



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-14744-2022 (O&M)

Date of decision: 29.08.2024

Gram Panchayat, Mirpur, Block and Tehsil Dasuya, Hoshiarpur

...Petitioner

VERSUS

State of Punjab and others

...Respondents

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

Present :- Ms. Simrat Kaur, Advocate for the petitioner.

Ms. Niharika Sharma, AAG Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for directing respondent No.4-Senior Superintendent of Police, Hoshiarpur to provide necessary Police protection for the timely completion of the renovation work of village pond and for preventing any loss to the property of Gram Panchayat, in compliance of the order dated 02.06.2022 of respondent No.3-District Magistrate, Hoshiarpur.

2. Learned counsel for the petitioner contends that the petitioner - Gram Panchayat, Mirpur is undertaking the work of repair and renovation of village Pond using the Government grant amounting in lakhs and is bound for the timely completion of said works for socio-economic wellbeing of the residents of the village. The village Pond exists on the land belonging to the Gram Panchayat bearing Khasra No.34 (12-0), Khewat No.223/204 Khatoni



No.273 village Mirpur Hadbast No.155, as per the Jamabandi for the year 2017-18. Various persons including Gurdial Singh son of Sewa Ram, Manjit Singh son of Sewa Ram and Kashmir Singh son of Labh Singh had encroached upon the village Pond. The eviction proceedings had been instituted by the petitioner against the encroachers on the above land on 13.08.2020. The said application under Section 7 of the Punjab Village Common Lands Regulation Act, 1961 was allowed by the District Development and Panchayat Officer-cum-Collector, Hoshiarpur vide order dated 29.10.2021 which order has not been set aside by any competent Court or authority and has become final. After passing of the above said order, the petitioner -Gram Panchayat, Mirpur moved an application dated 26.05.2022 for delivery of possession of the said land and restraining interference whereupon the warrants of possession were issued on 27.05.2022 by the District Development and Panchayat Officer-cum-Collector directing the Tehsildar and Block Development and Panchayat Officer to take possession of the land. The petitioner-Gram Panchayat had also submitted a representation to the District Magistrate, Hoshiarpur on 26.05.2022 to provide Police help, on which directions were issued to the Senior Superintendent of Police, Hoshiarpur on 02.06.2022 to provide Police force. As no action was taken on the said order, another application was moved by the petitioner-Gram Panchayat on 10.06.2022 to the District Development and Panchayat Officer-cum-Collector and to the District Magistrate, Hoshiarpur on 13.06.2022 followed by application dated 20.06.2022 as well



as 22.06.2022. Instead of getting Police help, the Sarpanch was given beatings by the encroachers on 27.06.2022 as they were only emboldened by the inaction of the District Administration in implementing its own orders. Demarcation of the property had already been carried out on 05.07.2021. She contends that despite issuance of warrants for delivery of possession and to provide Police protection for removal of the said encroachment, the administration has not been keen to protect the water bodies and thus promoting and protecting encroachment over the land of the village Pond. She contends that certain persons other than those against whom eviction order had been passed and who were in unauthorized occupation of the village Pond had initially given affidavits that they would have no objection to the removal of the encroachments, as have been determined as per the demarcation undertaken on 05.07.2021 but later they preferred a writ petition before this Court wherein the Gram Panchayat was directed to move an appropriate application under Section 7 of the Punjab Village Common Lands Regulation Act, 1961 before the District Development and Panchayat Officer-cum-Collector, Hoshiarpur for eviction of the other persons in unauthorized occupation of the land and that the same has also already been preferred but final decision in this regard has not been passed. She contends that in any case in relation to the proceedings with respect to eviction of the three persons against whom the order of eviction had already been passed by the District Development and Panchayat Officer-cum-Collector, Hoshiarpur on 29.10.2021 and had already attained finality, there is no reason as to why



the unauthorized encroachment in terms of the demarcation already carried out on 05.07.2021 be not removed by the respondents. She contends that it is not for the Police to ascertain as to what part of the encroachment is to be removed or not. Once the warrants of possession have already been issued and the property under encroachment is demarcated and also when the District Magistrate has already directed to provide Police help, the Senior Superintendent of Police was required to comply with the order. It is not the discretion of the Senior Superintendent of Police to determine as to whether the Police help has to be provided or not merely because eviction petition with respect to some of the unauthorized occupants has not been finalised. She contends that as a result of lack of the Police help being provided by respondent No.4, the work of the excavation and renovation of Pond for the well being of the residents of the village is being gravely hampered.

