



102

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14378-2021
Date of Decision : 20.02.2025

BALDEV RAJPetitioner
VERSUS
STATE OF PUNJAB AND OTHERSRespondents

CWP-13619-2023

RAMESH KUMAR AND OTHERSPetitioners
VERSUS
STATE OF PUNJAB AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Manu Loona, Advocate,
for the petitioner in CWP-14378-2021 and
respondent no.7 in CWP-13619-2023

Mr.Pardeep Bajaj, DAG, Punjab.

Mr. Ashok K.Sama, Advocate,
for the petitioners in CWP-13619-2023 and
for respondents no.9 and 10 in CWP-14378-2021

KULDEEP TIWARI, J.(Oral)

1. Both the petitions are amenable to the decided together, as the common dispute has been raised therein.
2. Through CWP-14378-2021, filed under Article 226/227 of the Constitution of India, filed by the petitioner-Baldev Raj, a prayer is made for issuance of a *mandamus* upon respondents to restore the common passage, and to further restore the sanctioned watercourse,



approaching to his agricultural fields. Whereas, in CWP-13619-2023, filed by the petitioner-Ramesh Kumar and others, a prayer is made for quashing the letter dated 11.08.2021 (Annexure P-9), issued by the office of respondent no.5-BDPO, Khuian, Sarwar, and letter dated 08.05.2023 (Annexure P-11), wherethrough, respondent no.5-BDPO, has directed the the Gram Panchayat concerned, to restore the watercourse, on the ground that the same is passing through a common passage vested with the panchayat.

3. Succinctly, the petitioner-Baldev Raj, asserted that he has a sanctioned underground watercourse approaching to his agricultural fields beneath the common passage, whereas the petitioner-Ramesh Kumar and others asserted that the watercourse, which has been laid down under the common passage, is infact, an illegal watercourse and the same is tantamount to encroachment made on the public passage and thereby, causing obstruction to use common passage to access their fields.

4. The other facts, which surged during the course of arguments, are that the petitioner-Baldev Raj, had earlier filed a civil suit for injunction to restore the watercourse at its existing place, which was stated to be running towards the western side of Recta No.61, Killa No.7/2. During the pendency of the said civil suit, an interim injunction was granted in favour of the petitioner-Baldev Raj, however, despite that the watercourse was dismantled by the Gram Panchayat concerned. In the meanwhile, the petitioner-Baldev Raj approached this Court by filing



CWP-14378-2021, and considering the interim injunction order passed in favour of petitioner-Baldev Raj by the civil court concerned, the co-ordinate bench passed the order dated 12.04.2023 (*supra*), asking the Deputy Commissioner, Fazilka, to file an affidavit to give explanation, as to how and under what circumstances, the watercourse was demolished. In deference to the directions (*supra*), the Deputy Commissioner concerned, filed as status report disclosing therein regarding restoring the water course.

5. The interim order dated 12.04.2023, is extracted hereinafter:-

“The instant petition has been filed for restoration of common passage and watercourse to the agricultural fields of the petitioner.

At the time of issuing notice of motion, the contention of the petitioner was recorded to the effect that despite the grant of interim injunction restraining the respondents No.9 and 10 from forcibly and unlawfully demolishing and dismantling the above said watercourse, the respondents had demolished and dismantled the said watercourse. He contends that after issuance of notice of motion on 02.08.2021, the Block Development and Panchayat Officer, Khuian Sarwar at Abohar, District Fazilka had directed the restoration of the watercourse vide letter No./reference No.1785 dated 11.08.2021. He contends that despite expiry of more than 1½ year of the issuance of the aforesaid letter to the Gram Panchayat to restore the watercourse, the needful has not been done so far.

The learned State Counsel has failed to give any valid explanation as to how and under what circumstances the watercourse was demolished despite an order of stay and as to why the respondent-Authorities have failed to ensure restoration of the watercourse despite specific directions issued by the Block Development and Panchayat Officer, Khuian Sarwar, Abohar.

Let an affidavit be filed by the Deputy Commissioner, Fazilka within a period of four weeks from today. It is made clear that in the event the aforesaid affidavit is not filed within the period of four weeks as specified above, the Deputy Commissioner, Fazilka shall remain present in Court on the next date of hearing.

List on 22.05.2023.”



6. In pursuance thereof, the water course, which was demolished, after reconstruction, has been restored to its original position.

7. It is further informed to this Court that during the pendency of the instant writ petition, the civil suit so preferred by the petitioner-Baldev Raj, was dismissed by the civil court concerned.

8. Now the issue which needs adjudication, is as to whether, the petitioner-Baldev Raj, has laid down the said watercourse through the common passage, or it is passing through the private property.

9. Learned counsel for the petitioner-Ramesh Kumar and others, submits that a demarcation was conducted in the year 2017 by the revenue officer concerned, and as per the demarcation report, the watercourse, is shown to be existing on the common passage, and the demarcation was duly registered in *Rapat Roznamcha* no.164, 12.12.2017. Therefore, the watercourse is required to be demolished, and the common passage, is required to be restored to its original position.

10. The issue which arose before this Court for consideration, is as to whether, the petitioner-Baldev Raj, has constructed a sanctioned watercourse which is passing through a common passage or through a private land, is highly disputed question of facts and same cannot be adjudicated before this Court merely by an exchange of affidavits. Therefore, this Court deems it apt to pass a *mandamus* upon the BDPO concerned, to carry out a fresh demarcation and consequent thereon, in



case, the watercourse was found to be laid through a common passage, the Gram Panchayat concerned, shall file an apt application for eviction before the competent authority, under the apt provisions of law.

11. The Gram Panchayat concerned, is directed to conduct the above exercise within a period of two months from the date of this order. In case the Gram Panchayat concerned, files any such application, before the competent authority/forum concerned, the latter shall make all endeavours to, thereafter, decide the same within a period of 06 months.

12. **Disposed of** accordingly.

13. A photocopy of this order be placed on the file of the connected case.

February 20, 2025
dharamvir

(KULDEEP TIWARI)
JUDGE

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