

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

223

CWP-5540-2018

Date of decision: 10.01.2024

SUBHASH CHANDER AND ANOTHERPetitioners

VERSUS

STATE OF HARYANA AND OTHERSRespondents

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

Present: - Mr. Daman Batalvi, Advocate and
Mr. H.S. Sandhu, Advocate
for the petitioners.

Mr. Pankaj Mulwani, DAG, Haryana
for respondents No.1 to 5.

Mr. Yashdeep Nain, Advocate
for respondent No.6.

VINOD S. BHARDWAJ, J. (Oral)

1. The petitioners seek quashing of the impugned order dated 27.10.2017 (Annexure P-12) passed by respondent No. 4 i.e. District Development and Panchayat Officer, Hisar whereby the claim of the petitioners for raising construction of the Government Girls Primary School in village Faridpur had been declined. A further direction is also sought for release of the Matching Grant to the tune of

Rs. 27,00,000/- for the construction of the building work of Ajit Singh Memorial, Govt. Girls Primary School, Village Faridpur.

2. The petitioners before this Court claim to have submitted a proposal with the Gram Panchayat, Village Faridpur for establishing a Government Girls Primary School in the memory of their brother Ajit Singh alongwith willingness to bear the expenses to be incurred on the construction of the School, subject to the grant of land by the Gram Panchayat for setting up of the said School. The above said proposal was accepted by the Gram Panchayat being for the welfare of the inhabitants of the village and a resolution in this regard was also passed on 15.09.2010. The said resolution was duly recommended and forwarded by the Education Officer on 24.09.2010 and was eventually accepted by the State Government. The Matching grant was also sanctioned under the Scheme by the Government vide its letter dated 12.11.2010.

3. The respondent No.2 i.e. the Director, Panchayat, Haryana called upon the petitioners to deposit their share under the 'Matching Grant Scheme' for construction of the School vide communication dated 17.03.2011. Since the total cost of the School was assessed at Rs. 27 lakhs, the petitioners were required to deposit a sum of Rs. 9 lakhs and the balance amount of Rs. 18 lakhs was to be contributed by the State Government. The share of Rs. 9 lakhs was deposited by the petitioners vide Treasury Challan No. 84 dated 18.04.2011, whereupon a letter was issued by the District Development Panchayat Officer on 23.04.2011 to the Deputy Commissioner, Hisar for releasing the first installment for construction of the School. However, the installment could not be released at that point in time. It is contended that during the pendency of the said release, some

villagers submitted a complaint to the District Development and Panchayat Officer and started creating hinderance in the construction work of the school. The project was thus stopped to avoid any controversy and to pursue against the miscreants as per law.

4. The petitioner hence instituted a Civil Suit No.51-C on 18.11.2010 for grant of permanent injunction to restrain the defendants therein from creating hindrance in the construction work of the School.

5. A question however also arose with regard to the nature of land in question for which a report was sought from the Block Development and Panchayat Officer to resolve the controversy and to resolve the conflict and enable construction of the building of the school. It was reported by the Block Development and Panchayat Officer that the site in question, where the construction work of the school building was to commence, was in an un-authorized possession of the villagers. A copy of the said report dated 19.04.2012 has also been appended. The District Development and Panchayat Officer, thereafter, suspended the resolution passed by the Gram Panchayat for construction of the School building against which the respondent No.6-Gram Panchayat preferred an appeal before the Director, Panchayat, Haryana. The said appeal was disposed of vide order dated 11.03.2013 by directing the Deputy Commissioner, Hisar to prepare a utilization plan according to Haryana Panchayati Raj Act, 1994, of the Shamlat Deh of the village and considering the Government instructions issued from time to time. The said civil suit for permanent injunction instituted by the petitioner was allowed by the Court of Civil Judge (Junior Division), Hisar vide judgment and decree dated 31.08.2013. The defendants therein were restrained from interfering in the peaceful construction work of

the school in question. It is further contended that notwithstanding the said judgment and decree, the residents/villagers continued to obstruct in the construction work and the installment in question was not released by the respondents No.4 and 5 compelling the petitioners to approach this Court in CWP-23805 of 2016. The above said writ petition was disposed of by this Court vide order dated 18.11.2016 directing the District Development & Panchayat Officer, Hisar to decide the representation filed by the petitioner within a period of three months. The said representation was decided after some delay by the District Development & Panchayat Officer, rejecting the claim and representation of the petitioners vide his order dated 27.10.2017, which is subject matter of challenge in the present writ petition.