3. Learned State counsel does not dispute the aforesaid position and fact and reiterates that eviction orders against some occupants have not been passed.

4. On hearing the learned counsel appearing on behalf of the respective parties I find myself in agreement with the contentions of the petitioner.

5. There is no dispute with respect to the fact that the eviction proceedings have already attained finality qua the persons referred above as per the order passed by the District Development and Panchayat Officer-cum-Collector, Hoshiarpur on 29.10.2021 after a demarcation report and the



warrant of possession have already been issued. The Senior Superintendent of Police was bound by the orders issued by the District Magistrate to provide Police help for delivery of possession with respect to the land under unlawful and unauthorized occupation of the respondents against whom order(s) of eviction has already attained finality in not doing so, the Senior Superintendent of Police as well as the concerned officers have abdicated their duties as per law.

6. The Hon'ble Supreme Court has emphasized the need for protection of the water bodies and reiterated effective and expeditious steps for removal of encroachments over village Ponds. Reliance may be placed in this regard on the judgment in the matter of *Hinch Lal Tiwari Vs. Kamala Devi and others*, reported as *AIR 2001 Supreme Court 3215*. The relevant extract of the same reads thus:-

“xxxx

On this finding, in our view, the High Court ought to have confirmed the order of the Commissioner. However, it proceeded to hold that considering the said report the area of 10 biswas could only be allotted and the remaining five biswas of land which have still the character of a pond, could not be allotted. In our view, it is difficult to sustain the impugned order of the High Court. There is concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case no part of it could have been allotted to



anybody for construction of house building or any allied purposes.

It is important to notice that the material 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. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If Respondents 1 to 10 do not vacate the land



within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride.

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7. Similar direction have later also been reiterated by the Division Bench of this Court. It is indeed a matter of grave concern despite such directions being issued repeatedly, the administration has rather chosen to frustrate the orders. Any such disregard is clearly an attempt of disobeying the mandate of law and frustrate directions issued *in rem*, for larger public good, solely to appease local leadership or out of fear to take responsibility. Either ways, it gravely damages rule of law. Officers holding seat of power do not sit there for the comforts and the perks but to take firm decisions for larger well being and ensure implementation of the law.

8. Surprisingly, the reply of respondents No.2, 3 and 5 for inaction is set out in para Nos. 3, 4 and 5 reads as under:-



“3. That a perusal of the above stated eviction order dated 29/10/2021 (Annexure P-3) passed by the competent authority would reveal that the same had been passed on the basis of the demarcation report/documents dated 05/07/2021 which had been prepared by the revenue officials. It is further submitted that the present petitioner had filed the said eviction petition before the competent authority only against three/four persons by contending that only the said persons had been found to be in illegal occupation of the village pond as per demarcation report submitted by the revenue officials. The said averment made by the Sarpanch of the petitioner Gram Panchayat is totally false. In this regard, it is submitted that as per the above stated demarcation report dated 05/07/2021 pertaining to Khasra No. 34 (12-0) village Pond, it had been found that the land is illegally possessed by 11 persons. True translated copy of the said demarcation report dated 05/07/2021 attached herewith as Annexure R-5/1.

4. That a perusal of the above stated demarcation report dated 05/07/2021 would reveal that the illegal occupation has been done by constructing houses by Raghvir Singh, Nirmal Singh, Santokh Singh sons of Gurpal Singh over the land measuring OK-12M, Dilavar Singh son of Ram Sarup over OK-5M, area measuring OK-2M under street, Gurdas Singh



son of Bhola Singh over 0-2M, Surjit Singh son of Sada Ram over 0-11, Kuldeep Singh son of Darshan Singh over OK-3M, Kashmir Singh son of Labh Singh over OK-8M, Manjit Singh and Gurdial Singh sons of Sewa Ram over OK-11M on northern side of the pond, Gurudwara Sahib over the land measuring OK-1M on East-south side, OK-0M-6M is keep material (utensils etc) of to Place of Peer (Peeran Di Jagah) on Southern side. Thus, it is evident that the Sarpanch Gram Panchayat Mirpur had misled the competent authority and had filed eviction proceedings only against 4 out of total 11 illegal occupants with a motive of providing benefit to 7 of the illegal occupants.

