

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**CWP-22863-2021****Date of decision : 02.06.2023****HARNEK SINGH****-PETITIONER****VERSUS****STATE OF PUNJAB AND ORS.****-RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Rai Singh Chauhan, Advocate with
Mr. Rohit Sapehiya, Advocate and
Ms. Deepika Chauhan, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. B.S. Ichhewal, Advocate
for the respondent No.8.

*********KULDEEP TIWARI, J.**

1. Through the instant writ petition, the petitioner has sought the issuance of a mandamus upon the official respondent(s) concerned, to consider the grievance of the petitioner, as carried in the representation dated 13.08.2021 (Annexure P-5), and, also to conduct an inquiry in terms of the directions, as carried in Annexure P-6, issued by the respondent No.2, on the premise that the Sarpanch of the Gram Panchayat concerned (respondent No.9), has constructed a community hall over the disputed pond (Chappar) in Village Badial by filling it with sand, which exists for the last more than 50 years and was used for common purposes by the inhabitants of the village concerned.

2. By placing reliance upon the judgment passed by the Hon'ble

Supreme Court, in case titled “**Jagpal Singh and others V/s State of Punjab and others**”, 2011(1) ICC 742, the learned counsel for the petitioner has argued that the factual matrix of the present case causes breach of the directions, as laid down by the Hon’ble Supreme Court in the case (supra), therefore, he has sought the indulgence of this Court, to take stern action against the private respondent No.9 and has also sought the restoration of the disputed pond to its original condition.

3. This Court, while issuing notice of motion in the present case, had passed the hereinafter extracted order:-

“The petitioner has approached this Court praying for a writ of mandamus directing the respondents to consider the grievance of the petitioner as highlighted in the representation dated 13.08.2021 (Annexure P-5), whereby the Deputy Commissioner, Hoshiarpur was called upon to look into the matter with regard to the encroachment on the Pond (Chappar) of village Badial as the pond has been filled in and construction is being carried out on the same. It has been asserted that in the revenue record as well as the other known facts for more than 50 years, the pond was in existence which has been filled in for carrying out illegal constructions. This act on the part of the Gram Panchayat itself, amounts to encroachment on the pond i.e. Khasra No.438, in violation of the provisions of the statute as also the judgment of the Hon'ble Supreme Court in 'Jagpal Singh and others Vs. State of Punjab and others, Civil Appeal No.1132 of 2011 decided on 28.01.2011' and as on to the judgment of this Court in 'CWP-9885-2020 titled as Terjinder Kumar and others Vs. State of Punjab and others' decided on 15.07.2020 (Annexure P-3). It has further been asserted that not only this, even the Director Rural Development and Panchayat, Punjab had vide communication dated 08.09.2021 addressed to the District Development and Panchayat Officer, Hoshiarpur (Annexure P-6) and vide letter dated 15.09.2021

sent by the Director Land Records, Punjab (Annexure P-7) to the Deputy Commissioner, Hoshiarpur had called upon these authorities to inquire into the allegations that has been made by the petitioner with regard to filling up of the pond and making construction therein but despite the same, no action has been taken. Petitioner has also approached the Deputy Commissioner, Hoshiarpur vide complaint dated 08.10.2021 (Annexure P-8) but without any response thereto as well. He, on this basis, asserts that the action on the part of the Gram Panchayat is totally unacceptable and in violation of the law laid down by the Hon'ble Supreme Court and this Court and also in violation of the statutory provisions of the Punjab Village Common Lands (Regulation) Act 1961.

Learned counsel for the State of Punjab prays for an adjournment to seek instructions. Let the Deputy Commissioner, Hoshiarpur and also the District Development and Panchayat Officer, Hoshiarpur respondent Nos.4 and 6 respectively file their specific affidavit as to what action has been taken by them in pursuance to the representation/directions received from the office of the Director Rural Development and Panchayat Punjab and Director Land Records, Jalandhar, respondent Nos.2 and 3, within a period of four weeks from today.

Status quo with regard to construction, if any, be maintained on the land in question i.e. Khasra No.438 till the next date of hearing. The Deputy Commissioner, Hoshiarpur shall ensure that no further construction is carried out on the land referred to above.

Adjourned to 21.12.2021.”

