

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.4457 of 2017

Date of Decision: 11.07.2017

Salochana @ Silochna

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Shashi Bharat Bhushan, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. The principal prayer in this petition filed under Article 227 of the Constitution of India is for quashing the impugned orders dated February 22, 2017 passed by the Additional Civil Judge (Senior Division), Fatehabad in case RTD 16-CS dated September 29, 2016 titled Solochana @ Silochna v. State of Haryana and another. By the impugned order the trial Court has allowed the application filed by the 3rd respondent – Ravina w/o Ved Parkash instituted under Order 1 Rule 10 CPC. The second prayer is that Court may pass any other order or direction which the Court deem fit and proper in the peculiar facts and circumstances of the case in favour of the petitioner.

2. The brief facts as appear from the petition are that the petitioner was elected as a Sarpanch of Gram Panchayat Daiyer, District Fatehabad. She had submitted her middle class certificate with her nomination papers for contesting the panchayat elections.

3. After she was elected as Sarpanch she was issued a show cause

notice vide letter dated September 22, 2016 under the provisions of Section 51 (3) (c) read with Section 175 of the Haryana Panchayati Raj Act, 1994 ("1994 Act"). The petitioner claims that the show cause notice has been issued on the basis of a fake inquiry report of the District Development and Panchayat Officer, Fatehabad.

4. Aggrieved by the show cause notice, she directly approached the civil court by filing the civil suit from where this revision arises seeking declaration and permanent injunction to the effect that the petitioner is an elected Sarpanch of the Gram Panchayat and the show cause notice is legally bad. She has not responded to the show cause notice by filing objections but has approached civil court by way of the suit.

5. On asking of the learned counsel, the Court is informed that the petitioner has secured a temporary injunction against the show cause notice under Order 39 Rules 1 & 2 CPC. Leaving aside for a moment the impugned order passed under Order 1 Rule 10 CPC impleading 3rd respondent herein as a defendant in the suit the question arising is how the suit itself was maintainable when a clear remedy is provided under Section 51 (5) by a person aggrieved by an order passed under Section 51 (3) © of the Act. Section 51 of the 1994 Act deals with suspension and removal of a Sarpanch or Panch. The Director or the Deputy Commissioner concerned are empowered to suspend any Sarpanch or Panch for reasons enumerated in the Section which includes sub-Section (c) of sub-Section 3 of Section 51. Sub-section (3) of Section 51 provides that the Director or the Deputy Commissioner concerned may, after such enquiry as he may deem fit and after giving opportunity of being heard to a Sarpanch or a Panch, as the case

may be, ask him to show cause against the action proposed to be taken against him, and by order remove him from his office. Of the five grounds which are available under sub-Section 3 of Section 51 the show cause notice has been issued under Section 51 (3) (c) in cases if the Sarpanch incurs any of the disqualifications mentioned in Section 175 of the Act after his election as member of the Gram Panchayat. Section 175 deals with disqualification and enumerates different situations where person can be disqualified. Since the show cause notice stands issued but cannot be given effect to because of the temporary injunction, the petitioner not having resorted to her first available statutory remedy of objecting to the show cause notice and furnishing reasons showing cause that she has not incurred any of the disqualifications under Section 175 I am inclined to think that the suit was not maintainable. After the Director or the Deputy Commissioner has passed an order in proceedings under Section 51 an appeal lies to the Government for which limitation period of 30 days is prescribed in sub-Section 5 of Section 51 from the date of communication of the order. The right to appeal is statutory. The order could not be passed because of the interim stay granted by the Civil Court in the application under Order 39 Rules 1 & 2 CPC. Prima facie the suit was brought at a premature stage by circumventing the procedure under the 1994 Act. Instead of explaining her case before the authorities under the 1994 Act she invoked Section 9 CPC by instituting the suit in avoidance of statutory remedies available to her in law. Ordinarily, a suit would not lie against the show cause notice nor would the High Court exercise its discretionary writ jurisdiction when a matter is pending before a statutory authority competent to hear the

objections and pass a final order. The petitioner could have convinced the authorities that the show cause notice was legally bad.

