

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 6614/2021

Ramji Lal Saini S/o Shri Sonya Saini, Aged About 51 Years, R/o
Netawali Dhaani Khatwa, Tehsil Lalsot, District Dausa (Raj.)

-----Petitioner

Versus

1. The State Of Rajasthan, Through The Chief Secretary,
Government Secretariat, Rajasthan, Jaipur.
2. The District Collector, Dausa (Raj.)
3. The Development Officer, Panchayat Samiti Lalsot, District
Dausa (Raj.)
4. Tehsildar, Tehsil Lalsot, District Dausa (Raj.)
5. Sarpanch, Gram Panchayat Khatwa, Tehsil Lalsot, District
Dausa (Raj.)

-----Respondents

For Petitioner(s) : Mr. Dharmendra Pareek

For Respondent(s) : Mr. G.S. Gill, AAG

Ms. Shikha Sharma

Ms. Rashmi Kaushik

Ms. Divya Rathore, AAAG for

Mr. K.P. Mathur, AAG

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**

Order

Reportable

07/05/2026

1. The instant writ petition (PIL) has been preferred by the
petitioner claiming the following reliefs :

*"It is, therefore, respectfully submitted that your
Lordships may be gracious enough to kindly allow this
Public Interest Litigation, and-*

*I. to kindly issue a writ of mandamus or any other writ,
order or direction in the nature thereof and thereby the
respondents be directed to remove the construction of
gravel road from gair mumkin Nala land bearing Khasra*

No. 717/444 rakba 2.03 bigha, situated at Village Khatwa, Tehsil Lalsot, District Dausa;

II. Any other appropriate writ, order or directions which is deemed just and proper by this Hon'ble Court may also be passed in favour of the petitioner;

III. Costs of the writ petition may also be allowed in favour of the petitioner."

2. Learned counsel for the petitioner has confined his submissions to the limited issue that the land in question is admittedly recorded in the revenue entries and Jamabandi as 'Gair Mumkin Nala', being a natural water channel, and therefore, no construction or utilisation thereof for any purpose other than its recorded nature is legally permissible. It is submitted that the action of the respondents in constructing a road and permitting utilisation of the land for crematorium purposes is wholly contrary to law and violative of the constitutional mandate relating to environmental protection and preservation of natural resources.

2.1. In support of his submissions, learned counsel has placed reliance upon the judgment rendered by this Court in ***Abdul Rehman Vs. State of Rajasthan & Ors. (D.B. Civil Writ Petition No.1536/2003)***, decided on 02.08.2004, wherein this Court emphasised the constitutional obligation of the State and citizens alike to preserve ecological balance and protect natural resources including water bodies and catchment areas. The relevant portion whereof is reproduced hereunder:

"9. The problem of environmental pollution has been recognized as a Worldwide disaster. Development without regard to the ecological equilibrium has led to an environmental crisis. Urbanization, modernization and the race for technological and industrial development has caused the ecological imbalance. The Constitution (Forty

Second Amendment) Act, 1976 has made it a fundamental duty of the State and citizens to protect and improve the environment.

10. Article 48 A of the Constitution provides that -

"The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."

11. Article 51 A of the constitution provides that -

"To protect and improve the natural environment including forests, lakes, rivers and wild-life and to have compassion for living creatures."

12. Thus, the Constitutional provisions, on the one hand give directions to the State for the protection and on the other, cast a duty on every citizen to help the preservation of natural environment.

13. Article 21 of the Constitution of India guarantees every citizen of India, the right to life and personal liberty. The Apex Court has elevated the environmental concerns to the level of a fundamental right as falling under Article 21 of the constitution.

2.2 Learned counsel for the petitioner has placed reliance upon the order dated 12.01.2017 passed by this Hon'ble Court in the case of ***Gulab Kothari Vs. State of Rajasthan & Ors. (D.B. Civil Writ Petition No.1554/2004)***, wherein the doctrine of public trust and the imperative necessity of protecting natural resources such as rivers, lakes, nalas and catchment areas were reiterated in unequivocal terms. The relevant portion whereof is reproduced as hereunder:

"Conservation and preservation of the land forming part of nadi, pond, lakes, river bed and catchment area etc.? (Question No.15)

200. As laid down by the Hon'ble Apex Court in Karnataka Industrial Areas Development Board's case (supra), the natural resources like air, sea, water and forest have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private

ownership. The court laid down that the Doctrine of Public Trust enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to use for private ownership or commercial purposes.

201. The necessity of protecting the forest, lakes, rivers, wildlife has been further emphasised by the Hon'ble Apex Court in Intellectual Forum's case (*supra*).

202. As noticed hereinabove, the learned AG and AAG have fairly conceded before this court that the natural resources such as hills, notified area, forest, river, lake etc. cannot be disturbed while preparing the Master Development Plan or modifying the same.

