

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Civil Revision No.8226 of 2016

Date of decision: December 21, 2016

Jagdish

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Ajay Jain, Advocate for the petitioner.

Dr. Sushil Gautam, Dy. Advocate General, Haryana.

Rajan Gupta, J.

Present revision petition has been preferred against the orders dated 17.11.2016 and 28.11.2016, passed by Civil Judge (Jr. Divn.), Hisar and Additional District Judge, Hisar respectively, whereby application filed by petitioner under section 113 CPC and Order 39 Rules 1 & 2 read with Section 151 CPC have been dismissed.

Learned counsel for the petitioner has assailed the orders. He has submitted that impugned orders are unsustainable as respondent No.2 had no right to issue show cause notice to the petitioner and the only remedy was to challenge the election. No fraud has been committed by the petitioner. He has referred to Article 243 (O) of the Constitution of India to submit that no election can be called in question except by way of election petition.

Prayer has been opposed by learned State counsel. He has submitted that petitioner was having a forged matriculation certificate of the year 2000 and thus, respondent/defendant No.2 had rightly issued

show cause notice to the petitioner and enquiry is still to be conducted. Petitioner is not entitled to any injunction regarding the proceedings initiated against him. He has further submitted that the trial court as well as the appellate court did not find any ground for referring the matter to this court and for grant of any injunction, therefore, application filed by the petitioner has been rightly dismissed.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

It appears, petitioner/plaintiff filed a suit against the respondent/defendants seeking declaration that certificate of Secondary School Examination issued to him in the year 2000 by respondent No.6 is legal and valid and further restraining defendants No.1 to 4 from implementing letter dated 4.7.2016 issued by defendant No.2 and also taking any action under section 51 (3) (c) read with Section 177 of the Haryana Panchayati Raj Act, 1994. During pendency of suit, plaintiff filed instant application under section 113 CPC for referring the matter to this court and further for grant of ad-interim injunction. Defendant/respondents contested the application. After hearing the parties, trial court rejected the prayer made by the petitioner. Appeal filed by petitioner against the said order has also been dismissed by Additional District Judge, Hisar. Aggrieved, petitioner preferred instant revision petition.

I am of the considered view that the courts below have not committed any error while passing the impugned orders. Under Section 51 of the Haryana Panchayat Raj Act, Deputy Commissioner is entitled to

issue show cause notice to the petitioner. Mere issuance of such notice does not lead to disqualification of the petitioner from the post of Sarpanch. The contention that in view of Article 243 (O) of the Constitution, the Deputy Commissioner cannot resort to proceedings under Haryana Panchayati Raj Act, is not only untenable but misconceived. The Deputy Commissioner has issued a show cause notice to the petitioner as he felt that petitioner had produced a bogus matriculation certificate at the time of election. He has, thus, commenced proceedings within the purview of the Act. It is inexplicable how Article 243 (O) would come into picture in the circumstances. Needless to observe that petitioner would be at liberty to file his reply to the notice, which would be considered by the concerned authority. In my considered view, application under Order 39 Rules 1 & 2 CPC has been rightly rejected by the court below as there is no ground to restrain the defendants from resorting to a statutory provision to initiate action against the petitioner. The plea that election of the petitioner has been questioned in violation of Article 243 (O) of the Constitution, is without any merit. Only proceedings have been initiated against him under the provisions of the Act for allegedly procuring a fake matriculation certificate at the time of elections. The present petition is without any merit and is hereby dismissed.

(RAJAN GUPTA)
JUDGE

December 21, 2016
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No