6. However, for the Civil Court to interfere mechanically in the suit and stay the show cause notice is not proper exercise of jurisdiction at the stage when the State was enjoined from proceeding against the plaintiff/petitioner. Had a writ petition being filed on the same cause of action in all probability the petition would have been dismissed as premature and the petitioner returned to his statutory remedy of filing objections and to be heard on them in the passing of the final order by the Director or the Deputy Commissioner concerned. If the Writ Court will be shy of passing the order the Civil Judge should have shown restraint and to have returned the petitioner to defend the show cause notice.

7. The case against the petitioner on facts spelled in the show cause notice was that while filing nomination form for contesting the election she has produced a fake middle school examination certificate bearing academic Session 2001-02 issued by Guru Nanak Academy Ratia whereas the school was recognized by the Haryana School Education Board on April 01, 2006 and the school was registered with the Education Department, Haryana on April 01, 2006 and as such the certificate the authorities thought should not be held to be genuine. This is the backdrop in which the show cause notice has been passed. The school certificate produced by the plaintiff finds no mention of the Education Board which issued the certificate. Even the date of issuing the certificate is not mentioned. The impleaded defendant in her application under Order 1 Rule 10 CPC has said all this. From the information received by her she points

out that the student who passed the 5th class in the year 1996-97 as mentioned in para.5 of the plaint cannot be deemed to have passed the middle examination in the Session 2007-08.

8. It is not for this Court to form any opinion on the merits of the certificate since it would be subject matter of proceedings under the show cause notice where the petitioner would have ample opportunity to explain her case. This would be a matter of evidence which she can produce before the authorities in reply to the show cause notice.

9. However, the jurisdiction of the Civil Court cannot be ignited to enter upon the merits without the statutory authority examining the issue in the first instance and taking a decision. As the school certificate is the lis to be determined then I do not think that the 3rd respondent lacked locus standi to pray for impleadment under Order 1 Rule 10 CPC even though she was the unsuccessful party who lost the election to the petitioner.

10. Since the order I propose to pass is such it will not be necessary to review the order dated February 22, 2017 passed by the Additional Civil Judge (Senior Division), Fatehabad which is rather elaborate for an application under Order 1 Rule 10 CPC as only the Court has to consider *prima facie* whether the presence of the applicant is necessary to decide the controversy in issue. Therefore, no opinion is expressed on the impugned order since I propose to dismiss the suit itself as premature and brought without first resorting to the primary remedies available under the statute.

11. Accordingly in exercise of powers under Section 24 CPC, I notionally transfer the suit to my dias and dismiss the suit as premature and vacate the interim order and remit the plaintiff to the stage of filing

objections to the show cause notice.

12. Continuing with a stay order in the facts and circumstances of the case would be against public interest and public policy because the petitioner would continue to be Sarpanch on the strength of a temporary injunction. The petitioner should not expect that the temporary injunction should continue till the next elections and expect this Court at this stage to consider whether the trial Court was right in passing the impugned order allowing the application. In exercise of powers under Article 227 of the Constitution of India intervention of the kind resorted to in this order would to my mind be just and appropriate. Against the final order passed under Section 51 of the 1994 Act the plaintiff would have remedy of appeal and thereafter she may take recourse to her remedies available in law. It is premature to think what the result of the show cause notice would be and this is factor which has prompted me to pass this order apart from the other reasons recorded above. The suit is dismissed and accordingly the application under Order 1 Rule 10 CPC must also fall even assuming that the show cause notice is void, even then, statutory remedy and competence to decide the show cause notice by the statutory authority cannot be prevented by an injunction of a court of law.

13. Notwithstanding the above, it is made clear that nothing said in this order or by the event of dismissal of the suit itself by transfer to this Court without calling for the file, will influence the statutory authorities in the proceedings they may take under the show cause notice as the present order does not express any opinion on the merits of the case or impinges on the defence of the plaintiff she may like to set up in her response in writing

to the show cause notice. I have no doubt that the competent authority will deal with the show cause notice with fairness and justice as if the suit was never filed. The time fixed in the show cause notice to file reply stands extended till the reply is received from the plaintiff and the limitation will not be treated to run against her since she was pursuing remedy she was adviced, though wrongly. Her case will be decided on merits by the authority strictly in accordance with law.

11.07.2017
manju

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned *Yes*

Whether reportable *Yes*