

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**C.M. Nos. 25277-CII, 25278-CII & 26737-CII of
2015 & 3130-CII of 2016 &
FAO No. 8027 of 2015 (O&M)**

Date of decision: October 6, 2016

Des Raj s/o Khan Chand

...APPELLANT

Versus

Sub Divisional Magistrate-cum-Election Tribunal and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Krishan S.Dadwal, Advocate
for the appellant.

None for respondent No. 1.

Mr. Sarju Puri, Advocate,
for respondent No. 2.

AUGUSTINE GEORGE MASIH, J.

1. Challenge in this appeal is to the order dated 09.11.2015 passed by the Sub Divisional Magistrate, Election Tribunal, Nawan Shahar, whereby election petition under Section 74 of the Punjab State Election Commission Act, 1994 (hereinafter referred to as '1994 Act') preferred by respondent No. 2-Arjun Dass son of Balak Ram praying for declaration of the election of the appellant to the post of Sarpanch of Village Haddon Bet held on 03.07.2013 as null and void, illegal on the ground that he is in illegal possession over the Gram Panchayat land and thus, ineligible to contest the elections as per Section 208 (1) (k) of the Punjab Panchayati Raj

Act, 1994 (hereinafter referred to as 'Panchayati Raj Act') has been allowed and election as per Section 87 (b) of the 1994 Act has been ordered to be re-conducted to the post of Sarpanch at Village Haddon Bet, Tehsil Balachour, District Shaheed Bhagat Singh Nagar.

2. Briefly, the facts are that the elections were declared to be held on 03.07.2013 to the Gram Panchayat Haddon Bet, Tehsil Balachour, District Shaheed Bhagat Singh Nagar. Appellant and respondent No. 2 filed their nomination papers for the post of Sarpanch. The scrutiny of the nomination papers was held on 21.06.2013 where objections were raised by respondent No. 2 (election petitioner) to the nomination papers of the appellant asserting that the same be rejected as he was in illegal possession over the Gram Panchayat Shamlat Deh Land bearing Khasra No. 15//7 Min situated in Village Haddon Bet, Tehsil Balachour. Copy of the demarcation report dated 28.07.2006 was also attached along with the objections. These objections were over-ruled by the Returning Officer-respondent No. 4. The voting took place, as per schedule, on 03.07.2013, in which the appellant polled 186 votes whereas Arjun Dass-election petitioner-respondent No. 2 polled 178 votes while 5 votes were cancelled. The appellant was, thus, elected as Sarpanch.

3. The election of the appellant was thereafter challenged on 06.07.2013 by respondent No. 2 by way of an election petition on the ground of he being in illegal possession of the Gram Panchayat Shamlat Deh land, which petition has been allowed by the Sub-Divisional Magistrate-cum- Election Tribunal, Nawan Shahar on 09.11.2015, which has been challenged in the present appeal.

4. It is the contention of the learned counsel for the appellant that

the appellant belongs to the *Bazigar* community, which is recognized as a scheduled caste and is a landless person. He along with others had constructed their houses on the Gram Panchayat land which was adjacent to the river side. In the year 1988, large number of villagers whose houses were on the river bank, including that of the appellant were washed off in the flash floods. They were all evacuated to safer places by the District Authorities. These people having lost their houses looked towards the District Authorities for the purpose of rehabilitation and were provided with tents on the Gram Panchayat land, which was at a higher level. All such persons who were affected by the floods, were asked by the Authorities to construct residential houses on the earmarked Gram Panchayat land. This resulted in not only the appellant but almost the entire village including respondent No. 2 being rehabilitated on the Gram Panchayat land by giving them 4-5 Marlas of land as per requirement of the families. Subsequently, electricity meter and water supply meter were also granted with the funds of the Government. This happened not only in Village of Haddon Bet but many other villages which were also similarly affected.

5. It is further contended by the counsel for the appellant that because of the provisions contained under Section 208 (1) (k) of the Panchayati Raj Act, there would virtually be no Gram Panchayat of Village Haddon Bet as the village is all located and situated on the Gram Panchayat land. To take care of this peculiar situation, which was not only faced by the villagers of Haddon Bet but other similarly placed villagers, a Policy/Scheme dated 14.08.2008 was framed by the Government. As per the said Policy/Scheme, ownership rights were to be conferred upon the Scheduled Castes and Scheduled Tribes including the Bazigar community to

come out of the statutory bar and to give the villagers an opportunity to participate in the democratic process. The said Policy was given effect to and in pursuance thereto, the Gram Panchayat had passed a resolution dated 01.10.2008 (Ex. R-6) detailing therein the landless persons belonging to the Scheduled Caste and Scheduled Tribes and were eligible as per the Policy for the issuance of the ownership certificate. The process was taken to the logical end and it was ultimately for the Deputy Commissioner to take a final decision thereon as all the formalities were completed in the year 2011. Despite that, the competent authority has not issued the requisite certificate, which has resulted in a situation where not only the appellant but the other villagers also are treated as illegal occupants of the Gram Panchayat land.

