

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

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FAO No.242 of 2016 (O&M)  
Date of Decision: January 14, 2016

Darshan Singh

...Appellant

Versus

Lakhwinder Singh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI**

Present: Mr. M.K. Garg, Advocate  
for the appellant.

Mr. Vikram Satpal, Advocate  
for respondent No.1.

**AUGUSTINE GEORGE MASI, J. (ORAL)**

Notice of motion.

Mr. Vikram Satpal, Advocate, puts in appearance on behalf of  
respondent No.1.

Challenge in this appeal is to the order dated 04.12.2015 passed  
by the Presiding Officer, Election Tribunal, Moga, by which the election of  
the appellant has been set aside by observing that he is in possession of the  
land of the Gram Panchayat as a tenant.

Counsel for the appellant states that in the light of the judgment  
of the Supreme Court passed in case titled as *Som Lal Versus Vijay Laxmi  
and others 2008(2) R.C.R.(Civil) 760*, wherein it has been held that the  
provisions as contained under the Punjab State Election Commission Act,  
1994, will be applicable to the elections of Gram Panchayat and the  
Municipal Corporation and thus, the disqualifications prescribed therein  
under Section 11 would have to be seen which do not refer to possession of  
the land of the Gram Panchayat as a tenant to be a disqualification. He, thus,

contends that the order impugned cannot sustain and deserves to be set aside.

Counsel for respondent No.1, on the other hand, contends that as per the provisions contained under Section 208 of the Punjab Panchayati Raj Act, 1994, the order, as has been passed by the Tribunal, is fully justified and do not call for any interference, specially in the light of the fact that as per the said provisions of the 1994 Act, the case of the appellant is covered by the disqualification prescribed therein. He, accordingly, prays that the impugned order may be upheld and the appeal dismissed.

I have considered the submissions made by learned counsel for the parties and with their assistance, have gone through the impugned order.

In the present case, the only question involved is as to whether possession of the Gram Panchayat land as a tenant would be a disqualification for a person from contesting election to the Gram Panchayat?

The disqualifications as prescribed under Section 208 of the Punjab Panchayati Raj Act, 1994 do state that he should not be in possession of any Gram Panchayat land/property, whereas Section 11 of the Punjab State Election Commission Act, 1994, which prescribes disqualifications, does not contain any such provision. The Hon'ble Supreme Court in *Som Lal's case (supra)* has held that for a person to contest the election of the post in a Gram Panchayat, the provisions as contained under Section 11 of Punjab State Election Commission Act, 1994, would be applicable as it is a subsequent legislation and the provisions as contained in the Panchayati Raj Act, 1994, would not apply.

In the light of the settled preposition of law, the provisions as

contained under the Punjab State Election Commission Act, 1994, would prevail and will have to be applied to determine the disqualification of the candidate to participate in the election to the Gram Panchayat. Admittedly, there is no provision under Section 11 of the Punjab State Election Commission Act, 1994, which prescribes disqualification of a person, who is in possession of the Gram Panchayat land, specially as a tenant as in the present case. If that is so, the impugned order dated 04.12.2015 passed by the Election Tribunal, Moga, cannot sustain and deserves to be set aside as it would be contrary to the provisions of the statute applicable to the case in hand.

In view of the above, the present appeal is allowed.

Impugned order dated 04.12.2015 is set aside and the election petition of respondent No.1 stands dismissed.

**January 14, 2016**  
*Puneet*

**(AUGUSTINE GEORGE MASIH)**  
**JUDGE**