6. A reply on behalf of respondents No. 1 to 5 has been filed wherein it has been averred as under :-

1. That the brief fact of the case are that the Gram Panchayat Faridpur passed a resolution no. 1 dated 15-09-2010 to reserve the land having Khasra No. 822 on the request of the petitioner to construct a building for Girl School from Matching Grant. The BD&PO forwarded the case to the Govt. by depositing an amount of Rs. 9-00 lacs (Public Share money of village Faridpur) and the Govt. accorded the financial approval of amount Rs. 27-00 lacs (9 lacs public share money + 18-00 lacs Govt. fund) as per the matching grant scheme. Some of the villagers raised objections to construct the building over the disputed land and filed an application before the then DD&PO, Hisar to cancel the resolution no. 1 dated 15-09-2010. The BDPO, Uklana was directed to give a report after examining the revenue record and visiting the site. After peruse of record the DD&PO found that the land having Khasra no. 822 has been reserved for Gair Mumkin Johar during

consolidation and the resolution for reserving the land for Girl School has been cancelled vide order dated 19-10-2012.

Xxx xxx xxx xxxx xxxx xxxx xxx

3. *That the Matching Grant amount could not be released to the executing agency due to litigation between the parties and due to the nature of the land as Gair Mumkin Johar, which cannot be utilized for any other purpose as per the judgment of the Hon'ble High Court and Apex court.*

4. *That now the share of the Govt. amounting Rs. 18.00 lacs has been returned to the Govt. in receipt head 2515 vide challan No. 47271422 on dated 03-02-18 in pursuance of Govt. letter no. 1366 dated 08-01-2018 and an amount of Rs. 9-00 lacs has been transferred to BD&PO, Uklana for further disbursal to the donee.*

5. *That in village Faridpur there already two Govt. Schools which are sufficient to cater the educational need of the villagers and if the petitioner wants to construct the rooms in the existing building of the Govt. School then the Govt. has no objection against the petitioner. So, there is no need to construct a separate new building for the Girl School and the nature of the disputed land cannot be changed for any other purpose then Johar.”*

7. A short reply on behalf of respondent No.6-Gram Panchayat has also been filed wherein the above said factual aspects have been reiterated and it is stated as under:-

“4. That the Gram Panchayat, Faridpur passed a resolution No.1 dated 15.09.2010 whereby resolved to grant the land to construct Shri Ajit Singh Memorial Kanya Primary School, Faridpur. This is pertinent to submit here that the aforesaid granted land is Gair Mumkin Johar Land hence nature of the land cannot be changed by raising any construction or in any other manner for their use.

5. That the villagers filed a case under Section 47 of the Haryana Panchayati Raj Act, 1994 before the Court of District Development and Panchayat Officer, Hisar for the suspension of the resolution No.1 dated 15.09.2010, thereby the learned court suspended the aforesaid resolution vide order dated 09.10.2012.

6. That aggrieved by the order dated 09.10.2012 passed by the learned aforesaid court, the Gram Panchayat Faridapur had filed an appeal before the court of Director Development and Panchayat Department, Chandigarh. The Appellate Court directed to the Gram Panchayat Faridpur vide order dated 11.03.2013 to pass fresh resolution again by giving notice to all the members of Gram Panchayat and make a land utilization plan of the Shamlat land of the village under the Haryana Panchayati Raj Act, 1994.

7. That the Gram Panchayat Faridpur in compliance of the order of the Appellate Court passed a fresh resolution No.1 dated 21.10.2017 wherein it is resolved to the consensus that there is no land available for construction of the School except the Johar Land. Copy of the Resolution No.1 Dated 21.10.2017 is attached as Annexure R-6/1.