6. Counsel, accordingly, contends that the appellant cannot be said to be in illegal possession of the land of the Gram Panchayat as he fulfills all the requirements of the Scheme which stands verified, established and approved by the competent authorities under the said Scheme and merely because the competent authority has not issued the ownership certificate would not disentitle the appellant to the benefit of the same as it would be a mere formality. He further contends that if the position, as stands, is taken into consideration, then there would not be any Gram Panchayat in the Village Haddon Bet. This would have the effect that virtually the village would be deprived of a Gram Panchayat and the villagers being denied of their democratic right of local self governance. He, on this basis, contends that the impugned order passed by the Sub-Divisional Magistrate-cum-Election Tribunal cannot sustain and deserves to be set aside.

7. On the other hand, learned counsel for respondent No. 2 vehemently contends that the order, as has been passed by the Tribunal being in accordance with law, does not call for any interference as the mandate of Section 208 (1) (k) of the Panchayati Raj Act which deals with disqualification of the membership and lays down that a person, who is in an authorized occupation of the property belonging to any local authority, shall be disqualified for any post under the 1994 Act. He asserts that as per the demarcation report dated 19.07.2006 (Ex. P-1), the name of the appellant finds mention at Sr. No. 44 and that of respondent No. 2 at Sr. No. 9. Since the appellant as also respondent No. 2 are not eligible to hold the post under the 1994 Act, the order cannot be said to be bad. Further, he contends that the requirements, which are mandated as per the Policy/Scheme framed by the Government of Punjab, have not been fulfilled which would confer the right of ownership upon the appellant. Unless the ownership right is conferred upon the appellant, it cannot be said that he is not in illegal possession of the Gram Panchayat land. He asserts this for the reason that neither any allotment letter has been placed on record nor has a certificate been issued by the Block Development and Panchayat Officer as per Condition No. 8 of para-5 of the Policy. His further submission is that there is a categoric admission on the part of the appellant that he is residing in the house constructed on the Gram Panchayat land. Once there is no denial to the said effect, the findings, as recorded by the Tribunal, cannot be faulted with. He, thus, prays for dismissal of the appeal by upholding the order passed by the Tribunal in the election petition preferred by the respondent No. 2.

8. I have considered the submissions made by the learned counsel for the parties and with their able assistance, have gone through the impugned order, the pleadings and the records of the Tribunal.

9. The facts, as have been culled out by the counsel for the appellant and the respondent No. 2, are not in dispute. The ground, on which the election petition was filed by respondent No. 2 which has been accepted, is that the appellant, who has polled 186 votes which is 8 votes more than respondent No. 2 who polled 178 votes and, thus, was declared the Sarpanch of the Haddon Bet Village is in illegal possession of the Gram Panchayat land. The fate of the election of the appellant depends upon the fact as to whether he could be said to be in illegal possession of the Gram Panchayat land in the light of the Policy/Scheme of the Government of Punjab dated 14.08.2008, which is regarding conferring right of ownership to the families of the Scheduled Caste and Scheduled Tribes, which includes *Bazigar* community as well, who had constructed their houses on the Shamlat Gram Panchayat land on or before 15.08.2008 on the earmarked land by the Authorities.

10. It is not in dispute that the appellant as also respondent No. 2 are similarly placed as both of them are residing in the houses built by them on the Gram Panchayat land in the village. It is also not in dispute and has rather been admitted by respondent No. 2 in the cross-examination that the appellant is landless and belongs to the *Bazigar* community, which is declared as a Scheduled Caste and that the post of Sarpanch was reserved for the Scheduled Caste category. Dispute is also not there that apart from the land, on which the appellant has constructed his house, there is no other Gram Panchayat land, which is in his possession which he got in

rehabilitation in the year 1988 when his house which was on the bank of the river was washed in flash floods and the villagers along with appellant were evacuated to higher ground/land owned by the Gram Panchayat. Each family was given 4-5 Marlas of land to construct their house and subsequently water and electricity connection was granted to them through Government funds.

