

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.26497 of 2016
Date of decision: 21.12.2016

Bheem Singh

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. A.S. Bhatti, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J.

Present writ petition is directed against the order dated 12.10.2016 (Annexure P-8), whereby Secretary to Govt. of Punjab, Department of Rural Development and Panchayats-respondent No.1 accepted the appeal of respondent No.4-Sarpanch and set aside the order dated 02.02.2016 (Annexure P-7) passed by the Director, Department of Rural Development and Panchayats, Punjab-respondent No.2, removing respondent No.4 from the post of Sarpanch on a factually incorrect allegation that he was in illegal possession of Panchayat land.

Petitioner claims himself to be the complainant. The only argument raised by learned counsel for the petitioner before this Court was that since respondent No.4 was in illegal possession over the Panchayat land, he was rightly removed from the post of Sarpanch vide order dated 02.02.2016 passed

by the Director-respondent No.2. He further submits that in such a situation, respondent No.1 ought to have dismissed the appeal of respondent No.4. However, since respondent No.1 has proceeded on a patently illegal approach, while passing the impugned order, the same is liable to be set aside. He prays for allowing the present writ petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that present writ petition is a frivolous litigation at the hands of a person, who has not been found to be a bonafide litigant. The only object of the petitioner is to settle the personal score with respondent No.4 by way of instant unwarranted litigation. The order passed by respondent No.1 is a perfect order on facts as well as in law and the same deserves to be upheld. The writ petition is liable to be dismissed with costs. To say so, reasons are more than one, which are being recorded hereinafter.

It is not in dispute that the land on which respondent No.4 and his brother were in possession, was described in the revenue record as Shamlat Taraf Patti. It is also not in dispute that respondent No.4 and his brother were members of the proprietary body. Father of respondent No.4 was in possession over this land during his lifetime and after his death, respondent No.4 stepped into the shoes of his father. It has also come on record that the land in question was in the possession of forefathers of respondent No.4 since the year 1911-1912 and his father has also inherited the possession from his forefathers. This land had never been used for common purposes of the village. It is also a matter of record that a

petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961, which is in the form of a declaratory suit, is pending between the parties, wherein question of title is yet to be decided by the learned Court of competent jurisdiction. Having said that, this Court feels no hesitation to conclude that respondent No.1 was well within his jurisdiction to pass the impugned order and the same deserves to be upheld.

Simply because respondent No.4 became Sarpanch, he committed no sin in inheriting the possession from his father. No Court of competent jurisdiction has ever held the possession of respondent No.4 as illegal so far. No ejectment petition had ever been filed either against the father of respondent No.4 or against respondent No.4, at any point of time. On the other hand, it had been a positive case of respondent No.4 right from day one that he has inherited the possession of the land of Shamlat Taraf Patti from his father, who was cultivating the same in his own right as co-sharer in the proprietary body. It is also neither pleaded nor argued case on behalf of the petitioner that respondent No.4 was in possession of excess land than his share in the Shamlat Taraf Patti. Even if that is so, only the other similarly situated co-sharers of Shamlat Taraf Patti could seek partition of Shamlat Taraf Patti land. However, the Gram Panchayat has nothing to do with this type of land by any stretch of imagination. Under these circumstances, neither the petitioner had got any locus standi to file the present writ petition nor any of his right has been infringed, while passing the impugned order by respondent No.1. In fact, petitioner has been proceeding on a malafide approach, with a view to harass respondent No.4 to the maximum and only for extraneous considerations. This type of totally unwarranted and

frivolous litigation must be curbed with strong hands.

In fact, petitioner has been misusing the process of law, which cannot be permitted. In spite of the fact that a factually correct and legally justified order was passed by respondent No.1, petitioner still felt aggrieved against the impugned order without realizing that respondent No.4 was in possession over the Shamlat Taraf Patti land in his own right and was not in illegal possession. Since the petitioner was bent upon to cause maximum harassment to respondent No.4, he has approached this Court by way of present writ petition.

Before passing the impugned order, respondent No.1 examined, considered and rightly appreciated the true facts of the case as well as relevant provisions of law, while recording his cogent findings. The operative part of the impugned order, which deserves to be noticed here, reads as under: -

“I have given my thoughtful consideration to the above submissions preferred by the parties and have gone through the record as is available on the file. In the present case, it is an admitted fact that appellant has filed a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 in the Court of ADC (D) cum Collector. It is also an admitted fact that earlier the father of the appellant was in possession of the suit land and after the death of his father, the appellants steps in the shoes of his father. The revenue record pertaining the land in question reveals its description as Shamlat Taraf Thola. There is no evidence on the file that it was ever used for common purposes. The applicant took over

its possession after the demise of his father. Thus the appellant's act of possessing a part of Shamlat Taraf Thola land cannot be termed as illegal. The Collector has not decided the case under Section 11 yet and at this stage, the possession of the appellant cannot be termed as illegal. In view of these facts, the appeal of the appellant is accepted and he is reinstated on the post of Sarpanch. Since the Gram Panchayat is contesting the case in the Court of Collector, the Block Development and Panchayat Officer, Bhunga is directed to supervise the case in the Court of Collector and ensure that the Gram Panchayat is represented properly in the Court.”

It does not appeal to reason that as to why the petitioner could not wait even upto the decision of the title suit, which is admittedly pending decision before the competent authority. Petitioner was in desperate hurry to get respondent No.4 removed from the post of Sarpanch. Petitioner was acting at the behest of the opponent group and was making every possible effort not to allow respondent No.4 to work as Sarpanch. It has been experienced by this Court in recent past that the very purpose of Local Government is being defeated by the infighting of members of the Gram Panchayats of the villages. The object of amendment of the Constitution, bringing Article 243 in operation, is being defeated. Present writ petition is one such glaring example.

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 since the present writ petition is wholly misconceived, bereft of merit

and without any substance, it must fail. No case for interference has been made out. Accordingly, impugned order dated 12.10.2016 (Annexure P-8) passed by respondent No.1 is upheld. The writ petition is dismissed with costs, which are quantified at Rs.30,000/-.

Office is directed to send a copy of this order to District Collector, Hoshiarpur, who is directed to recover the costs of Rs.30,000/- from the petitioner as arrears of land revenue and shall pay the same to respondent No.4, so as to compensate him for having been dragged in the unwarranted litigation, at the hands of the petitioner. Let the District Collector do the needful at an early date preferably within a period of three months and thereafter, he shall file his own affidavit along with Action Taken Report for placing the same on record of the present case.

Resultantly, with the abovesaid observations made and directions issued, present writ petition stands dismissed, with costs as indicated above.

[RAMESHWAR SINGH MALIK]
JUDGE

21.12.2016
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No