4. In response to the notice being issued by this Court, the official respondent(s) concerned furnished their reply, through an affidavit sworn by respondent No.6, i.e. District Development and Panchayat Officer, Hoshiarpur. However, a perusal of the reply (supra) reveals rather a completely contrasting picture, than the one canvassed by the petitioner, in the

instant writ petition. The reply (supra) unfolds that Village Badial Sainian is a small hamlet, comprising of only about 26 houses, with a population of about 150 individuals. It further reveals that, as per the relevant revenue record(s), a “Gair Mumkin Pond”, measuring 64 Marlas, was reserved during consolidation operations, but within the “abadi deh” of the village concerned, over Khasra No.438/1 (3-4), however, a government primary school was constructed over some part of the khasra number (supra), inasmuch as, the said school was constructed approx. upon 5-6 marlas, about 50 years ago. Another chunk of 5-6 marlas of land, in front of the said school, i.e. between the street and the school, is also being used for ingress and egress from the school. Apart from this, another area measuring 30 marlas is used as playground by the children of the village concerned. Ultimately, after utilization of the above portions of land, in the above manner, which was rather reserved for “Gair Mumkin Pond”, only an area measuring 10 marlas remained vacant, however, this area was also used for accumulating sullage and dirty water of the village concerned. The reply (supra) is supported by a detailed map, depicting therein the exact position, as exists at the spot. It further transpires from the reply (supra) that a Gurudwara is also situated near the above land reserved for “Gair Mumkin Pond”.

5. Therefore, considering the ill effects of accumulation of sullage and dirty water, in the above portion of “Gair Mumkin Pond” falling in “abadi deh”, as well as the health hazards arising therefrom, an NRI of the village concerned, namely Tirath Singh, who was interested in philanthropist activities, offered to donate 30 marlas of his private land for relocation of the pond. Even the said NRI also volunteered to lay the pipelines upto the re-

located pond and also to construct a community hall after filling the said pond existing within “abadi deh”.

6. In pursuance of the above welfare gesture of the NRI concerned, the Gram Sabha concerned, vide Resolution dated 10.06.2020, resolved to relocate the pond outside the “abadi deh”. Moreover, the resolution (supra) also gathered support from the circular bearing No. C/H-95/22769 dated 29.08.1995, issued by the Civil Surgeon, Hoshiarpur, who opined therein that a new pond cannot be excavated within the Phirni/Lal Lakir of the village concerned. Faced with the above life hazard problems and the instructions issued by the Civil Surgeon concerned, the inhabitants of the village concerned, decided to relocate the pond outside the “abadi deh”, with the financial assistance of an NRI of the village concerned.

7. Therefore, a new pond was got excavated on 30 marlas of land, which was donated by the NRI concerned, and the NRI concerned also got connected the out drains of sullage water of the village concerned, through a pipeline to the newly excavated pond, at his own expenses, which were to the tune of approx. Rs.2.91 lacs. Even the Executive Engineer concerned had also approved the laying of pipeline to the newly excavated pond, being technically correct.

8. After shifting of the original pond outside the “abadi deh”, which was existing over Khasra No.438/1, upon an area measuring 10 marlas, the area of the original pond was filled up with sand and thereupon, a community hall was constructed thereon for the utilization by all the inhabitants of the village concerned. An expenditure of approx. Rs.15 lacs was incurred on the construction of this community hall, which was borne by all the residents of

the village concerned and by the NRI concerned.

9. The hereinabove recorded facts reveal that the petitioner has filed the instant petition by concealing the material facts from this Court. Moreover, from a perusal of the record(s), it is revealed that the petitioner is neither an inhabitant nor a proprietor of the village concerned, which consequently gives rise to an inference that he has filed the present writ petition, not for any bonafide reason, rather for some extraneous consideration. This inference gains corroboration from the petitioner failing to make complete compliance of the order made by this Court on 09.01.2023, wherein, this Court had specifically directed the petitioner to place on record, the requisite document(s) to establish his locus standi, however, the petitioner has placed on record only a Jamabandi, which depicts that he has a very minimal share in a joint land in the village concerned. Apart from this Jamabandi, the petitioner has not produced any document on record to establish, that he is the original proprietor or pattidar of the village concerned. The order made by this Court on 09.01.2023 is reproduced hereunder:-

“1. After hearing the learned counsel for the parties for some time, the learned counsel for the petitioner, at this stage, has not been able to prima facie justify his locus standi to maintain the instant petition, before this Court.

2. Therefore, as prayed for, he is directed to place on record the list of bartandarans, prepared, and, maintained by the Patwari of the halqa concerned, with echoings therein of the petitioner being the bartandaran in the halqa concerned.

