

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

246

CWP-19350 of 2021

Date of Decision:14.09.2023

Jaipal Panchal and others

....Petitioners

Versus

State of Haryana and others

.....Respondents

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

Present: Mr. Ravinder Malik, Advocate,
for the petitioners.

Mr. Vivek Chauhan, Addl. AG, Haryana

VINOD S. BHARDWAJ, J. (Oral)

1. The present writ petition has been filed for seeking directions for the respondents authorities to renovate the Bus stand, Babain, District Kurukshetra which is stated to be in a dilapidated condition and requires immediate renovation.

2. A perusal of the pleadings made in the present writ petition shows that a resolution had been passed by Gram Panchayat, Babain in the year 2002 for allocation of 1 acre of land, falling in the village pond, in favour of the department of Transport. On receipt of the above resolution passed by the Gram Panchayat, the General Manager issued a letter dated 21.01.2003 to the officials informing about alienation of land for Bus-Stand. Estimate of Rs.6,25,500/- for construction of Bus-

Stand was forwarded. Sanction was also granted and construction raised in the year 2005. The same remained dysfunctional and is now in a dilapidated condition leading to a wastage of public funds of Rs.6.00 lakhs. The drivers continue to halt the bus on the main road. An estimate of Rs.53.06 lakhs was prepared for renovation of the same but no work has commenced despite approval.

3. The written statement filed on behalf of the respondents however shows that even though administrative approval for construction of boundary wall had been granted for the said piece of land, however, the land in question has not been transferred in favour of the Transport department. Hence, the amount sanctioned for construction of boundary wall cannot be spent, being public money, qua the land on which the ownership rights have not been legally vested in the Transport department. The Gram Panchyat being an autonomous body cannot be compelled by the State Government to transfer its land.

4. The respondents sent a letter to the Block Development and Panchayat Officer on 15.07.2021 for transfer of ownership of land for execution of the works. Communication was sent by the office of Block Development and Panchayat Officer on 01.05.2022 informing that the land cannot be transferred as per the report of the Department of revenue since land belonging to pond cannot be transferred as per the law laid down by the Hon'ble Supreme Court in the matter of **Jagpal Singh and others versus State of Punjab** (Civil Appeal No.1132/2011). The said position in law had also been hold in the matter of **Hinch Lal Tiwari versus Kamla Devi** AIR 2001 SC 3215

disallowing the transferring pond land and to take re-possession of land encroached upon.

5. No replication was filed by the petitioners.

6. Counsel for the petitioner has placed reliance on the Notification dated 19.01.2021 issued by the Revenue and Disaster Management Department in relation to a policy for transfer of Government, Municipal Bodies & Gram Panchayat lands for public purpose. He refers to clause 5 to contend that the Gram Panchayat land can be transferred to Government Department.

7. I have heard the learned counsel appearing on behalf of both the parties and have gone through the records with their able assistance.

8. The facts having not been controverted and the land undisputedly being a pond land, the petitioners have failed to controvert the communication sent by the Block Development and Panchayat Officer.

9. The decision having been specifically taken about pond land to be not transferred, the general provision of notification dated 19.01.2021 would not make it obligatory to transfer the land. The enabling provision can not be made as a mandate to transfer the land. The said notification merely empowers transfer of Panchayat land and cannot be the basis to direct the Gram Panchayat to execute a transfer of the aforesaid land in favour of the Transport department. Till such time any such transfer has been done in a lawful manner, public exchequer cannot be made to spend more money.

10. Moreover, in the current era, marked by declining water levels and water scarcity, it is incumbent upon the Government as well as the Gram Panchayat to assume the duty of safeguarding and conserving water bodies. The Hon'ble Apex Court, in the matter of Jitendra Singh versus Ministry of Environment and others (Civil Appeal No.5109 of 2019) observed that:-

*“15. In **Hinch Lal Tiwari v. Kamala Devi**, this Court settled that 'ponds' were a public utility meant for common use and held that they could not be allotted or commercialised. It had refused to give any weight to similar arguments of the pond having become levelled, with merely some portion getting covered during rainy season by water. Importantly, it emphasised that:*

“13. It is important to notice that the matyerial resources of the community like forests, tanks, ponds hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.”

