

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CWP-8475-2021 (O&M).

Date of Decision: 11.05.2023.

ISHWAR SINGH AND OTHERS

.. Petitioners

Versus

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. Mohit Garg, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Divyam Singh, Advocate,
for respondent No.8.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed for seeking issuance of directions to the respondents No.2 and 3 to clean the pond at regular intervals and to ensure that water is not accumulated in pond set up by the Village Panchayat in land situated in Khewat No.350, Khatauni No.505 in the revenue estate of village Barwa.

The petitioners who are residents of village Barwa, District Kurukshetra, have averred that the pond in question was constructed in the village to cater to the need for water during dry season for villagers as well as cattle. The same was constructed in the land situated in Khewat No.350, Khatauni No.505 in the revenue estate of village Barwa on an area of 02 acres. The State of Haryana has already enacted the Haryana Pond and

Waste Water Management Authority Act, 2018, for taking adequate measures so that no damage is caused to the ponds and they can be effectively used for the common benefit of the village and the village community. It is averred that the pond in question was constructed with the consent of the villagers by the Panchayat at the relevant time and that the same was catering to the needs of the villagers. However, the problem started only 4-5 years ago when the Sarpanch of the village illegally and arbitrarily blocked the drainage system of the excess water of the pond, without any authority, and gave the place meant for drainage water on lease for (pisciculture) fish farming. Due to setting up of the pond for fishing, the drainage of the above pond has been blocked causing accumulation of water in the pond and its overflow.

A short reply by way of affidavit of Manpal Singh, Member Secretary, Haryana Pond and Waste Water Management Authority, Panchkula on behalf of respondents No.2 to 4 had been filed wherein it was averred that the petitioners had earlier filed a Writ Petition No.14887 of 2020 which was disposed of vide order dated 21.09.2020 directing the respondents-Authorities to decide the representation of the petitioners within 08 weeks by passing appropriate order in accordance with law. It is further averred that the pond site was inspected by the Authority on 18.11.2020 in the presence of SDO (Civil) Thanesar, District Development and Panchayat Officer (DDPO), Block Development and Panchayat Officer (BDPO) and PR-PW along with other officials of Kurukshetra District. It is further averred that the Sarpanch of the village also agreed to ensure regular cleaning of all ponds of the village. However, the petitioners filed a contempt petition bearing COCP No.432 of 2021 which was withdrawn on

02.03.2021. It was also averred that the site was again inspected on 23.10.2021 by the Committee and the grievance of the petitioners already stands redressed.

A separate reply on behalf of respondents No.3, and 5 to 7 had been filed by Sahab Singh, Block Development and Panchayat Officer, Thanesar, wherein it was stated that a Committee consisting of SDO, Panchayati Raj Thanesar, SEPO, Thanesar, JE Block Thanesar, Gram Sachiv, Gram Panchayat Barwa and Numerbdar of village Barwa had been constituted vide Order No.6028 dated 19.10.2021 to verify the actual and true facts of the case. The said Committee also visited the spot on 23.10.2021 and submitted its report wherein it was reported that the level of the water in front of the houses of the petitioners is about 1-2 feet below and there is no problem of overflowing of the water in the said pond. It was also pointed out that there is a common street which is 37 feet in width, in front of the houses of the petitioners which is constructed by the Gram Panchayat with paver block. It was also pointed out that the petitioners are in fact discharging the waste/dirty water of their houses in the pond by installing a direct pipe line to the said pond. It was further pointed out that a separate pond measuring 02 acres has also been dug to control overflow of the water and to cater to the problems of the present pond that may arise in future. A reference was also made to the steps taken by the Haryana Pond and Waste Water Management Authority.

A separate written statement had also been by Gram Panchayat Barwa, District Kurukshetra-respondent No.8 wherein a specific stand has been taken that a separate pond has already been constructed by the respondent Gram Panchayat and underground pipes had been laid for

carrying out the excess water that may accumulate in the concerned pond and that there is no problem of water logging at the site.

Even though the above responses had been filed on behalf of the respondents way-back in the year 2021, however, no rejoinder/replication controverting the stand was filed by the petitioners. Hence, the factual claim made by the respondents remained unrebutted.

During the course of arguments, learned counsel for the petitioners contended that the problem in question erupted as a result of the Gram Panchayat leasing out the pond for pisciculture (fisheries) and that the lease of the second pond for rearing fishes is in violation of the Statute.

Learned counsel for the respondents, on the other hand, contend that the petitioners have never controverted any of the responses filed by the respondents even though a period of nearly 02 years has elapsed since the filing of the responses. They reiterate that there has been no blockage of water and there has been no overflowing. Had there been any such incident, there was no reason why the petitioners ought not to have preferred any rejoinder/replication to counter the stand of the respondents.

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

In so far as the contention of the petitioner that the second pond has been illegally given on lease by the Gram Panchayat for rearing of fishes is concerned, the same is not the subject matter of challenge in the present writ petition. The Gram panchayat is competent to lease ponds for rearing of fishes as per the State Policy and as per the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to the State of Haryana. Any person who is aggrieved of any such decision/process

whereby the village pond is given on lease may prefer a challenge before the competent Authority. Having not raised any such challenge, such indirect challenge to the aforesaid lease agreement, that had been executed by the Gram Panchayat for leasing out the aforesaid pond, cannot be sustained.

So far as the problem of water logging in the present pond is concerned, the factual matrix has been denied by the respondents in the written statements filed before this Court. The stand of respondents has not been countered by referring to any material. Consequently, there is no basis for this Court to come to any contrary conclusion. The present petition is accordingly dismissed.

May 11, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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