



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision: 04.10.2024

CWP-10038-2024

DARSHAN SINGH AND OTHERS

.....Petitioners

VERSUS

STATE OF PUNJAB AND ANOTHER

.....Respondents

CWP-11204-2024

VAKIL SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

.....Respondents

CWP-13382-2024

BABU SINGH SIDHU

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CWP-11523-2024

GURMEET SINGH AND OTHERS

.....Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

.....Respondents

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

Present: - Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Divij Datt, Advocate and
Mr. Chandan Singh, Advocate
for the petitioner.

Mr. Aditya Sharda, DAG, Punjab.

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VINOD S. BHARDWAJ, J. (Oral)

The present batch of 04 writ petitions are being decided by a common order since identical issues arise for consideration before this Court. Facts are, however, being briefly referred to from *CWP-10038-2024* titled as “*Darshan Singh and others versus State of Punjab and another*”. Prayer in the said writ petition is for directing the respondents to grant exemption to the lands of the petitioners from the purview of Section 3 (3) (C) of the Punjab Preservation of Sub Soil Water Act, 2009 till the problem of water logging is solved as similar exemptions had been granted by the respondent-Department to various villages of District Sri Muktsar Sahib vide notification dated 07.02.2014 which was valid only for a period of two years but subsequent notifications were being issued.

2. The petitioners had approached this Court highlighting and alleging that there is an acute problem of water-logging (SEM) in the area of District Sri Muktsar Sahib. Due to the water-logging, the fields of the petitioners remained flooded with water for most part of the year and resultantly the land is not yielding crops. To solve the problem of water-logging, the Government of Punjab installed shallow tubewells on the right side of Sirhind Canal starting from Faridkot town upto the Rajasthan Border. Besides, the Department of Drainage has also constructed many drains in Faridkot and Sri Muktsar Sahib Districts, particularly, Sri Muktsar Sahib, Gidderbaha, Lambi and Malout blocks. Each village has been connected with a drain/drains. It was averred that as a result of the above said problem, the petitioners and other farmers of the area used to sow early paddy varieties so that it could be matured upto the period of rainy season and that it is not unduly and inundated during the rainy season.

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3. It is argued that in order to solve the problem of depleting sub soil water in the State of Punjab, the Government of Punjab enacted “the Punjab Preservation of Sub Soil Water Act, 2009” imposing a prohibition against sowing or transplanting paddy before the notified date. The relevant Section thereof reads thus:-

3. *(1) No farmer to sow or transplant paddy before the notified date.- No farmer shall sow nursery of paddy before the 10 day of May of the agricultural year or such other date, as may be notified by the State Government by notification in the official Gazette for any local area.*

Explanation: For the purpose of this Section 'agricultural year' means the year commencing on the 16th day of June or on such other date, as may be appointed by the State government by notification in the official gazette for any local area.

(2) No farmer shall transplant paddy before such date, as may be notified in this regard by the State Government by notification in the official gazette.

(3) Notwithstanding anything contained in Sub-Section (1) and (2), the provisions of this section, shall not be applicable to:-

(a) any research project of the Punjab Agricultural University, Ludhiana;

(b) any other Research institute, as may be declared by the State Government by notification in the official gazette;

(c) any Water logged area, as may be declared by the State Government by notification in the official gazette;

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Explanation:- For the purpose of this clause, the term 'water-logged area' means an area having depth to water table less than one meter below the ground level; and

(d) any other method of paddy crop, as may be declared by the State Government by notification in the official gazette.

(4) Power to enter into estate.

The authorized officer or his subordinate servant or workman shall have the power to enter into the estate of any farmer for the purpose of surveying the area to assess the violation of the provisions of this Act.

Explanation: The term 'estate' shall have the same meaning as has been assigned to it under the Punjab Land Revenue Act, 1887.

(5) Power to issue directions:

The authorized officer, either suo moto or on the information brought to his notice regarding the violation of any provision of this Act, shall be competent to issue directions to the farmer, who has violated any provisions of this Act destroy the nursery of paddy or sown or transplanted paddy before the notified date.

(6) Power to destroy the nursery of paddy or transplanted paddy and recovery expenses.

In case, a farmer does not act as per the directions of the authorized officer given under Section 5, the authorized officer shall cause such nursery of paddy or sown or transplanted paddy, as the case may be, to be destroyed at the expenses of such farmers.

(7) Penalty: *(1) Any farmer who contravene the provisions of this Act, shall be liable for penalty of rupees ten*



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thousand for every month or part thereof, per hectare of land till the period, such contravention continues;

(2) The penalty referred to in sub-Section (1) shall be in addition to the recovery of the expenses, incurred for destroying the nursery of paddy, or sown or transplanted paddy before the notified date.

(3) Before passing any order for imposing penalty under Sub-Section (1), the authorized officer shall make such enquiry, as he may deem necessary and shall give an opportunity of being heard to the concerned farmer.

Xx xxx xxx xxx xxx xxx xxx

*11. **Bar of jurisdiction:** No Civil Court shall have jurisdiction to enter any suit or proceeding in respect of any matter arising under or connected with this Act.*

4. It is argued that the petitioners have sown nursery of paddy and the same was ready to be transplanted in the fields but the respondent-State threatened them that their crop shall be destroyed, hence, they approached this Court for seeking directions to the respondents so as not to cause unnecessary and illegal harassment to the petitioners under the garb of exercise of powers under the said Act.

