

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

(105)

CWP-6626-2022

Decided on : 25.09.2023

Jawahar Lal Bakshi

.....Petitioner(s)

Versus

State of Haryana & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr.Shobit Phutela, Advocate for the petitioner (s).

Mr.Ankur Mittal, Advocate
and Ms.Kushaldeep Kaur, Advocate, for respondents No.2 & 3-HSVP.

G.S. Sandhawalia, J. (Oral)

Prayer in the present writ petition, filed under Article 226/227 of the Constitution of India is for quashing of the e-auction proceedings to be conducted by the respondent-HSVP on 31.03.2022 in respect of plot No.47P, Sector 4, Panchkula measuring 1 kanal.

2. The case of the petitioner who is owner of House No.49 which is the adjoining plot is that there is a rainfed (barsati) naala which lies adjoining the plot which is sought to be auctioned and which overflows and also come to the residence of the petitioner. He has planted many trees to avoid soil erosion to save his own property. It is thus his case that the auction of the said plot along with other plots would put life and safety of the petitioner at peril. In the writ petition it has also been averred that the petitioner has paid compounding charges and had opened windows facing the said water channel and that the construction by the allottee on the plot in question would have direct impact on the light and ventilation of his house.

3. The stand of the respondents is specific that they never gave any permission to the petitioner nor any such plan was sanctioned and rather it is their case that encroachment has been done on the adjacent plot. It has been specifically mentioned that there are various other plots i.e., plot nos.18-P, 30-P, 31-P and 46-P which were not measured and not carved out by the competent authority and resultantly, these plots were not put to auction. The measurement of only plot No.47-P had been done and therefore, it was put to auction and the rest of the plots would also be put to auction in due course. It has been specifically mentioned that there are other encroachers also and notices were issued to owners of house Nos.19, 34, 43, 28 apart from the petitioner whose house number is 49 wherein also similar green-belts were encroached upon and they were used as adjoining gardens as the said belts were abutting the water channel. It has also been clarified that that the distance of the plot from embankment of the water channel was 9.32 meters and 1.28 meters as per the approved demarcation plan. The buffer zone between the toe wall created around the water channel was approximately 6 meters from the boundary wall of plot No.47-P and the toe wall is below the floor level of the plot to the extent of 4 feet. Therefore, the apprehension raised by the petitioner was alleged to be baseless.

4. Vide order dated 30.03.2022, it had been noticed that plots No.47, 46, 33, 29 & 18 had not been put to auction for the last 20 years and thereafter, vide order dated 20.04.2022, it was noticed that plots were duly carved out in the layout plan prepared by the respondents. Vide order dated 14.07.2022, it was also directed that any kind of encroachment which was found by way of construction in the area sought to be auctioned, such illegal

construction would be demolished which fact was confirmed vide order dated 15.02.2023 that all illegal constructions made were removed and doors and windows opening to that side were closed. An affidavit dated 13.03.2023 came to be filed on behalf of the respondents-HSVP wherein it has been mentioned that the Civil Engineering Department has been requested for providing consultancy work to be done in the Singh Naala Choe in Sector 4, Panchkula by associating Professors from Civil Engineering Department of the Punjab Engineering College, Chandigarh who had visited the site.

5. On 05.07.2023, we had passed the following order:

“Counsel for respondent Nos.2 and 3-HSVP has placed on record Design of Protection Work at the Singh Nallah Choe along Plot Nos. 14 to 49, Sector 4, Panchkula prepared by Punjab Engineering College, Chandigarh (PEC). The same is taken on record. We have examined the site plans and the photographs. Keeping in view the site plan (Annexure R-1), it would be apparent that Plot Nos.18P, 30P, 31P, 46P and 47P situated in Sector 4, Panchkula about the nallah/catchment area and are premium plots which were earlier were being utilized by the adjoining houses as green belts/lawns due to non-auction of the same. The petitioner is occupant of H.No. 49 and, therefore, was the beneficiary of one such green belt namely 47P and he seeks to challenge the auction proceedings of the said plot. The only apprehension which he has is that if the adjoining plots are auctioned and due to soil being soft and wet due to the location being next to the nallah, his house might be affected if construction is raised. The said aspect has already been redressed vide the report received from the PEC, which is now placed on record. In furtherance to the said report, the competent authorities can also consider the feasibility that at the time of auction of these plots, a condition can be imposed that building plans of the said plots can only be sanctioned if they construct a separate supporting load bearing wall on their neighbour side and will not be permitted to use as a basement keeping in view the location. The said conditions will cover the threat perception which has been raised by the present petitioner as the plots which are put to auction will be picked up by persons who are willing to construct with the

limited conditions. Let an affidavit be filed regarding these aspects on the next date of hearing.

Adjourned to 26.07.2023.”

6. The report of the experts also has been placed on record wherein soil investigation was done to recommend safe load bearing capacity for design of sound, durable and economical foundation system which was proposed by the said centre by digging a four bore holes/trial at regular intervals. It was also noticed that the water table was not encountered upto explored depth in any bore hole/trial. The said exercise had been done at the plots which are likely to be auctioned bearing Nos.49, 39, 28 & 20. The allowable bearing capacity had been computed with various footing parameters and recommendations had been given at the conclusion of clause 7. It can be thus said that the report of the expert is that the construction can be raised on the said plots inspite of their location adjoining the naala.

7. It is settled principle that the Courts have to adhere to the opinion of the experts. The affidavit in compliance of the earlier order reproduced above has also been filed dated 26.07.2023 whereby the respondents have agreed to the proposal that the building which is to be constructed could be only sanctioned if there is a separate supporting load bearing wall constructed. However, the respondents have not agreed that basement will not be allowed to be used as it is a part of the building code. The conditions which are liable to be imposed upon the plots have been mentioned as under:

- “a. The building can only be sanctioned if they construct a separate supporting load bearing wall on their neighbor side.
- b. The allottee shall hire HSVP empanelled Structure Engineer.
- c. Such Structural Engineer shall conduct soil tests determining safe bearing capacity of the soil, shall do soil profiling and conduct

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dynamic cone penetration tests (DCPT) and other tests as per
requirement.

- d. On the basis of such soil tests and other analysis done he shall
design retaining wall accordingly.
- e. To ensure, further structural stability Structural Engineer shall
clearly state the type of foundation (shallow footing/pile foundation)
etc. to be done for the proposed structure and also mention of the
material to be used for construction.
- f. The Structural Engineer shall give a clear report on the above points
and certify that the design/building plan is safe as per Geotechnical
Investigation done by him for the auctioned plot.

4. That the condition that allottee will not be allowed to use basement
cannot be imposed because it is a part of building code.”

8. Keeping in view the background, no such direction can be issued
restricting the respondents in auctioning the plot or similarly situated plots in the
neighbourhood. The safety measures to be adopted would not only benefit the
petitioner but the other residents of the area who can be protected to the extent
that regular annual dredging of the water channel should be conducted after
strengthening the toe walls and before the onset of the monsoon preferably in
the month of June every year on a regular basis to remove excess deposit of silt
and vegetation so that the free flow of water is not obstructed on account of
overflow of water due to heavy rain and water draining from the roads flowing
into the water channel. Respondent No.2 shall also ensure that the said exercise
is conducted on a regular basis for the water channel in question.

9. With the above-said observations, the present writ petition stands
disposed of.

(G.S. SANDHAWALIA)
JUDGE

25.09.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	