) of the Abadi as well as the Pond (B) adjoining the fields.

6. Phase 2 of the project shall be taken after the monsoon season and other ponds shall also be rejuvenated and will be interconnected through underground pipelines. The various schemes that are being used for carrying out of the development works are The Amrit Maha Sarovar, Jal Jiwan Mission, Swachh Bharat Mission, MGNREGA, 15th Finance Commission, Own funds of the Panchayat and Pradhan Mantri Krishi Sanchayi Yojna.”

Counsel for the parties have no objection to the suggestions/recommendation made as the due project has been finalized and is likely to be given effect to. (emphasis added)

In the light of the above, direction is issued to the authorities to ensure that the project is completed preferably prior to the onset of the monsoons.

Learned counsel for the petitioners has pointed out with reference to Annexure R-5/1 appended along with the affidavit dated 12.10.2021 filed by the Block Development and Panchayat Officer, Tarsikka-respondent No.5 to contend that the connectivity from Pond (A) till point Q has been completed, however, from point Q to R i.e. connecting it with Pond (B) has not yet been concluded and at present at point Q, the said connectivity comes to an end leading to a situation where there is logging of water in front of the house of the petitioners.

Counsel for the Gram Panchayat has suggested that a temporary connection from point Q to R i.e. to Pond (B) can be carried out by the Gram Panchayat to ensure that there is no logging of water in front of the house of the petitioners. The said exercise be carried out within a period of one week.

List for submission of the Status/Progress Report by the Deputy Commissioner on 08.08.2022.”

It is to be noted that petitioners were expressed to be agreeable to the suggestions/recommendations in the above said Status Report dated 21/23.05.2022. Thereafter, further Status Report by way of affidavit dated 05.08.2022 of the Deputy Commissioner, District Amritsar was filed on 08.08.2022. It was stated therein that removal of water from point Q to R was not possible due to rainy season and would be completed after demarcation by the revenue department. Water from point Q in front of house of the petitioner, it is stated, was diverted by temporary drain and

there was no water logging in front of the petitioners' houses. It was further stated that the work of the pond and construction of permanent/pucca disposal drain from point Q to R would be completed.

It was acknowledged by learned counsel for the petitioners that accumulation of water in front of the houses of the petitioners had been taken care of. Latest Status Report was thereafter sought, which was filed by way of affidavit dated 07.10.2022 of Sh. Harpreet Singh Sudan, Deputy Commissioner, District Amritsar on 11.10.2022. Report dated 07.10.2022 reads as under:-

“ That in compliance of the order dated 8.8.2022 in CWP No. 19877 of 2021 of the Hon'ble Punjab & Haryana High Court as per report submitted by Block Development & Panchayat Office, Tarsikka vide letter no.2766 dated 7.10.2022(Annexure A) and true translation (Annexure A.1) that Gram Panchayat Muchhal has laid down sewerage from point Q to R mentioned in the site plan for outlet of water from the house of petitioner to back side wall of the school and from point R onwards for management of outlet of water open disposal drain is being constructed by Panchayat. This work is being done with the consent of petitioner and other residents of the village without any hindrance. It is worth-while to mention here that for outlet of water of the entire village there is a pond in village measuring approximately five acres, the work of cleaning the pond was started by Panchayat. In the beginning drain chambers and kacha wells were dug in the pond and due to rain water drain chambers and kacha wells were filled with water. The Gram Panchayat has started dewatering from kacha wells and solar pump has been purchased for cleaning of water of pond in order to supply to the fields for irrigation and Gram Panchayat with the help of department is working continuously in order to complete this project.

2. Gram Panchayat Muchhal has laid down sewerage from point Q to R mentioned in the site plan for outlet of water from the house of petitioner to back side wall of the school and from point R onwards for management of outlet of water open disposal drain is being constructed by Gram Panchayat with the consent of petitioner and other residents of the village without any hindrance.

3. That there is a pond in village measuring approximately five acres, the work of cleaning the said pond was started by Gram Panchayat. Drain chambers and kacha wells were dug in the beginning in the said pond and due to rain water these drain chambers and kacha wells were filled with water. Gram Panchayat has started dewatering from kacha wells. Solar pump has been purchased for cleaning of water of pond in order to supply to the fields for irrigation. Gram Panchayat with the help of department is working continuously in order to complete this project. This may be treated as interim status report.”

Learned counsel for the State was thereafter afforded time to seek instructions regarding the timeline for completion of the entire project.

Today, learned counsel for the State while referring to communication dated 26.10.2022 from Block Development and Panchayat Officer, Tarsikka Advocate General, Punjab submits that work in question would be completed as detailed therein. Relevant timeline, as mentioned in communication dated 26.10.2022, reads as under:-

- “1. The cleaning and development of pond A' on Thapar Model will be completed in a period of five months from today, provided there are no heavy rains and the work of dewatering and desilting is not hampered.
- 2.The construction of permanent outlet of water from point 'Q' to Point 'R' will be completed by 30-11-2022.

3.The embankment of pond 'B' towards the fields of the farmers will be raised by one feet by 30-11-2022 in terms of para 4 of the order dated 23-5-2022.

4.After completion of the development of pond 'A' and the construction of the out let drain from point 'Q' to 'R' the feasibility and the requirement of the suggestion regarding a master plan for all the eight ponds in the village and their interconnection will be re-assessed.”

Communication dated 26.10.2022 is taken on record subject to just exceptions.

Learned counsel for the petitioners does not raise any objection to the time line as above, though it is submitted that in case, they have any objection to the decision taken after re-assessment as mentioned in clause 4, liberty be given to the petitioners to avail their remedy.

Keeping in view the facts and circumstances as above, we do not find the necessity of continuing with the present proceedings. Needless to say, time line as presented before the Court be adhered to by the respondents. Furthermore, the feasibility and requirement of the master plan for all the eight ponds in the village and their interconnection after development of pond A and construction of out let drain from point Q to R be carried out expeditiously and preferably within a period of four months thereof. Sum of Rs. 20,000/- deposited as fee of the Local Commissioner by the petitioners in terms of order dated 16.12.2021 be released to the Local Commissioner. Sum of Rs.30,000/- deposited as security in terms of

abovesaid order be returned to the petitioners, on submission of adequate proof of identity by the petitioners.

Writ petition is accordingly, disposed of in the above said terms.

(LISA GILL)
JUDGE

October 27, 2022
Rts

(HARSH BUNGER)
JUDGE

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