

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

CWP No.24697 of 2017
Date of decision: 01.11.2017

Ashok Kumar

... Petitioner

versus

State of Haryana & ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Surender Saini, Advocate
for the petitioner.

Rakesh Kumar Jain, J.(Oral)

This petition is filed, seeking a direction to respondents No.1 & 2 to remove respondent No.3 from the post of Sarpanch on the ground that she has been found in illegal possession over the land of Gram Panchayat, as per orders dated 02.09.2016 and 16.09.2016 passed by Assistant Collector, 1st Grade, Sonapat.

The election of Gram Panchayat, Bhatgaon Malyan, Tehsil and District Sonapat was notified on 04.09.2014. The elections were held on 10.01.2015 in which respondent No.3 – Saroj wife of Hari Om was elected. It is alleged that two cases bearing No.66/SDO and 67/SDO dated 19.08.2014 titled as Gram Panchayat Bhatgaon Malian vs. Samundar and others and Gram Panchayat Bhatgaon Malyan vs. Ramesh and others were filed before Assistant Collector, 1st Grade, Sonapat under Section 7 of the Punjab Village Common Land (Regulation) Act, 1961 with the allegations that respondents therein have illegally encroached upon the land of the Gram Panchayat. The said applications were allowed. During the pendency

of the applications, Deshan s/o Chandgi died and his legal heirs including Saroj w/o Hari Om, daughter-in-law of Deshan were impleaded. It is further submitted that the orders dated 02.09.2016 and 16.09.2016 (Annexures P-1 & P-2) were passed holding unauthorised possession and the said orders have attained finality as these were not challenged.

The petitioner has allegedly made a complaint against respondent No.3 that since she was a party in the application bearing No.66/SDO in which the Assistant Collector, 1st Grade, Sonapat has held them in unauthorised occupation upon Rasta/Phirni, therefore, she deserves to be disqualified in terms of Section 175(n) of the Haryana Panchayati Raj Act, 1994. It is further submitted that though the petitioner has made the representations but so far respondents have not decided anyone of the representations, therefore, he has approached this Court for the issuance of a direction.

Learned counsel for the petitioner has very fairly admitted that Saroj w/o Hari Om is the daughter-in-law of Deshan. The allegations are made by Gram Panchayat against Deshan for having encroached upon the land of Bhatgaon Malyan by raising construction of the house. Respondent No.3 – Saroj came on the scene only because Deshan had expired during the pendency of application. Otherwise, she is not the legal representative of Deshan being the daughter-in-law who would not intermeddle with the estate of Deshan. The daughter-in-law, so far the husband is alive, would not be an heir even in terms of Section 8 of Hindu Succession Act, 1956 because she is neither Class I nor Class II heir. Hari om is a Class I heir of the deceased who would succeed to Deshan after his death. Since respondent No.3 is not to succeed to the property of deceased Deshan,

therefore, she cannot be held legal representative for the purpose of proceedings against for her removal from the post of Sarpanch especially when there is no allegation that she herself has encroached upon the land of Gram Panchayat. Merely, she is sharing mess with her husband would not be sufficient to hold her disqualified after being held guilty for removal from the post of Sarpanch.

Thus, with these observations, the present petition is dismissed.

01.11.2017

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(Rakesh Kumar Jain)
Judge

Whether speaking/non-speaking?

Yes

Whether reportable?

Yes/No