

Water bodies should not be diverted for any other use

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.3221 of 2011(O&M)

Date of Decision: 22.11.2012

Rajpal & another

.... Petitioners

versus

State of Haryana & others

.... Respondents

**CORAM: HON'BLE MR JUSTICE RAJIVE BHALLA
HON'BLE MS JUSTICE REKHA MITTAL**

Present: Mr. R.S.Mamli, Advocate
for the petitioners.

Ms. Lavanya Paul, AAG, Haryana
for respondents No.1 to 4.

Mr. R.S.Rana, Advocate
for respondent No.6.

Rajive Bhalla, J.(Oral)

By this order, we shall dispose of CWP Nos. 3221 of 2011 and 14692 and 20206 of 2012 as they involve adjudication of the same questions of fact and law. The facts are being taken from CWP No. 3221 of 2011.

Affidavit of Smt. Monica Malik, Additional Director, Development and Panchayat Department on behalf of respondent No.1 filed in Court today, is taken on record. The affidavit contains an admission that despite instructions issued by the Government no steps have been taken by the office of Chief Engineer, Panchayati Raj Public Works, Haryana to provide any facility or infrastructure for disposal of sullage water.

The petitioners challenge the action of the Gram Panchayat in seeking to alter the user of a Gair Mumkin johar, bearing khasra No.423, measuring 54 kanala and 10 marlas, as recorded in

the Jamabandi for the year 2004-05, into a stadium. The Gram Panchayat mooted a proposal to change this water body into a stadium. The Government, duly obliged, and allocated funds unmindful of the nature of the land. It appears that work has started for converting the water body into a stadium. The counsel for the State as well as for the Gram Panchayat do not deny that the land is a gair mumkin johar but pray that as the pond is dry and money has already been spent by filling a part of the 'johar' with earth, the Gram Panchayat may be allowed to construct the stadium. Counsel for the Gram Panchayat submits that the Gram Panchayat is ready to demarcate alternative land, for a water body.

We have heard counsel for the parties and perused the paper book. Admittedly, the land, in dispute, is a gair mumkin johar (a pond). In these times of falling water levels and scarcity of water, the Government and the Gram Panchayat are duty bound to ensure that water bodies are protected, cleaned and if deficient in water, recharged. A paragraph from a judgment of Hon'ble Supreme Court in ***Hinch Lal Tiwari vs. Kamala Devi and others, (2001) 6 SCC 496***, where a similar controversy came up for consideration, needs to be reproduced so as to remind the State of Haryana as well as the Gram Panchayat of their obligation towards society as well as their duty to preserve water bodies. A relevant extract from the judgment reads as follows:

"13. 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."

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.

(RAJIVE BHALLA)
JUDGE

22.11.2012
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(REKHA MITTAL)
JUDGE