16. xxxxxx xxxxxx xxxxxx
17. xxxxxx xxxxxx xxxxxx

18. xxxxxx xxxxxx xxxxxx
19. xxxxxx xxxxxx xxxxxx

20. *Protection of such village-commons is essential to safeguard the fundamental right guaranteed by Article 21 of our Constitution. These common areas are the lifeline of village communities, and often sustain various chores and provide resources necessary for life. Waterbodies, specifically, are an important source of fishery and much needed potable water. Many areas of this country perennially face a water crisis and access to drinking water is woefully inadequate for most Indians. Allowing such invaluable community resources to be taken over by a few is hence grossly illegal.*

21. *The respondents' scheme of allowing destruction of existing water bodies and providing for replacements, exhibits a mechanical application of environmental protection. Although it might be possible to superficially replicate a waterbody elsewhere, however, there is no guarantee that the adverse effect of destroying the earlier one would be offset. Destroying the lake at Khasra Nos.552 and 490, for example, would kill the vegetation around it and would prevent seepage of groundwater which would affect the already low water-table in the area. The people living around the lake would be compelled to travel all the way to the alternative site, in this case allegedly almost 3 kms away. Many animals and marine organisms present in the earlier site would perish, and wouldn't resuscitate by merely filing a hole with water elsewhere. Further, the soil quality and other factors at the alternate site might not be conducive to growth of the same flora, and the local*

environment would be altered permanently. The respondents' reduction of the complex and cascading effects of extinguishing natural water-bodies into mere numbers and their attempt to justify the same through replacement by geographically larger attempt to justify the same through replacement by geographically larger artificial water-bodies, fails to capture the spirit of the Constitutional scheme and is, therefore, impermissible.

23. For the reasons stated above, we allow the appeal and set aside the impugned order passed by the NGT. The allotment of all water bodies (both ponds and canals), including Khasra Nos. 552 and 490 to respondent No. 6, or any other similar third party in village Saini, Tehsil Dadari, District Gautam Budh Nagar is held to be illegal and the same is hereby quashed. Since this Court has on 15.07.2019 already directed the parties to maintain status quo, respondent Nos. 1 to 5 shall restore, maintain and protect the subject-water bodies in village Saini. Respondents are further directed to remove all obstructions from the catchment area through which natural water accumulates in the village ponds, all within a period of three months.”

11. Division Bench of this Court has also directed in CWP No. 3221 of 2011 decided on 22.11.2012 to the effect that *Gair Mumkin Johar* or water bodies should not be diverted to any other use and ought to be protected, cleaned and re-charged. The necessity to retain the village ponds has been re-emphasized in the matter of **Harnek Singh versus State of Punjab and others (CWP No. 22863 of 2021)**.

12. Even otherwise, it is amongst primary and fundamental duties that the natural environment needs to be protected, preserved and improved. An obligation is also cast upon the Gram Panchayat to construct and repair village ponds under Section 21 of the Haryana Panchayati Raj Act, 1994.

13. The prayer thus made has an effect of diverting the pond land to construct the Bus-Stand. The water body serves larger public purpose by protecting the environment degradation and development at its costs has larger irreparable ramifications.

14. Prayer, invariably seeks validation of what has been repeatedly directed by the Hon'ble Supreme Court to be not done.

15. It is hence desirable that the Gram Panchayat takes adequate steps to prserve the pond and to maintain the same.

16. The petitioners may, if so advised, seek the relief of setting up of a Bus-Stand by an appropriate prayer in Public Interest Litigation.

17. The present petition is accordingly dismissed for the reasons as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

September 14, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No