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

CWP-1163-2022

Date of decision: 24.01.2023

NIRMAL SINGH SAINI

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLR MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Rakesh Bakshi, Advocate for the petitioner.

Mr. Raman Sharma, Addl. A.G. Haryana

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner becoming aggrieved from respondent No.7 the Sarpanch of the Gram Panchayat concerned, from his act of filling the pond constructed under the MGNREGA Scheme, as became raised on Khasra No.30 (1-14), rather with debirs, thereupons, has accessed this Court for a mandamus being made upon the respondents concerned, to ensure the eviction of the errant respondent concerned, from the above stated pond.

2. Moreover, the further mandamus as asked to be made, upon the respondent, is for restoration of the pond to the size and measurement, rather co-equal to the ones which the said pond had in contemporaneity to its completest construction being made.

3. Though there is no averment made in the petition, that the errant respondent concerned, has raised any construction upon the said pond, yet a mandamus is asked to be made, upon the errant respondent concerned, for his being evicted therefrom.

4. The errant act of the respondent concerned, is obviously limited to the pond (supra) became unavailable for its being used for the beneficial purpose of the entire village proprietary body, given his filling mud, and, debris therein. Therefore, when there is no construction raised thereons, by the errant respondent concerned, thus, there was no necessity for the errant concerned, becoming evicted from the pond (supra). In that respect may be the aggrieved petitioner, was not required to institute a petition either under Section 7 or under Section 11 of the The Punjab Village Common Lands (Regulation) Act, 1961 (As applicable to Punjab & Haryana). Resultantly, the instant petition, when is instituted merely for relief of restoration of the pond after the earth or the debris as loaded therein, becoming removed therefrom, whereupons the beneficial purpose for which it has been constructed, would become both ably facilitated besides enlivened, inasmuch as, the clean water in the pond rather becoming enabled to be used by the entire village proprietary body, thus yet becomes rendered both well constituted as well as maintainable.

5. The asked for reply on affidavit to the petition, in respect of the respondent concerned, hence for ensuring that the mud or debris filled in the pond (supra), hence making it unavailable for being used for the relevant purpose, by the entire village community, rather becomes removed therefrom, has been placed on record. A perusal of the said affidavit, relevant paragraph 2 whereof becomes extracted hereinafter, discloses, that the pond has been restored to its original size and dimension, and, that in the vicinity of the pond, there exists no heap of debris, so as to cause the pouring into the pond (supra) of muddy water, for hence precluding its ablest user by the entire village proprietary body.

“2. That it is respectfully submitted that in compliance of aforesaid order of Hon'ble Court the deponent directed the Sub Divisional

*Officer (Civil), Naraingarh to inspect and take necessary action for proper restoration of pond in question, if required. In compliance, Sub Divisional Officer (Civil), Naraingarh alongwith Sub Divisional Engineer (Panchayati Raj) Naraingarh, JE (Panchayati Raj) Naraingarh and Village Secretary conducted the spot inspection of pond in village Pinjodi on 16.01.2023 and subsequently, for smooth drainage and storage of water in pond, depth of the pond was increased 4.5 feet deeper than the surface level of drainage. Furthermore, a proper solution has been made for the drainage of water, so that no water gathering remain in the street. It is pertinent to submit that aforesaid work was carried out in presence of petitioner Nirmal Singh Saini and other respectable person of village. The SDO (Civil), Naraingarh report alongwith photograph of spot, dated 18.01.2023 received by deponent is attached as **Annexure R-1.**”*

6. However, the learned counsel for the petitioner submits, that the restoration work of the pond, is not to the size and measurement co-equal, to the one which it had in contemporaneity to its construction becoming completed. However, the above submission is rejected as it is not supported by any evidence.

7. The compliance affidavit as furnished before this Court is accepted, and, the petition is closed and disposed of.

(SURESHWAR THAKUR)
JUDGE

24.01.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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