8. That it is pertinent to mention here that the petitioners had filed civil suit No. 51-C for permanent injunction in the Civil Court of Hisar. The learned court vide its order dated 31.07.2013 granted the permanent injunction in favour of the petitioners. Aggrieved by the order dated 31.07.2013 the answering respondent filed an Appeal before the District Court Hisar. The learned District Court, Hisar dismissed the appeal vide its order dated 21.09.2019. Aggrieved by the orders passed by the District Court Hisar the answering respondent filed a Regular Second Appeal No. 344 of 2022 before this Hon'ble Court, wherein notice is yet to be issued.

9. That this is pertinent to submit here that land in question is a Gair mumkin Johar comprised in khasra No. 822, within the revenue estate of village Faridpur, Tehsil and District Hisar used for the construction and catchment of water so that the pure and cleaning drinking water could be available to the inhabitant of the village.

10. That it respectfully submitted here that the land whereupon the aforesaid school is to be constructed is the nature of Gair Mumkin Johar which does not falls under the ownership of the Gram Panchayat under the provisions of Village Common Land Act, 1961 as applicable to Haryana State however the Gram Panchayat is to take care of the proper utilisation of the land and the Gram Panchayat has no right to misuse the land in any manner by handing over the Gair Mumikin Johar Land for some other purpose like School etc. as the uprahan land is catchment area of water for filling up of the village pond, therefore, nobody can change the nature of the land by raising any construction or in any other manner for their use.

11. That as per the provisions of Section 5 of the Punjab Village Common Lands (Regulation) Act, 1961 as applicable state of Haryana read with rule 3(2) (xxiil) and (xxiv) of the Punjab Village Common Lands (Regulation) Rules, 1964 as applicable to the state of Haryana, the Panchayat may make use of the land in shamilat deh vested in it under the Punjab Village Common Lands (Regulation) Act, 1961 only for Ponds and fisheries; Wells, hand pump, water works, or any water lifting device.

12. That the Division Bench of this Hon'ble High Court in **CWP No. 3221 of 2011 titled as Rajpal and another versus State of Haryana and others** held that the gair mumkin johar or water bodies are not to be diverted to any other use, and are, infact, required to be protected cleaned and recharged. The relevant para of **CWP No. 3221 of 2011 titled as Rajpal and another**

versus State of Haryana and others is reproduced hereinunder for kind perusal of this Hon'ble Court:-

"...xxx. We, therefore, direct the Director, Development and Panchayat, Chandigarh to reconsider the matter and direct the government to ensure that in future gair mumkin johars or water bodies, are not diverted to any other use, and are, in fact, protected, cleaned and recharged.

A copy of the order be given dasti to counsel for the Gram Panchayat and the State of Haryana, under signatures of the Court Secretary of this Bench."

13. That material resources of the community like forest, tanks, ponds etc. which are nature of gift, should be protected and saved enabling the people to enjoy a quality life as per Article 21 of the Constitution of India.

*14. That the Hon'ble Supreme Court in **Hinch Lal Tiwari versus Kamla Devi and others (2001) (6) SCC 496** held in para No.13 as it is Important to notice that the material resources of community like forest, tanks, ponds, hillock, mountain etc. are nature bounty, they maintain delicate ecological balance. They need to be protected for proper and healthy environment which enables people to enjoy a quality life which is essence of granted right under Article 21 of the Constitution. The Government, including the revenue authorities i.e. respondents 11 to 13, having notice that pond is falling in this use, should have bestowed 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 public at large. Such vigil is the best protection against knavish attempts to seek allotment in non abadi sites."*

8. Counsel for the petitioner has argued that the petitioners were granted permission to raise construction under the Matching Grant Scheme and a valid resolution No.1 dated 15.09.2010 had been passed in their favour. Hence, the respondents were in error in rejecting the application of the petitioner for commencement of construction of the Girls School in Village Faridpur.

