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

CWP No.2986 of 2016

Date of decision : 27.03.2017

Gurbaksh Kaur

... Petitioner(s)

Versus

Joint Development Commissioner, Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Bains, Advocate
for the petitioner.

Mr. Manoj Bajaj, Addl. A.G., Punjab.

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned order dated 05.05.2015 (Annexure P-6) and order dated 17.06.2015 (Annexure P-7), whereby he has been suspended from the post of Sarpanch on the ground that against the unauthorized occupants, no action has been initiated.

Mr. R.S. Bains, learned counsel appearing on behalf of the petitioner submits that a show cause notice dated 14.10.2014 for not having taken any action was served upon the petitioner, whereas the petitioner had already taken an action by filing a petition under Sections 4, 5 & 7 of the Punjab Public Premises Act, for eviction of the unauthorized occupants on 09.10.2014. A preliminary inquiry dated 18.02.2015 does not notice this fact, resulting into, suspension order dated 17.06.2015 (Annexure P-7). In this regard, he has drawn the attention of this Court to the provisions of Section 20 of the Punjab Panchayati Raj Act, 1994 (for short 'the 1994 Act')

and as well as the Section 208 of the 1994 Act to contend that the conditions prescribed for removal of the Sarpanch had to be adhered/followed *in strict senso* and in support of his contentions, also relies upon the *ratio decidendi* culled out by this Court rendered in **“Kaki Devi Sarpanch V/s State of Punjab and others” 2010 (4) RCR (Civil) 317,** thus, urges this Court for setting aside the impugned orders under challenge.

On the contrary, Mr. Manoj Bajaj, Addl. A.G., Punjab has referred to the complaint dated 12.08.2014 (Annexure R-1/T) made by the Villagers with regard to the encroachment, the notice dated 13.08.2014 (Annexure R-2/T) issued by the Block Development and Panchayat Officer to the petitioner, statement (Annexure R-3/T), complaint dated 22.08.2014 (Annexure R-4/T) and as well as the inquiry dated 11.08.2015 (Annexure R-5/T) held in pursuance to the suspension order, to contend that the basis/foundation of suspension had been found to be proved in the regular inquiry, thus, urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book.

The provisions of Sub-section 1 (a) of Section 20 of the 1994 Act in conjunction with sub-Section 4, enable the Director, Deputy Commissioner or the District Development and Panchayat Officer at any time, during the course of the inquiry to suspend the Sarpanch for any of reason for which he can be removed. As per the provisions of Section 208 of the 1994 Act, the Sarpanch can be removed for any of the disqualifications. For the sake of brevity, the provisions of Section 208 of the 1994 Act read as under:-

208. Disqualification for Membership. (1) A person shall be

disqualified for being chosen as and for being a member of a Panchayat if. –

(a) he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State.

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) has been found guilty of any corrupt practice in any election of a Gram Panchayat, Panchayat Samiti or Zila Parishad;

(c) has been convicted of any offence involving moral turpitude or an offence implying of any defect of a Sarpanch or Panch of Gram Panchayat or member of a Panchayat Samiti or Zila Parishad, unless a period of five years has elapsed since his conviction, or

(d) has been convicted of an election offence, or

(e) has been ordered to give security for good behavior under section 110 of the Code of Criminal Procedure, 1973 , or

(f) has been notified as disqualified for appointment as public servant except on medical grounds ; or

(g) is a whole-time salaried employee of any local authority, Statutory, Corporation or Board or a Co-operative Society, registered under the Punjab Co-operative Societies Act, 1961, or of the State Government or the Central Government ; or

(h) is registered as a habitual offenders (Control and Reforms) Act, 1952 or any other law for the time being in force; or

(i) has not paid the arrears of tax imposed by a Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be; or

- (j) is a tenant or lessee or contractor or share-holder in any property of the Gram Panchayat, Panchayat Samiti and Zila Parishad, or*
- (k) is in unauthorised occupation of property belonging to any local authority; or*
- (l) being a Sarpanch has cash in hand exceeding the amount, permitted under the rules made-under this Act;*
- (m) is member of either House of Parliament or of the Legislature of the Punjab State:*

Provided that a member of either House of the Parliament or Legislature of Punjab State may be elected as a Sarpanch or member of Gram Panchayat, Panchayat Samiti or Zila Parishad if, along with his nomination paper gives undertaking to the effect that he shall resign the membership of either House of Parliament or of the Legislature of the Punjab State, as the case may be, and so resigns before taking the oath or making affirmation for taking over the office of Sarpanch of a Gram Panchayat or a member of any Gram Panchayat, the Panchayat Samiti and Zila Parishad;

- (n) has been convicted of an offence under the protection of the Civil Rights Act, 1955 within a period of five years immediately preceding the last date of the filing of the nomination papers; or*
- (o) being a Sarpanch or Panch does not attach certificate with his nomination papers to the effect that he has handed over to the Block Development and Panchayat Officer complete charge of the record of the Gram Panchayat and of the cash, if any, with him."*

However, the aforementioned disqualifications for the purpose of removal are not envisaged in Section 208 of the 1994 Act, therefore, in my view, the petitioner could not have been suspended, much less, even the

factum of filing of the petition was on 09.10.2014 had been disclosed, yet in the preliminary enquiry dated 18.02.2015, the aforementioned fact has not been noticed. In my view, the suspension order was without jurisdiction. Even final inquiry (Annexure R-5) would pale into insignificance in view of the fact that it cannot be a ground for removal.

The aforementioned finding of mine is derived from the findings rendered in paragraph 8 to 10 of the judgment cited supra which reads as under:-

"8. On being asked, learned Additional Advocate General is not able to point out any provision under the Act which empowers the State or the Director Rural Development and Panchayat, Punjab to disqualify a person to be a member on the ground that no action was taken by him against the encroachers for some time.

9. Mr. G. S. Sidhu, IAS, Director, Rural Development and Panchayats, Punjab, Chandigarh has filed his personal affidavit and in paragraph No.2 he has stated as under:-

"2. That the petitioner was suspended from the post of Sarpanch vide order dated 17.2.2009 (Annexure P-3) as she connived with some residents of the village and by that she facilitated them to encroach the property belonging to Gram Panchayat. These allegations were duly proved by the report submitted by the respondent no.3. It is however submitted that it was in advertently mentioned in the suspension order that the petitioner is herself in the illegal possession of Panchayat land."

10. Even from the affidavit of Mr. G.S. Sidhu, IAS I am unable to find out that petitioner was ever found in illegal possession of any public land. That being so, provision of Section 208(1)(k) of the Act is not attracted. Hence, there is no ground for removal against the petitioner under Section 20(1)(a) of the

Act. Consequently, petitioner can not be placed under suspension by invoking Sub-section (4) of Section 20 of the Act."

Keeping in view the aforementioned facts, the impugned order dated 05.05.2015 (Annexure P-6) and order dated 17.06.2015 (Annexure P-7) are not sustainable in the eyes of law and accordingly, the same are hereby set aside. The inquiry dated 11.08.2015 (Annexure R-5) is also quashed/set aside by taking the aid of the prayer of any other order which this Court may deem fit appropriate i.e. to prevent the miscarriage of justice.

With the aforesaid observations, the present writ petition stands allowed.

27.03.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes**

Whether Reportable **No**