

CWP No.5422 of 2017 (O&M)

Manoj Kumar
#1# 2017.12.19 15:29
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANAAT CHANDIGARH**

**CWP No.5422 of 2017 (O&M)
Date of Order: 15.12.2017**

Jitender Kumar

....Petitioner

Versus

State of Haryana & Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present : Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. C.B. Goel, Advocate for respondent No.6.

RAKESH KUMAR JAIN, J (ORAL)

The petitioner has challenged the election of respondent No.6 to the post of Sarpanch of Gram Panchayat, Babain, Tehsil Shahabad Markanda, District Kurukshetra.

The nomination papers for the election were to be filed between 06.01.2016 to 09.01.2016. The last date for withdrawal of the nomination paper was 13.01.2016. The Election was held on 24.01.2016 in which respondent No.6 and one Sanjiv Kumar secured equal votes. The Returning Officer instead of following the due procedure of draw of lots, held the election by Toss of a coin in which respondent No.6 was succesful and his election was challenged by said Sanjiv Kumar/defeated candidate by way of an election petition, filed under Section 176 of the Haryana Panchayati Raj Act, 1994 (for short "the Act") before the Election Tribunal. The petitioner is the voter of the said Constitutency from where the respondent No.6 had returned. After the election, the petitioner had filed an application to the

Deputy Commissioner, alleging that respondent No.6, at the time of filing nomination papers, had concealed that he was in unauthorized possession of the land of the Panchayat and was not qualified to contest the election in terms of Section 175(n) of the Act.

It is submitted that an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short “1961 Act”) was filed by the Gram Panchayat against respondent No.6 on 02.3.2015. The petitioner had also made an application to the Collector on 24.01.2016 immediately after the election of respondent No.6 that he is in unauthorized possession and was not eligible to contest the election. The Collector remanded the matter to the S.D.O (Civil). It is further submitted that since the complaint filed by the petitioner to the Collector was not making any headway, therefore, the petitioner had chosen to file a writ petition bearing CWP No.8095 of 2016 wherein a direction was issued to the Deputy Commissioner to take a decision on the representation dated 24.1.2016 within one month. Accordingly, the Collector, Kurukshetra sent the case to the SDO (Civil) for inquiry, who submitted report on 26.09.2016, holding that respondent No.6 is in unauthorized possession of the panchayat land and that there is a violation of Rule 71 of the Haryana Panchayati Raj Election Rules, 1994 (“1994 Rules”) that the elections should have been held by draw of lots and not by way of “Toss”. The Collector then referred the matter to the A.D.C who has also given the same report.

The Deputy Commissioner observed in favour of respondent No.6, holding that as per Nishandehi conducted on 13.1.2016, respondent No.6 was not found in unauthorized possession of panchayat land and thus

the allegation made against him was not true. Aggrieved against this order of the Deputy Commissioner, the present petition has been filed.

Learned counsel for respondent No.6 has submitted that the application filed under Section 7 of 1961 Act was ultimately dismissed on 27.2.2017 by the Deputy Commissioner, Kurukshetra. Later on it was found that Parveen Kumar son of Satish Kumar and Suresh Kumar son of Rattan Lal were in fact in possession of that portion of the land of the Gram Panchyat and respondent No.6 was absolved.

Be that as it may, learned counsel for respondent No.6 has brought a fact to the notice of this Court that the election petition filed by aforesaid Sanjiv Kumar/defeated candidate is pending before the Election Tribunal in which evidence has already been over and the same is now fixed for hearing on 19.12.2017.

Since this Court has already observed that the same election cannot be challenged before two Forums as it would entail two conflicting orders, the learned counsel for the petitioner has prayed that a direction may be issued to the Election Tribunal, who is seized of the election petition filed by the defeated candidate, to at least decide the same either on the date fixed or the adjourned date in case the entire trial is already over and the case is now fixed for arguments or pronouncement of the order.

Learned counsel for respondent No.6 has raised no objection to the said prayer.

In these circumstances, present petition is hereby disposed of with a direction to the Election Tribunal, who is seized of the election petition filed by said Sanjiv Kumar against respondent No.6 in respect of

election held on 24.01.2016, to decide the same either on the date fixed or on the adjourned date. It is needless to mention that the Election Tribunal shall not be influenced by any of the observations made by this Court in the present case.

At this stage, learned counsel for the petitioner has submitted that the amount of ₹2 lacs deposited by him in terms of order dated 28.3.2017 may be returned.

Registry is directed to return the amount of ₹2 lacs deposited by the petitioner, pursuant to order dated 17.3.2017 only after satisfying with the identity of the petitioner through his counsel.

December 15, 2017
manoj

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No