3. List on 11.4.2023.”

10. Although, the concealment of material facts (supra) and the non-establishment of locus by the petitioner, are sufficient to dismiss the present petition with costs, however, since the dispute involved in the present case,

relates to re-location of a pond from within the “abadi deh” to a site outside the “abadi deh”, therefore we deem it apt to further examine the matter.

11. It is not the case of the petitioner that the Sarpanch of the Gram Panchayat concerned had, with any malafide intention, re-located the pond, rather out of the total area reserved for pond, some portion had already been utilized by the government, by constructing a school about 50 years back, which still exists at the site concerned. Furthermore, some portion is used for ingress and egress from the said school, and, also as a playground by the children of the village concerned. After such utilization of this area, only an area measuring 10 marlas remained vacant, however, that too was used for discharge of sullage and dirty water of the village concerned. The consequence of such discharge of sullage and dirty water was spreading of life endangering diseases in the village concerned, thereby making the inhabitants of the village exposed to life hazards. Although the above acts, which though are result of a bonafide necessity of the entire villagers, may not have the sanctity of law, however, since the same have been done for the benefit of all the inhabitants of the village concerned and with no particular individual getting benefit from the above acts of Gram Sabha, resultantly the acts (supra) cannot invite wrath of this Court.

12. Insofar as the judgment (supra), as relied upon by the learned counsel for the petitioner, is concerned, the same also does not have any apt applicability to the case in hand. The Hon’ble Supreme Court, in the judgment (supra), while directing the respective Chief Secretaries of all the State Governments to prepare a scheme for eviction of illegal unauthorized occupants, upon Gram Sabha/Gram Panchayat/Shamlat deh land, and

thereafter, restoring possession thereof to the Gram Panchayat(s) concerned, also has assigned relaxations for regularizing possession(s) in exceptional cases, vis-a-vis, where the land has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or, where there is already a school, dispensary or other public utility existing on such land. Since, over some portion of the disputed land, a government school and a community center have been constructed, thereby with the same subserving a public purpose, or, the same being an educational institution and a public utility center, thus make them fall within the exception (supra), as carved in the judgment (supra) and therefore, the same are required to be regularized. The directions issued by the Hon'ble Supreme Court, in the judgment (supra), are extracted hereunder.

“22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public

utility on the land.”

13. Village ponds are the epicenter of rural life and they also maintain balance in a fragile ecosystem. In the present case, the pond has been virtually converted into a disposal point for sullage and dirty water, which instead of maintaining balance of ecosystem in the village concerned, rather became a flash-point for spreading of various diseases. Therefore, considering the fact that the pond has already been converted into a school building and a community center, we do not find it appropriate to now order the demolition of these buildings, which are in fact, meant for the benefit of the inhabitants of the village concerned, especially considering the fact that an alternate pond has also been excavated, on the land donated by the NRI concerned, outside the “abadi deh”. Therefore, in the light of peculiar facts and circumstances, we deem it appropriate to issue specific directions to the official respondent(s) concerned to prepare and thereafter, implement a comprehensive action plan for proper functioning of the newly constructed pond, so that the same can serve the purpose, which otherwise was meant to be served by the original pond.

- (i) to ensure the transfer of the newly excavated pond’s land in favour of the Gram Panchayat concerned, which was gifted by the NRI concerned for this purpose;
- (ii) to ensure that in future, the land of pond shall not be converted or used for any other purpose;
- (iii) to ensure proper installation and maintenance of treatment facilities in the village, so that sullage water of the village concerned can be safely disposed off;
- (iv) to ensure proper disposal of sullage water after treatment and to ensure that the same is not disposed of in the pond;

- (v) to ensure identification of sources of pollution(s) near the pond and thereupon ensure removal of such pollutant(s);
- (vi) to ensure environment restoration and replenishment of surface water;
- (vii) Department of Rural Development and Panchayat shall ensure providing the requisite infrastructure, such as pumping machinery, channels and pipe system for utilization of pond water;
- (viii) Department of Rural Development and Panchayat shall further ensure providing the necessary treatment facilities for proper maintenance and management, in a scientific manner, of the village pond;

Apart from the above issued directions, no further intervention is required to be made in the present writ petition. The present petition is disposed of accordingly.

The compliance report in respect of the above issued directions be submitted by the competent and responsible functionary concerned, within three months from today.

(SURESHWAR THAKUR)
JUDGE
02.06.2023
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No