

In the High Court of Punjab and Haryana at Chandigarh

**CWP No. 27212 of 2022
Date of Decision: 20.2.2023**

Massa Singh and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. Rhythem Bajaj, Advocate for
Mr. Karanjeet Singh Brar, Advocate
for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

Ms. Natasha Munjal, Advocate
for respondents No. 4 to 9.

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioners are the residents of village Anarkali, Changali Jadid, Ferozepur. A Government school is averred to exist in the vicinity of the lands, owned by the Gram Panchayat concerned. On the said lands, adjoining the Government school concerned, and which are owned by the Gram Panchayat concerned, co-respondent concerned, is stated by the petitioners, to be making a proposal, to after excavation of such lands, rather create thereons a gair mumkin chappar or a gair mumkin pond.

2. Therefore, the petitioners appear to nurse a grievance against the said creation of a gair mumkin pond in the closest vicinity of the Government school. It also appears that the above grievance is planked upon the factum, that in case there is a necessity of growth in future of the infrastructural requirements of the Government school concerned, thereupon the raising of a pond in the vicinity of the Government school, rather would work as an

impediment. Moreover, it also appears that in case the said pond is permitted to be raised on the land adjoining the Government school, there may be a possibility of a calamity arising, inasmuch as there being a possibility of the school children falling into the gair mumkin pond.

3. Therefore, the purported action of a member of the Gram Panchayat concerned, to raise a pond in the vicinity of a Government school, is challenged before this Court. If the above possibility of the necessity of growth in the apposite infrastructural requirements rather become impeded hence through creation of a gair mumkin pond, in the vicinity of the Government school, and/or if the creation of the said pond, does result, in an imminent danger being caused to the school children, to fall into the gair mumkin pond. Therefore, but obviously the respondent concerned, is to be sensitized to the above factum, and, also was required to be taking an objective view, that whether the said pond is compulsarily required to be created in the vicinity of the school concerned or whether if there is any such imperative requirement, qua yet the said pond being located at some other site.

4. The State of Punjab has filed reply on affidavit to the petition, which is taken on record. A perusal of the said reply discloses, that the Government School, Anarkali, in whose vicinity, the gair mumkin pond is proposed to be raised by the Gram Panchayat concerned, has been merged with the Government Primary School, Changali Jadid, Block Ghal Khurd. It is further revealed, on a reading of the reply on affidavit, as, furnished to the writ petition, that after the merger of the Government Primary School, Anarkali with the Government Primary School, Changali Jadid, the Government Primary School, Anarkali has been closed. Furthermore, it is

also revealed in the reply, that the said has been done in accordance with the

relevant policy, as drawn by the Department concerned. However, the merger of Government Primary School, Anarkali with Government Primary School, Changali Jadid, is stated to yet not deter the school children to access their right to education, as the Government Primary School, Changali Jadid is located at a distance of one kilometer from the Government Primary School, Anarkali.

5. Be that as it may, on the basis of the above, yet respondent No. 2 appears to tacitly facilitate the creation of a pond in the vicinity of the Government Primary School, Anarkali, and, but on the premise that the said school is closed, on its merger with Government Primary School, Changali Jadid, which is located at a distance of one kilometer therefrom. The above proposal has been opposed by a resolution of the Panchayat concerned.

6. However, even if the above merger has occurred, but on the premise, that there is a deficit number of school going children to Government Primary School, Anarkali, but yet the respondent concerned, has been oblivious to the fact, that there is yet a possibility in future, qua an imminent growth occurring in the number of children, who choose to take admission in Government Primary School, Anarkali. Therefore, the above unmindfulness to the possibility of growth in future qua in-takings of admissions in the Government Primary School, Anarkali, thus may not yet support the effort of the respondent concerned, to create a pond in the vicinity of Government Primary School, Anarkali. Therefore, prima facie, the above decision is not objectively drawn, nor is drawn with a futuristic vision, besides appears to even curtail the possibility of there being an imperative necessity in future, of growth in the infrastructural requirements of all schools concerned, inasmuch as, the necessity of playgrounds or some additional buildings adjoining the

Government Primary School concerned, being required to be raised in future,

and, which may require space, hence covering the lands, whereons, the respondent concerned, is proposing to create a gair mumkin pond. Therefore, the complete blindness to the above fact, by respondent No. 2, has but forestalled, the mitigations qua necessity of growth, in future of infrastructural requirements of even the now closed school, nor has the respondent concerned, borne in mind that in future there may be growth in the intakings of admission(s) in the now closed school.

7. If a school exists, and, even it has been closed, and, even if there is within a distance of the now closed school, yet another school, whereinto the earlier school has been merged, but yet, both the schools are Government Primary Schools. Therefore, in future, there may be a necessity of the said Government Primary Schools, given the increase in the numbers of students who might intend, to in the nearest distance to their homes, hence receive education upto middle standard or upto the senior secondary level, that the upgradation of the said schools, rather upto the middle standard or to the senior secondary standard, also rather may be required in future. The above effort has been completely overlooked but leading to an imminent casualty being meted vis-a-vis of the right(s) of the children concerned, to receive higher education.

8. Therefore, the instant petition is partly disposed of, with a direction, to the respondent concerned, for ensuring that even if the Government Primary School, Anarkali has been, as of now closed, but yet the Collector of the revenue district concerned, is directed to ensure, that in future, when there arises an imperative necessity of mitigating the infrastructural growth requirement(s) of the Government Primary School, Anarkali, and, as may arise on its upgradation being made, and, thereafter

when in future a further necessity arises of it being further upgraded to

Government Senior Secondary School, that the lands in the vicinity of the now closed Government Primary School, are reserved for such future requirements.

9. Moreover, the Principal Secretary Education to the Government of Punjab, is directed to place on record the complete census, with respect to the children, who are to in future take education in proximity to their homesteads. Moreover, the Principal Secretary Education to the Government of Punjab, is also directed to place on record the complete data, but in view of the so conducted census, with respect to the likelihood of growth in the population of children, who are to take education in proximity to their homesteads, as, but leading to a further necessity of upgradation(s), being made of Government Primary Schools concerned, within the State of Punjab to Government Middle Schools, and, further also with respect to the upgradation(s) being, required to be made of Government Middle Schools in the State of Punjab, as, Government Senior Secondary Schools, so that the Right to Education, which is but a part of Article 21 of the Constitution of India, is ensured to serve its fullest purpose.

10. The reply on affidavit, by the Principal Secretary Education, be ensured to be furnished before this Court on or before 10.4.2023.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 20, 2023
Gurpreet

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