

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111

CWP-13564-2023

Date of Decision : August 10, 2023

SURESH

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present : Mr. Parveen Kumar, Advocate for the petitioner.

Mr. Ankur Mittal, Addl. AG, Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Vikram Singh, Advocate
for respondent No.4.

SURESHWAR THAKUR. J.(Oral)

1. Notice of motion.
2. Mr. Ankur Mittal, Addl. AG, Haryana with Mr. Saurabh Mago, DAG, Haryana, waives service on behalf of the respondent-State, whereas Mr. Vikram Singh, Advocate has caused appearance on behalf of respondent No.4 under a validly executed Vakalatnama filed before this Court.
3. Admittedly, the present petitioner was granted lease of the disputed land, his being the successful highest bidder in an open auction, as became conducted in respect thereof, thus by the authorities concerned. The purpose for which the disputed land was leased to the present petitioner, was for enabling the latter to engage himself in fish farming. The tenure of the lease was for a period of 7 years, and, the said period was to commence from May 2020 and was to last upto May 2027.

4. However, it appears that the Gram Panchayat concerned, on taking clue from an order made by the National Green Tribunal, on OA No.673 of 2018, thus made a motion, thus to rescind the lease granted to the petitioner, through its preferring an application cast under Section 10-A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as '**the Act of 1961**'), thus before the learned Collector, Panipat.

5. The Collector, Panipat through a decision, as becomes enclosed in Annexure P-4, thus accepted the above prayer of the Gram Panchayat concerned, and, thereby proceeded to rescind the lease of the disputed land, as became assigned to the present petitioner, thus for the above purpose.

6. The petitioner became aggrieved from Annexure P-4, and, instituted an appeal thereagainst before the Collector, Panipat, who after affirming the order enclosed in Annexure P-4, thus dismissed the statutory appeal, as became preferred by the petitioner.

7. Simply the gravamen of the entire *lis*, is encapsulated in an order drawn by the National Green Tribunal in the case (Supra) For appreciating the mandate as encapsulated therein, it is but essential to extract the relevant paragraph thereof, as become embodied, in para No.50, paragraph whereof becomes extracted hereinafter:-

“In view of above, we consider it necessary to issue the following directions:

i) All States and Union Territories are directed to prepare action plans within two months for bringing all

the polluted river stretches to be fit at least for bathing purposes (i.e BOD < 3 mg/L and FC < 500 MPN/100 ml) within six months from the date of finalisation of the action plans.

ii) The action plans may be prepared by four-member Committee comprising, Director, Environment., Director, Urban Development., Director, Industries., Member Secretary, State Pollution Control Board of concerned State. This Committee will also be the Monitoring Committee for execution of the action plan. The Committee may be called "River Rejuvenation Committee" (RRC). The RRC will function under the overall supervision and coordination of Principal Secretary, Environment of the concerned State/Union Territory.

iii) The action plan will include components like identification of polluting sources including functioning/status of STPs/ETPs/CETP and solid waste management and processing facilities, quantification and characterisation of solid waste, trade and sewage generated in the catchment area of polluted river stretch. The action plan will address issues relating to; ground water extraction, adopting good irrigation practices, protection and management of Flood Plain Zones (FPZ), rain water harvesting, ground water charging, maintaining minimum environmental flow of river and plantation on both sides of the river. Setting up of biodiversity parks on flood plains by removing encroachment shall also be considered as an important component for river rejuvenation. The action plan should focus on proper interception and diversion of sewage carrying drains to the Sewage Treatment Plant (STP) and

emphasis should be on utilization of treated sewage so as to minimize extraction of ground or surface water. The action plan should have speedy, definite or specific timelines for execution of steps. Provision may be made to pool the resources, utilizing funds from State budgets, local bodies, State Pollution Control Board/Committee and out of Central Schemes.

iv) The Action Plans may be subjected to a random scrutiny by a task team of the CPCB.

v) The Chief Secretaries of the State and Administrators/ Advisors to Administrators of the Union Territories will be personally accountable for failure to formulate action plan, as directed.