5. *That the above stated facts came to the knowledge of the answering respondents only when the revenue as well as police officials, in pursuance to the notice issued by this Hon'ble court in the present writ petition, had been requested to provide necessary help for getting the warrants of possession issued by the answering respondent No. 5 in relation to the village pond situated in Khasra No. 34 executed. Accordingly, the revenue officials along with the police assistance that was provided came present at the spot in the village on 08/09/2022 and while executing the warrants of possession, it came out that, the eviction order had been*



passed to take possession of Khasra No.34 (12K-OM) from three persons namely Gurdial Singh, Manjit Singh and Kashmir Singh but as per the enclosed demarcation report of Girdawar, 11 persons are in possession over the Khasra No.34. Accordingly, the revenue officials concluded that the warrant of possession is incomplete and requested that suitable order be given according to the demarcation report and the possession of only Khasra no. 12//19/2 (1-1) has been got delivered to Sh. Lakhvir Singh, Sarpanch by the Block Development and Panchayat Officer in the presence of persons present on the spot. True translated copy of the said warrant of possession proceedings dated 08/09/2022 along with the attendance report is attached herewith as Annexure R-5/2.”

9. The officials chose not to even submit as to what is the total area under the illegal encroachment by the persons against whom order of encroachment had been passed. Surprisingly, the Block Development and Panchayat Officer issued a notice dated 08.09.2022 to the Sarpanch for not filing the case for removal of encroachment by others. Notwithstanding that the said proceedings were actually filed and that no final decision has been taken on the same, the Social Education and Panchayat Officers have been authorized by the Government to institute application for eviction of encroachers on the Panchayat. For no valid explanation, the Block



Development and Panchayat Officer did not ask his subordinate to do the needful and to safeguard the public land. This Court has emphasized the need for protection of village Ponds in the matter of **Jagpal Singh Toor Vs. State of Punjab and others**, reported as **2010 (2) LAR (P&H)** and directed the Block Development and Panchayat Officer to also take action.

10. The response by the Police too has been evasive even though it is said that they had sent the Police force and after holding discussion with persons assembled there, came back to apprise higher officers. The respondents have chosen not to even submit that the encroachment over the land for which eviction was ordered has been actually removed. The State officials have thus resorted to filing responses, as usual, which never address or respond to the specific dispute and issue, when they are in default and instead to file pages of reply with irrelevant contentions and stand which reflects lack of officer like qualities to take responsibility or to lead from front. It is such consistent response and attitude of the administration which has often compounded the problem instead of resolving the same. The Courts are much often dealing with issues which are rather failure of administration to act leading to prejudice to individuals rather than involving any judicial review causing huge drain on the resources of the individuals and clogging the judicial process by adding litigation which would not even have been generated if a swift and timely action would have been taken by the administration.

11. I see no reason as to why appropriate recommendations be not



made to the Director General of Police, Punjab for initiating action against the erring officials, however, the Court refrains from passing any such direction at this juncture and deems it appropriate to grant one final opportunity to respondent No.4-Senior Superintendent of Police, Hoshiarpur and all officers who remained posted during the period, to ensure that the warrants of possession as issued by the District Development and Panchayat Officer-cum-Collector, Hoshiarpur as well as the subsequent order(s) issued by the District Magistrate, Hoshiarpur are fully complied with. In the event of the necessary action not being taken and compliance not being done by the Administration/Senior Superintendent of Police, Hoshiarpur for providing Police help to enable the Gram Panchayat to take possession of the land under unlawful and illegal/unauthorized occupation of Gurdial Singh son of Sewa Ram, Manjit Singh son of Sewa Ram and Kashmir Singh son of Labh Singh against whom the eviction orders have already attained finality, within a period of 04 weeks of receipt of certified copy of this order, the Director General of Police, Punjab is directed to take appropriate action against the erring Police Officers/Officials and apprise this Court of the action taken against them.

12. Additionally, the erring officials shall also be liable to pay compensation @ Rs.50,000/- to the petitioner-Gram Panchayat per month for the default committed by them in seeking enforcement of the order(s) passed by the competent authority, after the expiry of the period of 03 months as ordered above. The District Development and Panchayat Officer-



cum-Collector, Hoshiarpur is also directed to expeditiously finalize the pending eviction proceedings pertaining to encroachment over the village Pond and pass a final order within 04 months of the date next fixed (if proceedings are not finalized). Compliance be also filed by the District Development and Panchayat Officer-cum-Collector, Hoshiarpur.

- 13. The present petition is accordingly **disposed of**.
- 14. To be listed for compliance after five months.

(VINOD S. BHARDWAJ)
JUDGE

29.08.2024
Mangal Singh

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