203. It is pertinent to note that in 'Abdul Rahman v. State', 2005 RRT 59, a Bench of this court has issued direction to the State Government to remove encroachment in the catchment area of the water bodies. That apart, in "Suo Motu vs. State of Rajasthan" (S.B.C.Writ Petition No.11153/11), disposed of by Jaipur Bench of this court vide order dated 29.5.12, specific directions are issued restraining allotment of the land falling in catchment areas of water reservoirs like Johar, Nala, Tank, River, Pond etc. and it is further directed that the appropriate action shall be taken for cancellation of the allotment made in defiance of Section 16 of the Act of 1955.

204. But the fact remains that no effective steps have been taken so far for conservation and preservation of the natural resources i.e. hills, forest, river, lake, other water bodies and the encroachment thereon by unscrupulous persons continues unabated. We earnestly feel that the State Authorities should take a drive to remove all encroachments made over the natural resources noticed hereinabove and the unauthorised activities operating thereon, with utmost expedition. "

3. *Per contra*, learned Additional Advocate General appearing for the respondents-State submitted that the road and crematorium have been developed for public utility purposes and, therefore, no interference by this Court is warranted in exercise of extraordinary writ jurisdiction.

4. Heard learned counsel for the parties as well as perused the record of the case, alongwith the judgments cited at the Bar.

5. At the outset, this Court deems it appropriate to reproduce paragraph No.1 of the reply filed on behalf of the respondents-State, which reads as under:

"1. That the contents of para No.1 of the writ petition are not admitted in the manner stated and are replied in terms that the land in question bearing Khasra No.717/444 measuring 2 bigha 3 biswa is Gair Mumkin Nala in the revenue record and as per report of the Patwari Halka Khatwa, on some part of the land in question there is a road and on some part of the land there are crematorium canopies. The remaining land is vacant which is being used as a kachcha way. There is no encroachment by any individual over the land in question."

5.1. The aforesaid stand taken by the State leaves no manner of doubt that the land in question is admittedly recorded as 'Gair Mumkin Nala' in the revenue records. Once the nature of the land as a natural water channel stands admitted, the consequential legal position becomes self-evident.

6. This Court notes that a 'Gair Mumkin Nala' constitutes a natural drainage and water flow channel forming an integral part of the ecological framework and hydrological system of the area concerned. Such lands cannot be permitted to be diverted, obstructed or altered for any non-conforming purpose merely on the ground that the utilisation is for a public purpose. The doctrine of public trust obligates the State to act as a trustee of natural resources and mandates preservation thereof for the benefit of the general public and future generations.

6.1. The constitutional scheme under Articles 48-A and 51-A(g) of the Constitution of India casts a corresponding duty upon the State as well as citizens to protect and improve the natural environment. The right to a clean and sustainable environment has repeatedly been recognised as an inseparable facet of Article 21 of the Constitution of India.

7. This Court is of the considered opinion that preservation of water bodies, natural drains, catchment areas and traditional water channels assumes even greater significance in a State like Rajasthan, where ecological conditions and water scarcity render conservation of every natural water resource indispensable. Any obstruction or alteration of a natural water channel has the potential of adversely affecting drainage patterns, groundwater recharge and environmental equilibrium.

8. This Court is further of the considered view that unless natural water bodies and water channels are zealously protected and preserved, the right to a dignified and sustainable life of the common citizen stands seriously imperilled. In contemporary times, conservation and preservation of water resources constitute an indispensable component of sustainable development and ecological governance. Though increasing urbanisation, developmental expansion and demographic pressures may give rise to competing land-use demands, such considerations cannot legitimise actions which are contrary to law and destructive of ecological balance. Any arbitrary diversion or utilisation of land recorded as a natural water channel, particularly by the State

itself, deserves strict judicial scrutiny and cannot be countenanced.

9. The justification sought to be advanced by the respondents that the land has been utilised for construction of a road and crematorium for public purposes cannot be accepted. Public utility cannot be achieved at the cost of destruction or impairment of natural resources which the State is constitutionally and legally bound to preserve. Administrative convenience or developmental pressures cannot legitimise an action otherwise impermissible in law.

10. This Court further finds that despite categorical judicial pronouncements rendered in **Abdul Rehman (supra)** and **Gulab Kothari (supra)**, the respondents have failed to discharge their statutory and constitutional obligations towards preservation of natural water channels and instead have sought to justify their utilisation for purposes alien to their recorded character.

11. In view of the admitted factual position and the settled legal principles governing preservation of natural resources and water bodies, this Court is satisfied that interference in the present matter is warranted.

12. Consequently, the present writ petition (PIL) is hereby **allowed**.

12.1. The respondents are directed to remove forthwith any road, crematorium structure, encroachment or any other construction existing over land bearing Khasra No.717/444 (718/444), admeasuring 2.03 bigha, situated at Village Khatwa, Tehsil Lalsot,

District Dausa, recorded as 'Gair Mumkin Nala', and restore the land to its original recorded nature.

12.2. The respondents shall further ensure that no portion of the aforesaid land, or any adjoining land recorded as 'Gair Mumkin Nala' in the revenue records, is utilised for any purpose inconsistent with its recorded character.

12.3. Due compliance of the present order be made within a period of three months from today.

13. All pending applications stand disposed of accordingly.

(VINIT KUMAR MATHUR),J

(DR. PUSHPENDRA SINGH BHATI),J