

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.11688 of 2015
Date of decision:21.12.2016**

Devinder Kumar Sarpanch

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Raj Kumar Garg, Advocate for the petitioner.
Ms.Monika Chhiber Sharma, DAG, Punjab.
Mr.Ashok Giri, Advocate for the applicant in
CM-8534-2015.

RAMESHWAR SINGH MALIK, J. (Oral)

Present writ petition is directed against the order dated 1.4.2015 (Annexure P-8) passed by the Special Secretary, Department of Rural Development and Panchayat, Punjab-respondent No.1, whereby appeal of the petitioner was dismissed and his removal order dated 18.2.2015 (Annexure P-6) passed by the Director, Rural Development and Panchayat Department, Punjab, was upheld.

Notice of motion was issued and in compliance thereof, reply by way of affidavit was filed on behalf of respondents No.1 to 5. Petitioner filed his replication.

Heard learned counsel for the parties.

It is a matter of record that an ejectment application was filed against the petitioner, seeking his ejectment from panchayat land. He appeared before the learned Collector, Gurdaspur. After hearing learned

counsel for the parties and going through the material brought on record, learned Collector vide his order dated 10.12.2008, ordered the ejectment of the petitioner from the panchayat land. Petitioner filed his appeal, which was dismissed by the appellate authority vide its order dated 2.12.2011. Against the above-said ejectment and appellate orders, petitioner approached this Court by way of CWP No.19634 of 2013 (Devender Kumar and others Vs. The Director, Rural Development and Panchayat, Punjab and others), which was also dismissed by a Division Bench of this Court vide its order dated 5.9.2013.

Operative part of the order dated 5.9.2013 passed by the Division Bench of this Court, reads as under:-

“In this writ petition, it is primary contention of counsel for the petitioners that as per provisions of the Act, application under Section 7 of the Act cannot be filed by any private individual. Be that as it may, in view of circumstances of this case, this plea cannot be taken in favour of the petitioners. Petitioner No.3 was Sarpanch of the village at relevant time. Petitioner No.1 is her husband, whereas petitioner No.2 is her brother-in-law. It is case of the respondents/complainants that they made many requests to the Gram Panchayat to initiate ejectment proceedings against the petitioners and when it failed to do so, they brought to the notice of the competent authority factum of illegal possession over the land in dispute by moving an application. Gram Panchayat is a legal body. It has to act through its Sarpanch and Panches. When Sarpanch herself had occupied land of the Gram Panchayat illegally, then it was open to the complainants to bring that fact to the notice of the higher authorities. It was so done in this case. Under the circumstances, this technical objection cannot be entertained in favour of the petitioners. There is no document

on record to show that land does not belong to the Gram Panchayat. To support their claim to retain land, no evidence has been brought on record by the petitioners.

Dismissed.”

Against the above-said order passed by the Division Bench of this Court, petitioner approached the Hon'ble Supreme Court by filing SLP No.5419 of 2014, however, he withdrew the same on 26.5.2015. The above-said ejectment order attained finality against the petitioner. That is how serious misconduct of the petitioner stood established on record.

A regular enquiry was conducted against the petitioner, he being the Sarpanch, by the Division Deputy Director, Jalandhar, who submitted his enquiry report vide letter No.1432 dated 14.8.2014. Allegation levelled against the petitioner came to be proved in the regular enquiry also, to the effect that he was in illegal possession of the panchayat land. On the basis of regular enquiry, a show-cause notice was issued to the petitioner vide communication dated 30.9.2014. Petitioner submitted his reply to the show-cause notice. Thereafter, petitioner was granted an opportunity of being heard by the Director, Rural Development and Panchayat Department, Punjab, before passing the impugned order dated 18.2.2015 (Annexure P-6), removing the petitioner from the post of Sarpanch.

A bare perusal of the impugned order (Annexure P-6) would show that every relevant aspect of the matter was duly considered by the Director, before passing this order. He recorded his cogent findings, which have been found based on sound reasons. The relevant operative part of the impugned order (Annexure P-6), which deserves to be noticed here, reads as

under:-

“According to the report of Division Deputy Director Panchayats, Jalandhar, District Development and Panchayat Officer, had ordered the eviction against the Sarpanch in case no.5 dated 06.02.2008 which was decided on 10.12.2008 and 27.03.2009. Against the said orders the Sarpanch had filed a appeal no.667 dated 2010 before the court of the undersigned which was dismissed on 02.12.2011. Thereafter, Davinder Kumar filed a CWP 19634 of 2013 before Hon'ble Punjab and Haryana High Court. The said writ petition was dismissed on 05.09.2013. Thereafter, Sarpanch filed appeal No.5419 of 2014 before the Hon'ble Supreme Court. The said appeal was withdrawn by him on 26.05.2015. From which it is proved that Davinder Kumar Sarpanch, Gram Panchayat Gibindsar is in illegal possession of the Panchayat Land.

According to Section 208(K) of the Punjab Panchayati Raj Act, 1994 if a Panch is in illegal possession of property of the local authority then he is disqualified from the membership.

According to Section 2(ZR) of the Punjab Panchayati Raj Act, 1994, Sarpanch has been notified to be a Public Servant as given in the definition of IPC and in this way the responsibility of the Sarpanch further increases and he should not do such act which is not correct in view of the rules which effects the common man. Therefore, Sh.Devinder Kumar Sarpanch, Gram Panchayat Gobindsar, Block and District Pathankot is dismissed from the post of Sarpach u/s 20(1) of the Punjab Panchayati Raj Act, 1994 with immediate effet.