5. Reliance was also placed on the order passed by this Court in *CWP-10557-2010* titled as “*Harcharan Singh and others versus State of Punjab and others*” decided on 11.08.2010. The relevant extract of the said order reads thus:-

“The petitioners are farmers of different villages in Tehsils Gidderbaha and Malout, District Muktsar. They seek a Mandamus to restrain the respondents from destroying their paddy crops sown before 16.06.2010 in

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terms of the Punjab Preservation of Sub-Soil Water Act, 2009.

Shorn of the details, it may suffice to mention here that under the Punjab Preservation of Sub-Soil Water Act, 2009, the farmers are prohibited from sowing nursery of paddy before 10th of May of the agricultural year, and they can also not transplant paddy before 16th of June of the said agricultural year. There is, however, an exception in terms of Section 3[3][c] of the Act whereby the 'water-logged area' has been exempted from the rigors of these cut-off dates. The Explanation appended to the afore-stated provision defines the expression "water-logged area" to mean an area having depth to water table less than one metre below the ground level.

The solitary question that arises for consideration is as to whether or not the agricultural lands owned by the petitioners are 'water-logged area'. While the petitioners claim that their lands are water-logged and as such the condition of not sowing and transplanting paddy does not apply to them, the respondents have taken a contrary stand.

Having heard learned counsel for the parties and in the light of there being serious dispute regarding the nature of land, I deem it appropriate to dispose of these writ petitions with a direction to the respondent State to depute a team of experts from the Agricultural Department along with one subject expert from the Punjab Agricultural University, Ludhiana to inspect/test the petitioners' lands and/or other adjoining areas, and submit a report with regard to the nature of water-logging, if any. If the State Government is satisfied that the lands in dispute are water-logged areas, it is directed that a notification to this effect be issued before commencement of the next season of the paddy plantation.

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6. The matter came up for preliminary hearing before this Court on 02.05.2024, when the following order was passed:-

Learned Senior counsel appearing for the petitioners, inter alia, contends that village Kotli Ablu falls in a water-logging area and hence would be an exempted area under Section 3 (3) (C) of the Punjab Preservation of Sub Soil Water Act, 2009. He contends that the initially the notification regarding the said area being a water-logging area was issued in the year 2009 with a validity period of 02 year, however, he is not aware as to whether the name of village Kotli Ablu exists in the subsequent notifications or not. He, however, contends that the petitioners submitted an application to the Chief Agricultural Officer for carrying out a hydrological survey of village Kotli Ablu and that in the event the said village is found to be water-logged as per the definition provided in the Punjab Preservation of Sub Soil Water Act, 2009, appropriate permissions be granted to them.

Notice of motion returnable for 24.05.2024.

Notice re: stay as well.

In the meanwhile, the State of Punjab is directed to undertake a survey of the land of the petitioner as well as village Kotli Ablu by a Committee comprising of an expert from the Central Ground Water Authority, Chaudhary Charan Singh Haryana Agricultural University, Hisar and the Punjab Agricultural University, Ludhiana, to inspect/test the land and report with regard to the same falling under Section 3 (3) (C) of the Punjab Preservation of Sub Soil Water Act, 2009 or not.

Let a report in this regard be placed before this Court within a period of 02 weeks. The expenses of the experts to be nominated by the Central Ground Water

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Authority, Chaudhary Charan Singh Haryana Agricultural University, Hisar as well as the Punjab Agricultural University, Ludhiana, shall be borne by the State of Punjab.

The paddy saplings in the Nursery of the petitioner shall, however, not be destroyed till the next date of hearing.

A copy of the order be given under the signatures of the Bench Secretary.”

7. Pursuant thereto, the team as constituted under the orders of this Court conducted a survey and submitted a report which was filed by way of an affidavit of Gurnam Singh, Chief Agriculture Officer, Sri Muktsar Sahib. The relevant extract of the said reply is reproduced herein-after-below:-

3. *That in compliance with the orders of this Hon'ble Court, the Director, Agriculture and Farmers Welfare, Punjab wrote a letter to Chaudhary Charan Singh Haryana Agricultural University, Hisar, Punjab Agricultural University, Ludhiana and Central Ground Water Board, North-Western Region, Chandigarh to nominate one scientist/ expert to conduct the survey (Annexure R-1).*

4. *That on dated 27.05.2024 the constituted committee conducted the survey and reported that water table at the field of the petitioner and in the village Kotli Ablu was below 1 meter (Annexure R-2 & R-3). Water table in Village Kotli Ablu in the field of Petitioner no. 1 has come around 12.10 meter (Annexure R-2) and in the field of petitioner No. 2 and 3 has come around 14.95 meters below ground level (Annexure R-3).*

5. *That the survey was conducted by the committee along with officials of Department of Agriculture*



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and Farmers Welfare, Sri Muktsar Sahib in the presence of petitioners.

6. *That as per the survey report the village/field of the petitioner is not falling under Section 3 (3) (c) of the Punjab Preservation of Sub Soil Water Act, 2009.*

8. It is evident from perusal of the aforesaid report, that the area of the village of the petitioner cannot be said to be a water logging area as the explanation to the sections specifies that the term “Water logged Area” means an area having depth to water table less than 1 meter below the ground level. The Committee nominated by this Court has specifically recorded a finding that the depth of water table came at around 12.10 meters in CWP-10038-2024 and even in other matters, the depth of water table does not fall within the definition of a water logged area.

9. Faced with the above, Counsel for the petitioner does not press the instant writ petition at this stage and seeks withdrawal thereof.

10. All the petitions are disposed of as withdrawn.

11. All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)
JUDGE

OCTOBER 04, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No