

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 24636 of 2016

Date of Decision: 8.08.2018

Ghanshyam

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Baldev S. Sidhu, Advocate
for the petitioner(s).

Ms. Bhavna Gupta, Deputy Advocate General,
Punjab for respondents No.1 to 5.

Mr. C.L.Premi, Advocate
for respondent No.6.

Shekher Dhawan, J.

Petitioner, who is a resident of village Panjkosi, Block Khuian Sarver, District Fazilka, has filed the present writ petition for quashing of order dated 19.09.2016 (Annexure P1), passed by respondent No.2-Director, Rural Development and Panchayat, Punjab, whereby appeal, filed by him, for quashing a resolution dated 06.02.2015 got passed by respondent No.6-Gram Panchayat Panjkosi has been dismissed. Petitioner also sought quashing of resolution dated 06.02.2015 and 16.09.2016 passed by respondent No.6-Gram Panchayat.

As per petitioner, the Gram Sabha passed a resolution dated 06.02.2015 in violation of the provisions of law and rules applicable to

them, whereby the Gram Sabha passed a resolution to allot 213 plots to persons from the land bearing khasra No. 201 of the Gram Panchayat, which was otherwise kept reserved for *Shamshan Bhumi*. As per revenue record, the said land is *Gair Mumkin Shamshan Bhumi*. The land reserved for common purpose was to be reserved for applying a pro-rata cut on the proprietors so the land reserved for common purposes in the name of Gram Panchayat has been left by the petitioner and other proprietors. Petitioner and residents of the village filed a complaint to the Sub Divisional Magistrate and handed over the list of illegible persons including the list for allotment of 5-5 marlas plots. The said resolution was passed against the policy issued by the Government vide letter dated 17.04.2001.

As per petitioner, the Gram Panchayat has not passed a resolution with a required quorum of the Gram Sabha. The Gram Panchayat called a meeting on 06.09.2016 to fix a date to hold meeting on 13.09.2016 at 10.00 A.M. in the Panchayat Ghar and also passed resolution to send notices to the members and to conduct munadi in the sabha area. The Gram Panchayat assembled for holding a special meeting of Gram Sabha on 13.09.2016, but because of inadequate quorum, the meeting could not be held and the same was to be held on 16.09.2016 at 10.00 A.M. On the said date i.e. 16.09.2016, the Gram Panchayat passed a resolution for allotment of 5-5 marlas of plots to 168 persons out of the land which was kept reserved for *Shamshan Bhumi*.

As per petitioner, Section 23 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as “1994 Act”), provides for calling of meeting by giving seven days clear notice of the ordinary meeting and three days

clear notice of a special meeting. But the meeting has not been held as per due notices and passed resolution to encroach upon the land reserved for cremation/burial ground, which is totally illegal and as such present writ petition before this Court.,

In the reply filed by respondent No.6-Sarpanch, Gram Panchayat Panjkosi, preliminary objection was taken that as per Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “1961 Act”) and Rule 3 of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter referred to as “1964 Rules”), the Gram Panchayat is competent to make use of all its land vested or deemed to have been vested in the Panchayat for the benefit of inhabitants of the village in any manner and for that purpose *shamlat land* could be used. Relevant Rule 13 A of 1964 Rules provides as under:-

“13-A. Giving of land to landless workers – A Panchayat may, with the previous approval of the Government, give land in Shamlat deh, free of cost, to a landless worker residing in the Sabha Area for construction of a house for his residence; Provided that the landless worker to whom such land is given shall not be entitled to sell, exchange or mortgage it except mortgaging it for the purposes of raising loan to construct a house on it.”

In pursuance of the aforesaid Rule, the State Government formulated policy dated 17.04.2001 that the Gram Panchayat identified the eligible persons and passed resolution to that effect and sent the same to the concerned Block Development & Panchayat Officer. Verification was done

by the Block Development & Panchayat Officer.

The District Development & Panchayat Officer placed proposal before the District Level Committee headed by the Deputy Commissioner. *Sanads* were to be issued by the Block Development & Panchayat Officer. To achieve that object, the Gram Panchayat passed a resolution dated 06.05.2015 for allotment of 5-5 marlas plot the landless workers. The petitioner made a complaint dated 12.06.2015 to the Sub Divisional Officer, Abohar. The Committee jointly verified the eligibility of each and every beneficiary mentioned in the resolution and submitted its report on 18.09.2015. Petitioner/complainant was very much present at the time of verification of eligible landless workers.