9. Counsel for the respondents on the other hand have contended that the resolution in question had been passed with respect to a land bearing Khasra No. 8220 measuring 36 kanal 13 marla, which is gain mumkin johar, and that the said land could not have been used for any other purpose, as per the directions given by the High Court in numerous judgments. The resolution passed by the Gram Panchayat allotting Johar Land was also in conflict with the departmental instructions. The work of construction of School building thus could not have been carried out at the land meant for the pond. No other land was available with the Gram Panchayat. A subsequent resolution, in compliance of the order of the Director Panchayats, had thereafter been passed by the Gram Panchayat bearing Resolution No.1 dated 21.10.2017 declining the permission to start construction of School on Johar land in supersession of the earlier resolution. The above resolution has neither being challenged nor the rescinding of the earlier resolution is under challenge in any of the collateral proceedings. The Civil Suit had been filed by the petitioner for seeking a decree of permanent injunction. The said Civil Suit was decreed on 31.08.2023 on the basis of the resolution that may have been passed then. Since the above resolution No.1 has been passed by Gram Panchayat later in point of time on 21.10.2017 as per which the construction on the village

pond could not be permitted and that there is no other land available with the Gram Panchayat same has not been challenged in any proceedings including in the above Civil Suit or adjudicated upon, hence, the judgment and decree cannot be said to have any bearing on the validity/legality of the above said resolution. Further, there was no issue as regards entitlement of the petitioner to raise construction of School on the pond land in the above Civil Suit. The issues that had been framed by the Civil Court are extracted as under:-

- 1. Whether the plaintiff is entitled for the relief of permanent injunction (Prohibitory and mandatory) as prayed for? OPP*
- 2. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 3. Whether the plaintiff has no cause of action and locus standi to file the instant suit? OPD*
- 4. Relief.*

10. It is evident that in the said Civil Suit, the issue of declaration and entitlement of the petitioner to raise construction of the School on the land of village pond was neither a subject matter of dispute nor examined. The judgment and decree also does not declare that the resolution passed by the Gram Panchayat bearing resolution No.1 of 2010 to over-ride the subsequent resolution No.1 of 21.10.2017 or to hold that the later resolution is bad and would have no bearing on the right of the petitioner. Hence, the said judgment and decree has no enforceability on account of changed facts of the case.

11. Counsel for the petitioner has failed to dispute the above said factual aspects and no replication had been filed to the written statements

filed by the respondents even though the reply of respondents No.1 to 5 had been filed in August, 2018 and reply by respondent No. 6 had been filed in June, 2022 and despite a lapse of a substantive period since then.

12. I have heard counsel for the parties and have gone through the documents available on record. The following undisputed facts emerge on a consideration of the above:-

- a. the land in question is a 'Pond Land'
- b. the Gram Panchayat superseded the earlier resolution of 2010 by a subsequent resolution in the year 2017.
- c. The subsequent resolution of 2017 has never been challenged before or set aside by a competent Court or Authority.
- d. The law prohibits raising of construction on land meant for a pond and mandates preservance thereof.
- e. The Civil Court decree was neither declaratory nor set aside the resolution of 2017. The decree of injunction was based on the earlier resolution.

13. In view of the above undisputed facts, there can be no superior claim of the petitioner to raise construction of School over the earlier site i.e. the land meant for pond. The judgments of this Court as well as the Hon'ble Supreme Court clearly rule that ponds need to be protected and encroachments over ponds need to be removed. Any direction to the contrary would be in violation of law.

14. In view of the facts noticed above and in the absence of any challenge to Resolution No.1 of 27.10.2017 passed by the respondent No.6-Gram Panchayat, pursuant to the orders passed by the Director, Panchayats

as also the setting aside of the erstwhile of Resolution No.1 of 2010 passed by the Gram Panchayat in favour of the petitioner, I find that the prayer sought for by the petitioner in the present writ petition cannot be allowed. The order passed by the District Development and Panchayat Officer cannot be said to be contrary to or in violation of any law.

15. The writ petition is accordingly dismissed. Dismissal of the present writ petition shall however not stand in the way of the petitioner to take recourse to his alternative remedies in accordance with law, against the resolutions that have already been passed by the Gram Panchayat.

JANUARY 10, 2024

Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

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