

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****121****CR-1143-2025 (O&M)****Date of decision: 24.02.2025****Mittar Pal & Another****...Petitioner(s)****Vs.****State of Haryana & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. V.P. Sangwan, Advocate
for the petitioners.

Mr. Satish Singla, AAG Haryana.

NIDHI GUPTA, J.

Present petition under Article 227 of the Constitution of India is filed by the plaintiffs/petitioners against the impugned order dated 05.02.2025 (Annexure P1) passed by learned Additional District Judge, Charkhi Dadri whereby CMA-19-2019 titled as "Mitter Pal & Another Vs. State of Haryana & Others" of the petitioners has been dismissed; further against the order dated 14.03.2024 (Annexure P2) passed by learned Additional Civil Judge (Senior Division), Charkhi Dadri in Civil Suit No.1007 of 2023 whereby application dated 29.09.2023 (Annexure P3) under Order 39 Rule 1 & 2 CPC of the petitioners, has been dismissed.

2. Learned counsel for the petitioners inter alia submits that the impugned orders deserve to be set aside as the learned Courts below have failed to consider that the pond in Khasra No.57 having area of 9 kanal 11 marla is existing since the inception of the village. It is



submitted that a well is existing very close to the pond and the villagers used to fetch water from this well for drinking water but with the passage of time due to supply of tap water, water consumption in every house has increased. Resultantly, now dirty water in large quantity is being discharged from every house which is being released into the said pond, thus contaminating the drinking water source for the villagers and the cattle. To manage the dirty water, drain has been constructed parallel to the passage of village Makrana to drain and store the water far away from the village. However, PWD Department had started raising the level of the road, as a result of which there was an obstruction in the drainage of the sewerage and dirty water, which is now collecting in the village. Though representations were made and respondents were requested to get the drain cleaned, however, no attention was paid by them to the said problem. Thus, Civil Suit was filed along with the present application for ad-interim injunction.

3. Ld. Counsel for the petitioners/plaintiffs further submits that the learned trial Court has wrongly dismissed the application of the petitioners by holding that the water of the pond in Khasra No.57 is already contaminated and further Gram Panchayat is owner of the pond and Gram Panchayat can put the sewerage and dirty water in the village pond. It is contended that the above findings of the Ld. Trial Court is against the facts and law. No sewerage and dirty water can be allowed to be put in any pond. If the same is allowed it will cause contamination of



ground water also, which is against the right of the petitioners and other villagers. It is reiterated that the findings of the learned Courts below are incorrect and contrary to the record and are therefore, liable to be set aside. It is accordingly prayed that the present revision petition be allowed by allowing the application (Annexure P3).

4. No other argument is made by learned counsel for the petitioners.

5. I have heard ld. counsel and perused the case file.

6. Brief facts of the case are that the petitioners/plaintiffs have filed the suit for permanent and mandatory injunction with the averments that there is a Johar (pond) existing in Khasra No.57 near Abadi Deh of village Datoli also called Khaddi. The said pond is being used for drinking water for cattle of villagers as well as for the villagers. Residential house of the plaintiffs is also near the Johar along with other co-villagers. There is a problem of drainage of water. The defendants constructed drainage system for the drainage of dirty water of the village but due to non-cleaning of the drain, the newly constructed drainage has become non-functional. As a result, dirty water is collected in the village. Defendant No.3/respondent No.3 herein is the Sarpanch of the village and by wrong use of his power and position he is putting all the dirty water of village in this Johar (Pond) in Khasra no.57. This is making the drinking water of cattle unfit and contaminated. As such, present suit was filed for



permanent injunction to restrain the defendants from directing the flow of dirty water of village towards this Johar/ pond existing in Khasra no.57.

7. Along with the above suit, the petitioners/plaintiffs had filed an application dated 29.09.2023 (Annexure P3) under Order 39 Rule 1 & 2 CPC. Although initially an interim order was passed in favour of the petitioners, however, the above said application of the petitioners has been dismissed by the learned trial Court vide impugned order dated 14.03.2024 (Annexure P2). The appeal against the said order dated 14.03.2024 was dismissed by the learned Additional District Judge, Charkhi Dadri vide order dated 05.02.2025 (Annexure P1).

8. It has been submitted on behalf of the petitioners that the pond in Khasra No.57 is being used since earlier times as drinking water for the villagers and cattle; and the same is being polluted by the defendant by releasing the dirty water and sewage of the village into the said pond. It is further the case of the petitioners that the houses of the petitioners and other villagers are constructed near the Khasra No.57 as reflected in the Jamabandis for the years 2020-21, 2015-16.

