

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

251

CWP-16774-2021 (O&M).
Date of Decision: 11.09.2023.

KHUSHI RAM

... Petitioner

Versus

THE STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. Sushil Bhardwaj, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition has been filed for seeking issuance of directions to the respondents to construct Furlak drain for proper flow of the water and further to repair and construct the culvert for preventing any mishap on both side walls of culvert.

It has been averred by the petitioner that the above said drain leading from village Furlak to Dadlana crossing village Khora Kheri is being used for draining out rainy water to the main stream. However, the above said drain is not being properly maintained and the same leads to accumulation of water that over flows into the fields of the petitioner.

Further, the garbage is also dumped in the drain causing exposure of the petitioner to a hoard of rodents and mosquitoes.

Reply on behalf of respondents has been filed wherein the allegations levelled by the petitioner about the embankment being damaged was denied. It was further averred that the drain is regularly cleared before the onset of Monsoon and the same was done in the month of May/June 2021 so that it can carry maximum discharge during the peak monsoon season. The rain water drain system has been designed to carry the rain water only and also to recharge the ground water through the drainage system. The National Green Tribunal (NGT) has already directed that there should be no complete surface lining of the natural drain and they should not be covered in any case. Accordingly, the drain cannot be covered, however, effective measures for ensuring smooth outflow of rainy water/drain water are being taken.

In order to ascertain the factual scenario, a Local Commissioner was appointed by this Court vide order dated 12.10.2022. A report dated 11.01.2023 has been received from the Local Commissioner. Copies thereof have been furnished to the respective counsels. However, no objection to the said report by any party has been filed.

It has been stated in the report of the Local Commissioner that the Furlak drain is situated in the midst of land owned by the Irrigation Department and that the drain does not span the total width of the land owned by the Irrigation Department and rather lies in the middle of both and there is notified forest land on either side of the embankment. It is further reported that as a result of the adjacent land being owned by the Irrigation Department, the possibility of overflow can be suitably checked.

It was reported that the drain is not overflowing and there is no congestion.

It was, however, pointed that the drain is not clean and is filled with aquatic plants i.e. common water hyacinth.

Taking into consideration the above said report against which no objections have been filed by either of the parties and considering the submissions advanced by the learned State counsel that cleaning of the drain and/or removal of the water hyacinth/sedimentation is an exercise which is regularly taken before the onslaught of monsoon. There is currently no material available on the file on the basis of which it could be conclusively determined that there is water overflow from the said drain so as to cause damage to the standing crop of the petitioner, the present writ petition is disposed of as not pressed at this stage. Liberty is, however, granted to the petitioner to move an appropriate representation to the respondent Authorities for ensuring cleanliness of the said drain and for filing any claim for damages, if so advised, on account of any loss so sustained due to overflow of the drains.

(VINOD S. BHARDWAJ)
JUDGE

September 11, 2023.
raj arora

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No