During the course of proceedings before respondent No.2 for cancellation of resolution dated 06.02.2015, direction was issued to respondents No.4 & 5 to make verification of the eligible beneficiaries proposed to be allotted and on the basis of that, Gram Panchayat passed a resolution dated 16.09.2016, which is under challenge. Respondent No.2 passed order dated 19.09.2016 dismissing the appeal of the petitioner by upholding the resolution of the Gram Panchayat. As per respondent No.6, in the revenue record, *khasra No.* 201 is exclusively owned by the Gram Panchayat and as such it can make use of such land in the manner it likes in the interest of residents of the village and prayed that writ petition is liable to be dismissed.

As petitioner, who is resident of Gram Panchayat Panjkosi, has challenged the order dated 19.09.2016 passed by respondent No.2 on the ground that resolution dated 06.02.2015, passed by the Gram Panchayat, is

wrong and illegal. Undisputedly, the Gram Panchayat had passed the resolution dated 06.02.2015 for allotment of 5-5 marlas of plots to 213 persons out of *khasra No. 201* (194 kanals 12 marlas), owned by it, as per *jamabandi* for the year 2002-03, which was kept reserved for *Gair Mumkin Shamshan Bhumi*.

Learned counsel for the petitioner contended that even the resolution was carried out by the Gram Panchayat, though seven days clear notice was not given. On this point, reliance was placed on the judgment rendered by the co-ordinate Bench of this Court in ***Misra Singh v. State of Punjab 2013(2) RCR (Civil) 1022***, wherein identical view was taken i.e. legal notice has not been issued. If proper notice has not been issued, the resolution carried out by the Gram Panchayat is liable to be set aside.

As per petitioner, initially the Gram Panchayat had called a meeting on 06.09.2016 to fix the date of holding a meeting on 13.09.2016 at 10.00 A.M. at Panchayat Ghar and for that purpose, notices were issued to the members and also information was to be given through munadi as well. A copy of resolution dated 06.09.2016 is Annexure P8 on the file. However, on the said date, quorum was not complete and as such no proceedings could take place and the meeting was adjourned to 13.09.2016 at 10.00 A.M. in the Panchayat Ghar. Written notices were ordered to be issued to the Panches and munadi was to be got done by the Chowkidar and announcement was ordered to be made through Mandir speaker. Thereafter, on 16.09.2016, a special Gram Sabha meeting was held under the Chairmanship of Sanjiv Punia at 10.00 A.M. in the Panchayat Ghar and resolution was passed to allot 5-5 marlas of plots to the landless and houseless persons. On that day,

none of the members of the Gram Sabha got registered any objection to that and as such resolution was carried out.

Learned counsel for the respondents had rightly taken the plea that if there is issuance of legal notice and discussion and participation in the meeting, then principle of waiver shall come into picture. Identical matter was before the co-ordinate Bench of this Court in ***Darshan Singh v. State of Punjab and Others (CWP-10623-2011, decided on 22.03.2012)***, wherein on an application of six Panches made to the Block Development & Panchayat Officer, meeting was convened. The meeting required seven days notice under Section 19 of the 1994 Act but notice was short by two days. The said meeting was held on 19.08.2010. In the said meeting, there was majority of 2/3rd against the petitioner and as such the motion was carried out. In the said case also, objection was taken to the legality and propriety of the meeting on the ground that seven days clear notice as required under Section 19(2) of the Act was not issued, which was required for the Panches to discuss and take decision on the “No Confidence Motion”. The contention raised from other side in the above mentioned matter was that if there is participation and discussion on the matter, the same shall deem to have waived of the objection of seven days notice period.

Identical matter was before the Hon'ble Division Bench of this Court in ***Harpal Singh v. Paramjit Kaur and Others (L.P.A. No. 129 of 2011, decided on 29.08.2011)*** and ***another connected LPA No. 1126 of 2011, decided on 15.12.2011***. The said cases were also wherein notice of required period was not given and it was held that in a case where no

would be deemed waiver.

In such like cases, if mandate of the elected representatives have been carried out as per the provisions of law, such a resolution cannot be set aside on the ground of inadequacy of notice given.

Respondent No.2-Director, Rural Development and Panchayat, Punjab has also considered all these aspects while passing order dated 19.09.2016 (Annexure P1) and dismissed the petition filed by the present petitioner.

In view of above discussion, present writ petition, having been filed by the petitioner, is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

August 8, 2018
“DK”

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No