11. Section 208 (1) (k) of the Panchayati Raj Act rendered all such villagers ineligible to contest the elections of the Gram Panchayat as they were in illegal possession of Gram Panchayat land resulting in depriving them of their right to contest elections to the Gram Panchayat and thus, to be elected as Members/Sarpanches of the Gram Panchayat depriving them of their democratic right of participation in local governance. This position existed in large number of villages where the under privileged class of scheduled castes and scheduled tribes, who were landless, were rehabilitated on Gram Panchayat land by giving them small areas to build their small houses as shelter, but would not be a part of the Gram Panchayat as a Panch or a Sarpanch. Under Rule 137-A of the Punjab Village Common Lands (Regulation) Rules, 1964 framed under Punjab Village Common Lands (Regulation) Act, 1961, vacant land from the Gram Panchayat area could be given free of cost to the landless poor people living in the Gram Panchayat area for construction of their residential houses on it with the permission of the Government.

12. With this in the foreground, a policy was framed by the Government of Punjab. The Secretary, Punjab Government, Rural Development and Panchayat Department, Chandigarh vide Letter No. 15/15/2008/L.D.1/Policy/32152-71 dated 14.08.2008 floated a Scheme

regarding giving right of ownership to the families of Scheduled Caste and Scheduled Tribes of the Shamlat land of the Gram Panchayat, on which they had constructed their houses on or before 15.08.2008. The said Policy Decision was relied upon by the appellant in his written statement for claiming ownership over the land which was in his possession and the letter was exhibited. It was specifically mentioned in the said Policy/Scheme that the Scheduled Castes and Scheduled Tribes, which included *Bazigar* community, are very poor people and have made their residential houses on the vacant Shamlat land of the Gram Panchayat. As per the Scheme, a person will be entitled to the allotment and the ownership certificate under the Scheme provided he had constructed a residential house on or before 15.08.2008 on the Shamlat land of the Gram Sabha and is a registered voter of the said Sabha Area apart from he being a Scheduled Caste or Scheduled Tribe Category. Further, he should be landless worker and above the age of 45 years.

13. The process for selection of the recipients was also spelt out therein that the Gram Sabha in a general meeting would select recipients from amongst the residents of the village, who belong to the Scheduled Caste and Scheduled Tribes including the *Bazigars*, who fulfil the requirement of entitlement under the Scheme. In case the Gram Panchayat wanted to give free land to the landless families to construct their houses, it could do so by passing a resolution to the said effect. With an intention to expedite the decision, powers were conferred on the Deputy Commissioner of the District concerned, for which a proper procedure, entitlement, selection of the recipients and the conditions for implementation of the Scheme were given. Para-4 deals with the conditions, which would be

imposed on the allottees i.e. the recipients under the Scheme. These conditions were that they cannot further sell the land to anyone nor can they give the land on mortgage except for taking loan for construction of the house. Para-5 deals with the process to be followed by the Deputy Commissioner at the time of passing of the order conferring the right of ownership under the Scheme. First step is the verification of the correctness of the resolution of the Gram Sabha along with the Jamabandi of the land so that it is free from all incumbrances to avoid future dispute. The site plan of the land must be appended and shall also ensure that only eligible and deserving persons receive the benefit of the Scheme. He should ensure that the cremation ground or public toilets or any other religious place is not given out under this Scheme to any recipient. After the allotment is confirmed, the Block Development and Panchayat Officer will issue a certificate to the recipient.

14. In consonance with and in pursuance to this Scheme/Policy, the Gram Panchayat passed a resolution dated 01.10.2008 (Ex. R-6) giving details of the landless persons belonging to the Scheduled Caste and Scheduled Tribes and the *Bazigar* community. The process continued and thereafter, the Block Development and Panchayat Officer, Balachour addressed a letter to the Tehsildar, Balachour on 30.05.2011 (Ex. R-7) to verify as to whether the beneficiaries mentioned in the resolution of the Gram Panchayat, on which they had constructed their houses as per the guidelines passed by the Government are eligible to confer them the ownership rights. The report was to be submitted accordingly. The case was down-marked and the Patwari of the village submitted his report on 05.07.2011 confirming the resolution of the Gram Panchayat and thereafter,

the Block Development and Panchayat Officer, Balachour forwarded it further to the Deputy Commissioner, Nawan Shahar. This establishes the entitlement of the appellant for allotment and issuance of the ownership certificate to the appellant of the land in his possession.

15. A perusal of the pleadings and the evidence, which have been brought on record, indicates that all the needful steps have been taken by the competent authorities up to the level of the Block Development and Panchayat Officer with regard to the checking and verification of the result of the Gram Panchayat and in their reports, the recommendations of the Gram Panchayat have been found to be in order and the name of the appellant exists at Sr. No. 44 in Ex. R-8 at page 203 of the record and the name of respondent No. 2 exists at Sr. No. 9 at page 197. This clearly shows that the appellant is eligible and fulfills all the requirements as per the Policy/Scheme framed by the Government of Punjab dated 14.08.2008 and it is at the final stage where the Deputy Commissioner has to pass a formal order of allotment to be followed by the issuance of a certificate by the Block Development and Panchayat Officer.