9. To the contrary, it is the pleaded case of the defendants that Gram Panchayat is owner of the said pond in Khasra No.57, and that the petitioners have encroached upon the land of the Gram Panchayat and are in illegal occupation of the Khasra no. 57. It has further been pleaded by the respondents that the pond in Khasra no. 57 is already contaminated as it is being used for collecting dirty water of the village



since long time, and the same has never been used as drinking water either by cattle or villagers. Drinking water is taken from pond in Khasra no. 49. It has further been stated that the plaintiffs have filed the present suit due to political party faction in the village. The pleadings of the respondents have been noticed in the impugned order dated 05.02.2025, as follows: –

“3. According to the defendants, the plaintiff No.2 is an illegal encroacher on the panchayati land and in this regard proceedings are pending before the Assistant Collector, Charkhi Dadri. The present suit has been filed in order to put pressure on Panchayat. In village Datoli, the water is being collected in the streets and houses of Harijan Basti which is causing hardships to the residents of that area. There is a Johar (pond) in Khasra No.57 (on which the plaintiff No.2 has illegal encroachment). It is 20 feet in depth. From earlier times, dirty water of the village collects in this johar only. It is made only for the purpose of drainage of dirty water. It is not being used by cattles as the water is not suitable for drinking and its depth is also 20 feet, so the cattles cannot enter into the johar. Grant has been received from the Government for the purpose of drainage of dirty water from Harijan Basti and on account of the same, the Panchayat wants to construct a drainage system. In this regard, proposal has been made by Gram Panchayat. In fact, the drinking water for cattles is collected in Khasra No.49 in a Johar which is being used by the entire village. Another civil suit titled as "Yudhvir Vs. State of Haryana" was also filed. The main motive of the plaintiffs is not to allow any work to be done due to village party politics.”



10. Further, the reliance placed by the petitioners upon Jamabandi for the year 2020-21 (Annexure P5) is misplaced as the said Jamabandi shows that khasra No.57 and 49 both belong to Gram Panchayat; and that Ponds/Johars exist on both the khasra numbers. As noticed above, it is the case of the defendants that the pond in khasra No.57 is used for collecting drainage/dirty water and is unfit for drinking by cattle; and that pond in Khasra No.49 is used as drinking water for cattle. The correctness or otherwise of the said rival assertions of the parties is a matter of evidence. However, it will be safe to say that the plaintiffs have failed to establish a prima facie case in their favour for grant of interim injunction.

11. Second contention of the petitioners is that they are residing in khasra No.57 close to the Pond, and great hardship is being caused to them due to the release of dirty water into the pond, and construction of drainage system. In this regard, the relevant findings/observations of the learned trial Court in order dated 14.03.2024 (Annexure P2) are as under:-

“6.Defendants have relied upon the proposal no. 2 dated 09.05.2023 of the Gram Panchayat of village Datoli which was passed by the Gram Panchayat and thereafter it was sent to BDPO Jhojhukalan for necessary action. Apart from this, defendants have placed on record affidavits of various villagers of village Datoli, wherein they have stated that dirty water of houses of other streets are being released in johar which is there in khasra no. 57 only and now the panchayat wants to construct the nala for the purpose of drainage of



water of the Harijan basti of the village and there is consent of 90% of the villagers in this regard, however, plaintiff has wrongly filed the present suit in order to obstruct in the welfare work of the Harijan Basti on account of the political interference. Moreover, the photographs has also been placed on record in which no houses are seen nearby the johar and the water which is being seen in the johar appears to be very dirty water and it cannot be said that it is being used by the cattle of the villagers for drinking purpose. Further khasra no. 57 is property of Gram Panchayat and necessary proposal in this regard has been passed by the Gram Panchayat for construction of nala for the purpose of the drainage of dirty water in khasra no. 57 and this proposal is being passed after all the physical verification and necessary formalities being complied with. Grant for the purpose of nala has also been provided by the Government and it is only possible when the site was inspected by the concerned official and would have been found suitable for the purpose of construction of nala. All the details regarding the same i.e. history report, estimate for the same has also been placed on record by the defendant.

7. Therefore, when proper procedure has been followed by the defendants for the construction of the nala and taking into consideration the facts and circumstances of the case, plaintiff has prima facie failed to prove his case that construction of nala will affect him and other villagers as in the photographs which has been placed on the record, nala has not been seen nearby the house of the plaintiff and other villagers and the water also does not appear to be fit for drinking purpose. Since the property is of Gram Panchayat, therefore, balance of convenience also does not lie in favour of the plaintiff and it is also not prima facie proved on record what irreparable loss is going to be caused to the plaintiff and other villagers, if injunction is not granted in their favour. Then in these circumstances, when plaintiff has failed to discharge his initial onus, it cannot be said that circumstances in the present case are so immediately pressing that granting of permanent injunction does not seem to be justified in the present facts and circumstances of the case.”



12. I am in complete agreement with the above said observations of the learned Court below. From the above facts, it would appear that the Gram Panchayat is owner of the ponds; that there are two separate ponds in khasra nos. 57 and 49; the former being used for collection of dirty water from the village and the latter for clean drinking water for the villagers and the cattle; and for that the petitioners are encroaching upon the land of the Gram Panchayat. Thus, balance of convenience is in favour of the respondents; and the petitioners have been unable to make out any irreparable loss or injury that may be caused to them. Accordingly, no ground is made out to interfere in the impugned orders.

13. The present petition is **dismissed**.

14. Pending application(s) if any also stand(s) disposed of.

15. However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the matter.

24.02.2025

Sunena

(Nidhi Gupta)

Judge

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