vi) All States and Union Territories are required to send a copy of Action Plan to CPCB especially w.r.t Priority I & Priority II stretches for approval.

vii) The States and the Union Territories concern are directed to set up Special Environment Surveillance Task Force, comprising nominees of District Magistrate, Superintendent of Police, Regional Officer of State Pollution Control Board and one person to be nominated by District Judge in his capacity as Chairman of Legal Services Authority on the pattern of direction of this Tribunal dated 07.08.2018, in Original Application No.138/2016 (INHRC), "Stench Grips Mansa's Sacred Ghaggar River (Suo-Motu Case).

viii) The Task Force will also ensure that no illegal mining takes place in river beds of such polluted stretches.

ix) The RRC will have a website inviting public participation from educational institutions, religious institutions and commercial establishments. Achievement

and failure may also be published on such website. The Committee may consider suitably rewarding those contributing significantly to the success of the project.

x) The RRCs will have the authority to recover the cost of rejuvenation in Polluter Pays Principle from those who may be responsible for the pollution, to the extent found necessary. In this regard, principle laid down by this Tribunal in order dated 13.07.2017 in O.A No. 200 of 2014, M.C Mehta Vs. U.O.I will apply. Voluntary donations, GS contribution, voluntary services and private participation may be considered in consultation with the RRC”.

8. A reading of the hereinabove extracted paragraph, thus openly reveals that the action plan, as was directed to be drawn, besides to become implemented, but appertained to the polluted river stretches, and/or appertained to rejuvenation of rivers.

9. Though the action plan also included components like identification of polluting sources including functioning/status of STPs/ETPs/CETP and solid waste management and processing facilities, quantification and characterisation of solid waste, trade and sewerage generated in the catchment area of polluted river stretch.

10. Nonetheless, the said polluting sources, as mentioned in the herein-above extracted paragraph, does also only appertain to pollutions, being caused, thus by mismanagement or disfunctionality of solid waste management processing facilities.

11. Having regard to the above made inferences, as become drawn from the hereinabove extracted relevant paragraph, as carried in

the order of National Green Tribunal, it is but further candidly clear, that the ponds in respect whereof, lease became granted to the present petitioner, for his engaging in fish farming, rather is not embodied in the action plan (Supra), as became drawn for compliance thereto, thus by the respondents concerned.

12. Though in pursuance to the making of the above directions, the State of Haryana, has drawn a river action plan, appertaining to river Yamuna, but again also the drawing of the said river action plan, as appertaining to river Yamuna, is also amplificatory, that the ponds are not at all either mentioned in the said river action plan, and, but obviously the leased pond is also not a tributary of river Yamuna. It is evidently much distanced, and, rather is located as such but as a water body in the village concerned.

13. Be that as it may, if there was apart from the above reliance being placed by the authorities concerned, in cancelling the lease, as become granted to the present petitioner, rather some cogent material thus evidently displaying, that in the present petitioner engaging himself in fishery ventures, over the leased pond, thereby he was evidently committing such gross violations, thereby resulting in evident pollution being caused to the water body concerned. Therefore, in the event (Supra) may be the concurrently made rescinding orders qua the leased pond(s), thus would have been validated by this Court.

14. However, the above evidence is completely amiss, and, when this Court for the reasons(Supra) comes to the conclusion, that the impact

of the order of the National Green Tribunal, as became concurrently relied, upon, by the authorities concerned, for the latter rescinding rather the lease of the ponds granted to the petitioner, is in the least applicable, to the pond leased to the petitioner. Therefore, this Court finds, that the concurrently drawn orders against the present petitioner whereby the lease as became granted to the present petitioner, was rescinded, thus requires an interference being made by this Court.

15. In consequence, after allowing the present petition, this Court quashes and set aside the impugned orders dated 18.5.2023 (Annexure P-4) and dated 1.6.2023 (Annexure P-5).

16. However, it is clarified that regular inspections of the leased ponds shall be conducted by the authorities concerned, constituted under the relevant statute, and, if contamination by pollutants are found in the water body concerned, thereupon, it is directed that the authorities concerned, shall draw such action as deemed fit and appropriate against the present petitioner.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 10, 2023
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No