

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

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CWP No. 15289 of 2018 (O & M)

Date of Decision: 27.9.2018

Amardeep Singh Panch and others

Petitioners

v.

State of Punjab and others

Respondents

**CORAM HON'BLE MR. JUSTICE MAHESH GROVER
 HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present:- Mr. C.S. Bagri, Advocate, for the petitioners
 Mr. Suveer Sheokand, Addl. AG, Punjab
 Mr. Baljinder Singh, Advocate, for the applicants

MAHESH GROVER, J. (Oral) :

CM No. 11765 of 2018 :

Present application has been filed under Order 1 Rule 10 CPC for impleading the applicants as respondents being affected parties.

For the reasons mentioned in the application and also in view of the no objection given by the opposite counsel, the same is allowed. Applicants are impleaded as respondents No.8 to 10. Amended Memo of parties is taken on record.

Main Case :

This is a writ petition filed by the petitioners with a prayer that Order No. 414 dated 2.4.2018 (Annexure P-1), passed by the Electoral Registration Officer, Bassi Pathana, be quashed as also the consequential proceedings arising therefrom and orders dated 25.4.2018, 28.5.2018 and 29.5.2018.

Briefly stated, the petitioners are aggrieved of their exclusion

from voters' list of Village Mandlan Mairan, Tehsil Bassi Pathana, District Fatehgarh Sahib. The petitioners have instead been treated as residents of Rural Tibba Theh, Bassi Pathana and their names included for the said area. On 4.6.2018 when this matter came up for hearing, this Court passed the following order :-

“Learned counsel, inter alia, submits that on an earlier occasion after directions have been issued by the Division Bench on 18.6.2003 (Annexure P-8), the State Election Commission – respondent No.2 had come to the conclusion that the residents of village Mandlan (Mairan) would be allowed to vote in the Panchayat Election. It is accordingly submitted that vide impugned order dated 2.4.2018 (Annexure P-1), petitioners have been excluded from the boundary of Village Mandlan (Mairan) and would come under the Municipal Committee, Bassi Pathana. It is further submitted that vide communication dated 28.5.2018 (Annexure P-3), the houses of the petitioners were deleted from the electoral roll of gram Panchayat, Mandlan (Mairan). It is also submitted that a representation has been made to respondent No.2 thereafter on 30.5.2018 (Annexure P-7) with a request not to grant approval to the said order.

Notice of motion.

At the asking of the Court, Mr. A.S. Gill, Senior DAG, Punjab, who is present in Court, accepts notice on behalf of the respondents. Let adequate number of copies of paper book be supplied to him during the course of the day.

Keeping in view the above, respondent No.2 shall take appropriate action on the said representation before the next date of hearing and submit status report.

Adjourned to 17.7.2018.

In the meantime, the operation of the impugned order dated 2.4.2018 (Annexure P-1) shall remain stayed.”

Respective replies of the respondents have been filed and the

State has brought to our notice that at the time when the writ petition came up for hearing i.e. on 4.6.2018, a Notification dated 30.5.2018 (Annexure R-

3) had already come into existence after overruling objection of the petitioners. It is stated that this has not been challenged by the petitioners. Our attention has also been drawn to Annexure R-5 i.e. report of the Patwari, which we extract here below :-

“It is submitted that the houses have been constructed within the limit of Bassi Pathana, Hadbast No. 103 for preparing the votes of the houses constructed in Khasra Nos. 68//4,5,6/1, 7/1 and Khasra No. 69//1,2,9/1, 9/2 and 203/1 of Tibba Theh, which fall within the limits of M.C. The houses have been constructed in Khasra No. 70//10, 11, 12, which are also fall within the M.C. Limits. As such, houses have been constructed in Khasra No. 49//6/1, 26, 14 and Khasra No. 50//6/1, 6/2 and 71//8/1, 8/2, which are beyond the limit of M.C. Report is submitted for appropriate action.”

Learned counsel for the petitioners has repeatedly referred to the earlier proceedings that concluded in the year 2003 to contend that subsequent variations in the voters' list could not have been done.

Learned counsel for the respondents has then drawn our attention to Annexure P-8, which is the order passed by this Court in an earlier round of litigation in 2003, upon which the petitioners have placed heavy reliance. In fact, this is an innocuous order, where this Court directed the Punjab State Election Commission to decide the communication dated 28.5.2003 within one week, whereafter the Election Commission went through the issue and passed Annexure P-9, directing that certain voters No. 661 to 664, 670, 672, 674 to 685, 688, 702, 712, 714 to 716 require to be deleted. To be true to the record, we also extract the relevant portion of the order of the Election Commission as below :-

“As reported by the Deputy Commissioner, Fatehgarh Sahib vide his letter dated 12.6.2003 that voters No. 661 to 664, 670, 672, 674 to 685, 688, 702, 712, 714 to 716 require to be deleted. This letter was

received in Commission on 12.6.2003 and this latest finding about the genuineness of these votes was approved by the Commission and conveyed to the Deputy Commissioner for implementation. Since this was the finding over riding the earlier findings, therefore, this was to be approved by the Commission, which was done.

It is also decided that since the number of voters in Bassi Pathana Rural, Tibba Theh is less than 200 which is the requirement for forming the new Panchayat they are allowed to vote in the Panchayat Election.”

It is pertinent to mention here that in the earlier round of litigation, the petitioners were claiming voting rights in Village Mandlan Mairan. To our minds, the earlier exercise would be in consequential as over a period of more than a decade the de-limitation probably been necessitated. The writ petition deserves to be dismissed on two counts; firstly, the petitioners have not impugned the Notification dated 30.5.2018 and the final notification dated 25.06.2018 after their objections were dealt with, even though it was to their notice after the reply was filed and secondly, there would be a constitutional bar to challenge the creations of wards. The only remedy the petitioners had was to impugn the process leading to the Notification dated 30.05.2018 and the notification itself but they have done neither. Rather this fact was not disclosed to this Court, when the writ petition was filed. Consequently, we dismiss the present writ petition.

(MAHESH GROVER)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

27.9.2018

Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No