16. At page 227 of the records of the Tribunal, a report has been produced on record dated 01.07.2014, according to which Village Haddon Bet is constructed on the Gram Panchayat land. If that be so, then the village, as it stands, would have no Gram Panchayat as none of the residents of the village would be eligible to contest the elections as per Section 208 (1) (k) of the Panchayati Raj Act. The very purpose and intent of the Policy/Scheme dated 14.08.2008 was to enable the Scheduled Castes and Scheduled Tribes, which included the *Bazigar* community, to be participants in the democratic process of the local bodies so that they could,

where they form a substantial population, be a part of the process of self governance as provided for under the Constitution of our country. Because of the in-action and procedural delays at the hands of the Government officials/competent authority, the village, at large, cannot be denied the benefits of the Policy/Scheme. The residents of the village, who belong to the under-privileged class, cannot be punished because of the lethargic attitude of the authorities, on whom they are fully dependent for release of the certificate as all the formalities were completed in the year 2011.

17. In the light of the peculiar facts and circumstances of the present case, this Court is of the considered view that the appellant cannot be said to be in illegal possession of the Gram Panchayat land especially when nothing has been brought on record which would indicate that the appellant is not eligible for the benefit of the Policy/Scheme dated 14.08.2008 framed by the Government of Punjab which has been implemented. The competent authorities because of their lack luster and casual approach have not given full effect to the aforesaid Policy/Scheme. The Policy/Scheme dated 14.08.2008 cannot be frustrated because of the officials as the intent and purpose was to give the downtrodden their democratic constitutional right i.e. due representation in the Gram Panchayat. It may be added here that even respondent No. 2 is having his house on the Gram Panchayat land and is similarly placed as the appellant. Going by the Resolution of the Gram Panchayat dated 01.10.2008 (Ex. R-6) giving details of the eligible Scheduled Caste and Bazigar community would render the village without any Gram Panchayat at all, which is contrary to the spirit of the Policy/Scheme dated 14.08.2008.

18. Keeping in view the above observations of this Court, it is held

that the appellant and other similarly placed villagers, who have been found to be eligible for issuance of the certificate of ownership, are not in illegal possession of the Gram Panchayat land. For no fault of theirs, they cannot be penalized and, therefore, the process and formalities having been completed in the year 2011, the competent authority should have issued the ownership certificates to not only the appellant but other similarly situated persons, who have been found eligible as per the Policy/Scheme dated 14.08.2008 for issuance of the certificate of ownership. Let the competent authority issue the ownership certificates to all eligible persons including the appellant and respondent No. 2 within a period of six weeks' from today.

19. In view of the above, the findings, as recorded by the Sub-Divisional Magistrate-cum-Election Tribunal, Nawan Shahar in the impugned order dated 09-11-2015 is set aside and the election petition, as preferred by respondent No. 2-Arjun Dass, stands dismissed. Election of the appellant as Sarpanch of Village Haddon Bet, Tehsil Balachaur, District Shaheed Bhagat Singh Nagar, held on 03.07.2013 is hereby upheld.

The appeal stands allowed.

C.M. Nos. 25277-CII, 25278-CII & 26737-CII of 2015 & 3130-CII of 2016

In the light of the above order, C.M. No. 25277-CII of 2015 filed for exemption from filing the certified copies of Annexures A-1 to A-13 and for placing on record true typed copy of Annexures A-1 to A-5 and A-9 to A-13 and photocopy of Annexure A-6 to A-8, C.M. No. 25278-CII of 2015 filed for staying the operation of order dated 09.11.2015, C.M. No. 26737-CII of 2015 filed under Order 41 Rule 27 read with Section 151 CPC preferred by the applicant/appellant and C.M. No. 3130-CII of 2016 for

placing on record the reply to the application for additional evidence by the non-applicant/respondent No. 2, have been rendered infructuous. Disposed of as such.

Copy of this order be forthwith sent to the Deputy Commissioner, Shaheed Bhagat Singh Nagar for information and compliance. The Deputy Commissioner shall submit his compliance report with the Registrar (Judicial) of this Court on or before 06.12.2016.

(AUGUSTINE GEORGE MASIH)
JUDGE

October 6, 2016
pj

Whether speaking/reasoned: Yes
Whether Reportable: Yes