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

CWP-16295-2014

Date of decision : 13.02.2017

Gurjeet Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.P.S. Mann, Advocate
for the petitioners.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

AMIT RAWAL, J. (ORAL)

The petitioners, being the legal heirs of late Shri Balwinder Singh, Ex-Sarpanch of Gram Panchayat Bhangala, are aggrieved of the letter/inquiry report dated 24.12.2010 (Annexure P-7) of the respondent No.6-Block Development and Panchayat Officer, Valtoha, whereby an amount of ₹ 6,82,074/- has been assessed against the petitioners and order dated 21.01.2014 (Annexure P-10), whereby the amount of recovery, aforementioned, has been enhanced to ₹ 10,20,523/- and also the order dated 20.06.2014 (Annexure P-12) passed by the Deputy Commissioner/respondent No.3, whereby the aforementioned amount has been ordered to be recovered from the petitioners as arrears of land revenue.

Mr. N.P.S. Mann, learned counsel appearing on behalf of the petitioners submits that the aforementioned orders have been passed without making any assessment and giving any opportunity of hearing.

He further submits that the father of the petitioners, namely, Balwinder Singh, had contested the elections for the post of Sarpanch of Gram Panchayat Bhangala, Block Valtola, Tehsil Khemkaran, District Tarn Tarn and he was elected for the tenure 2003-2008. Thereafter, on the basis of the complaint, an inquiry was initiated, on 04.02.2010, by the then Cabinet Minister of Rural Development and Panchayat Department, Punjab, Chandigarh and the said inquiry was conducted by the Divisional Deputy Director, Jalandhar/respondent No.3 which ultimately found that a sum of ₹ 3,41,037/- was recoverable from Balwinder Singh, Ex Sarpanch and a sum of ₹ 3,41,037/- from Paramjit Singh, VDO on the premise that Gram Panchayat Bhangla had received a sum of ₹ 16,19,074/- for development works and out of which expenditure of ₹ 9,37,000/- was incurred and remaining amount of ₹ 6,82,074/- was allegedly misappropriated. Thereafter, vide order dated 21.01.2014 (Annexure P-10) passed by the BDPO, the amount of recovery, aforementioned, has been enhanced to ₹ 10,20,523/-.

He further submits that Balwinder Singh is stated to be died on 07.10.2009 and his tenure as Sarpanch was expired in the month of May 2008. He has drawn the attention of this Court to the provisions of sub-Section 4 of Section 216 of the Punjab Panchayati Raj Act, 1994, to contend that proceedings for recovery after expiry of four years can not be proceeded against the Sarpanch, much less, two years from the date he ceased to hold the office. All these factors have not been taken care of, thus, the order under challenge is wholly erroneous, much less, perverse. In support of his contentions, he relies upon the *ratio decidendi* culled out by

the Division Bench of this Court in “Gurdial Singh and others V/s State of Punjab and others” 2013 (1) RCR (Civil) 139 to contend that as per the provisions of law referred above, inquiry could not have been initiated, thus, urges this Court for allowing of the present writ petition.

Mr. Yatinder Sharma, Addl. A.G., Punjab submits that the inquiry report is sacrosanct. The recommendation is for elections and there cannot be a estoppel of taking criminal action under the provisions of Indian Penal Code. There is no limitation as the purported offence involves the punishment of more than three year, thus, the inquiry cannot be faulted.

I have heard the learned counsel for the parties and appraised the paper book. In order to appreciate the controversy, noticed above, it would be apt to reproduce the provisions of sub-Section 4 of Section 216 of the Act which reads thus:-

“216. Liability of members of Panchayat.

(4) Notwithstanding anything contained in this section no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of four years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be a member, whichever is later.”

On going through the provisions aforementioned, it is crystal clear that no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of four years from the occurrence of the loss, waste or misapplication or after the expiry of two years from ceasing to be a member, whichever is later. Concededly the petitioner remained as Sarpanch for the period 2003-2008 and the inquiry report/letter is dated 24.12.2010 (Annexure P-7) and same, in my view, is

not sustainable in view of the fact that already the Division Bench of this Court had an occasion to ponder upon the jurisdiction of the inquiry, much less, initiation after elapse of more than four years and two years, as indicated above. For the sake of brevity, the relevant paragraphs of the judgment cited supra reads thus:-

"5. After hearing the learned counsel for the parties and going through the impugned order, we do not find any substance in the submissions made by the learned counsel.

*6. Undisputedly, respondent No.5 ceased to be the Sarpanch of the Gram Panchayat from July, 2003. The allegations of mismanagement and misappropriation of the Panchayat funds pertained to her tenure as Sarpanch from 1998 to 2003. Though in the written statement filed by the official respondents it was stated that against respondent No.5 a complaint was filed in the year 2003 before the Deputy Commissioner and on the complaint notice was issued by the Block Development and Panchayat Officer, Khanna to respondent No.5 to appear before him on 27.9.2004 for enquiry on the said complaint, yet thereafter nothing was done and finally in the year 2010 the fresh notice dated 8.3.2010 (Annexure P4) was issued to respondent No.5 to appear and explain the position. In these facts, it cannot be held that the enquiry initiated against respondent No.5 in the year 2003 was pending against her. The fresh notice dated 8.3.2010 was issued in pursuance of the fresh complaint made by the appellants against respondent No.5 in the year 2006. Therefore, the learned Single Judge has rightly come to the conclusion that no enquiry could have been initiated against respondent No.5 in pursuance of the impugned notice dated 8.3.2010 (Annexure P4) after a period of seven years from the expiry of her term of Sarpanch of the Gram Panchayat. While placing reliance upon **Ram Kanwar vs. The State of Haryana and others, (2011-1) 161 P.L.R. 359**, wherein it has been held*

that no inquiry can be initiated against the petitioner after 5 two years of expiry of his term as a Sarpanch, the learned Single Judge held that the notice dated 8.3.2010 (Annexure P4) could not legally be maintained and thus allowed the writ petition and quashed the said notice and all other enquiry proceedings arising therefrom. We do not find any illegality in the said order passed by the learned Single Judge. Hence, the appeal is dismissed.”

For the foregoing reasons, the impugned orders are not sustainable in the eyes of law and the same are hereby set aside. Resultantly, the present writ petition stands allowed.

13.02.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No