Besides this Block Development and Panchayat Officer, Pathankot is hereby directed to elect the authorised person till the new Sarpanch is elected and he should send the information to this office so that they should be no obstruction of the development works of the panchayat. It is also made clear here that the above mentioned system is temporary and it

should not be taken that the Block Development and Panchayat Officer has elected the Panch primarily as Sarpanch.”

Feeling aggrieved against the above-said order of removal, petitioner filed his appeal, which was dismissed by respondent No.1, vide order dated 1.4.2015 (Annexure P-8). A bare reading of the impugned removal order (Annexure P-6) as well as the impugned appellate order (Annexure P-8) would make it crystal clear that neither respondent No.2 nor respondent No.1 committed any error of law, while passing their respective impugned orders. It is so said because both these authorities were well within their jurisdiction to pass their respective impugned orders.

The argument raised by the learned counsel for the petitioner, based on a subsequent demarcation report dated 24.2.2015 (Annexure P-7) has been found wholly misplaced, for the reason that subsequent demarcation report would be of no consequence. This demarcation report is not only a cryptic and non-speaking one but also a procured document based on an afterthought which is liable to be ignored outrightly. Once the ejectment order had been passed against the petitioner way back on 10.12.2008 and said ejectment order had already attained finality up to the Hon'ble Supreme Court, the entire case of the petitioner is based on technicalities alone. Under these circumstances, this Court is of the considered view that while doing complete and substantial justice between the parties, technicalities, if any, must not weigh with the court. It is so said because neither any of the above-said impugned orders (Annexures P-6 and P-8) have been found suffering from any patent illegality or perversity nor any kind of prejudice has been shown, which might have been caused to the petitioner, while passing the impugned orders, warranting interference at the

hands of this Court, while exercising its writ jurisdiction.

To be fair to the learned counsel for the petitioner, his another argument that the ejectment order dated 10.12.2008, which had attained finality up to the Hon'ble Supreme Court, would not stand in the way of the petitioner, because he contested the election in 2013, is to be noted to be rejected. This argument raised by the learned counsel for the petitioner has been found without any force for the reason that he cannot challenge the validity of those ejectment orders now, because the said ejectment order had already attained finality against him up to the Hon'ble Supreme Court. In fact, petitioner had been trying to play smart, while misusing the process of law. He has not been found to be a bonafide litigant.

Effectiveness of above-said ejectment orders, including the detailed order dated 5.9.2013 passed by the Division Bench of this Court, while dismissing the writ petition filed by the petitioner, would not wipe out, just at the asking of the petitioner. This is the basic fallacy in the argument raised by the learned counsel for the petitioner. Learned counsel for the petitioner wanted this Court to ignore the above-said ejectment orders, which had already attained finality up to the Hon'ble Supreme Court, however, it is not permissible in law. In this view of the matter, it can be safely concluded that the impugned orders are factually correct and legally sustainable orders and the same deserve to be upheld, for this reason also.

Another equally unsubstantiated argument raised by the learned counsel for the petitioner was that on 18.2.2015 when the impugned order (Annexure P-6) was passed by the Director, the Director was on leave,

being on election duty. This averment taken by the petitioner in para 11 of the writ petition has been denied by the respondents in corresponding paragraph of their written statement. Further, this was not even his pleaded or argued case in his appeal before respondent No.1. Petitioner had the first opportunity to raise this issue, before the appellate authority, however, he failed to do so, for the reasons best known to him.

It is also pertinent to note that no such averment has been taken by the petitioner in the instant writ petition, that he raised this argument before the appellate authority, about his allegation that Director was on leave on 18.2.2015 and said argument was not recorded by the appellate authority. Had the petitioner raised this argument before the appellate authority, there would have been no difficulty for him to take a specific averment to that effect in the present writ petition. As a matter of fact, when caught at the wrong foot, petitioner has been trying to delay the inevitable action against him, glaringly misusing the process of law, proceeding on technicalities alone but he had nothing substantive to say.

Be that as it may, no prejudice of any kind, whatsoever, has been caused to the petitioner, in view of the undisputed fact that the above-said ejectment orders have attained finality against him up to the Hon'ble Supreme Court. In such a situation, petitioner cannot be permitted to turn around and say that those ejectment orders, including the detailed order dated 5.9.2013 passed by the Division Bench of this Court, would lose their significance. In fact, petitioner has misconducted himself to such an extent that he made himself liable for removal from the post of Sarpanch and he was rightly removed by passing the impugned order (Annexure P-6),

which has been rightly upheld by the appellate authority vide impugned order (Annexure P-8), therefore, both these impugned orders deserve to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Consequently, the Deputy Commissioner, Pathankot, is directed to ensure that an alternative arrangement is made at an early date so that functioning of the Gram Panchayat should not suffer. The Deputy Commissioner, Pathankot, shall do the needful by passing an appropriate order, in accordance with law but in any case within a period of three weeks from the date of receipt of a certified copy of this order.

Resultantly, with the above-said observations made and directions issued, the instant writ petition stands dismissed, however, with no order as to costs. Pending application, if any, shall also stand disposed of, accordingly.

21.12.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No