

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.2644 of 2016 (O&M)
Decided on : 18.01.2018

Manjit Kaur

....Appellant

Versus

Jasvir Kaur & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Sarju Puri, Advocate, for the applicant/appellant.

Mr.Rai Singh Chauhan, Advocate, for respondent No.1.

Service upon respondent No.2 stands dispensed with
vide order dated 03.05.2017.

None for respondents No.3 to 5.

G.S. SANDHAWALIA, J. (Oral)

Present appeal has been filed against the order dated 23.12.2015, passed by the Learned Sub-Divisional Magistrate-cum-Election Tribunal, Nawanshahar, whereby the election petition of the appellant, filed under Section 74 read with Section 89 of the Punjab State Election Commission Act, 1994 (for short, the '1994 Act'), was dismissed. It was held that the appellant has not produced any documentary evidence to show that any mal-practice had taken place in the election and that the appellant was satisfied with the result.

The plea that respondent No.1-the elected Sarpanch was in illegal possession of the Panchayat's land, as per the demarcation record of the Tehsildar, was dispelled, on account of the fact that the name of Jasvir Kaur was not mentioned in the demarcation report as unauthorized occupant. Further, the Election Tribunal also held that written objections had been filed by the appellant before the Returning Officer at the time of filing nomination papers and while rejecting the objections of the appellant,

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speaking order was passed which was clear and there was no legal weight in the petition and the allegations of the appellant on the basis of which the petition had been filed were not supported by any evidence before that Court.

After hearing counsel for the parties, this Court is of the opinion that the order impugned cannot be justified, as the Election Tribunal had not taken into account the pleadings and the defence of the respondent No.1, in proper perspective.

A perusal of the written statement filed before the Election Tribunal would go on to show that defence taken by respondent No.1 as Sarpanch of Village Ramgarh (Paniali Khurd) Tehsil Nawanshahar, District SBS Nagar, was that she was not in illegal unauthorized possession of the land of the Gram Panchayat in khasra No.36(0-5). It had been specifically pleaded that land measuring 5 marlas comprised in Khewat No.121/109, Khatauni No.157, Khasra No.36(0-5) of Village Ramgarh (Paniali Khurd) belongs to Gram Panchayat and respondent No.1 and her family including her husband-Paramjit Singh had remained in illegal possession and were still in illegal occupation and the report of the Tehsildar had been attached, to show that there was illegal possession and that they had encroached upon the property for their use and they were trespassers, as such. It was further pleaded by the appellant that at the time of filing of the nomination papers, the Officer concerned had ignored the objections raised and allowed the said respondent to contest the election which had materially affected the result of election as a

legally disqualified person cannot contest election.

Further from the perusal of the reply filed by respondent No.1, it would go on to show that inspite of the pleadings, wherein it has been specifically mentioned in paras No.3 (i) & (ii) of the Election Petition, that possession of the land of specific khasra number, measuring 5 marlas, was of the respondent's husband-Paramjit Singh. It had only been denied that the elected representative was not in illegal possession of the Panchayat's land. A categorical averment had been made that respondent No.1 was an unauthorized occupant along with her husband-Paramjit Singh, which had not been denied.

Counsel for the appellant points out from the record that when the appellant had appeared as a witness and submitted her evidence by way of affidavit (Ext. PW-1/A), she had also tendered the evidence Ext. P-6, of the Naib Tehsildar, Balachaur, disclosing that who was the person in illegal possession. The said report dated 19.08.2009 (Ext.P-6) has been appended along with the present paperbook also as Annexure A-2. Same reads as under:

“With reference to the above said subject it is submitted that upon inquiry in the application through Kanungo Halqa it is found that the application submitted by Maharaj Singh of village Ramgarh @ Paniali Khurd against Hardayal Singh, Paramjit Singh sons of Karam Singh and Amrinder Singh son of Manohar Singh, residents of village Ramgarh in respect of Khasra No.36 area 5 Marlas, which is a Gair Mumkin Rasta regarding illegal possession. In this connection, the Kanungo Halqa has conducted demarcation in the presence of both the parties and respectable persons of the

village. This demarcation has been conducted by affixing pacca points. From the demarcation it has been found that the allegation leveled by the applicant against the aforesaid persons is correct because Khasra No.36 is the ownership of the Panchayat. Hardayal Singh, Paramjit Singh sons of Karam Singh and Amrinder Singh son of Manohar Singh have taken illegal possession over the same. It is worthwhile to mention here that Sh. Paramjit Singh son of Karam Singh is presently Sarpanch of village Ramgarh and as per the report of Kanungo Halqa, he was present at the spot at the time of demarcation but has refused to put his signatures. The copy of the proceedings of demarcation conducted by Kanungo Halqa at the spot is being annexed herewith. The report is being sent for information and necessary action.”

A perusal of the above report would go on to show that the pleadings were based on a specific report regarding the illegal possession by the family of respondent No.1. As noticed, the same was never properly controverted in the written statement. There was sufficient material before the Election Tribunal which it has ignored and came to the conclusion that the name of respondent No.1 does not figure in the said demarcation report as an unauthorized occupant. As noticed, it is not the case of respondent No.1 that she was staying separately from her husband and therefore, the reasoning which has been recorded by the Tribunal, cannot be justified, in any manner. Once it was the pleaded case of the appellant that the husband of the Sarpanch was in illegal possession, the Tribunal could not make out a separate defence and exonerate respondent No.1, on the ground that her name did not figure in the report and in view of the specific pleadings as per the report, which

was not denied and no explanation has been given.

Counsel for respondent No.1, on the other hand, has referred to report dated 24.06.2013, at the time when the objections had been raised and report had been received in favour of respondent No.1 that she was not in unauthorized occupation which has also been relied upon, as such, by the Election Tribunal.

The 1994 Act provides that the Election Tribunal has to try the petition as in accordance with the procedure prescribed as per Section 81(1) and the provisions of the Indian Evidence Act, 1872 shall be applicable subject to the provisions of the Act and shall be deemed to apply in all respects to the trial of the election petition. As per Section 78 (2), the contents of the petition has to be signed and verified, in accordance with the procedure laid down in the Code of Civil Procedure, 1908.

Once a categorical report has been placed on record as Ext. P-6 by PW-1, the same has not been properly appreciated and has been misread by the Election Tribunal while deciding the lis between the parties. The pleadings, as such, which were specifically in detail, though reproduced in the order, again, have not been taken into account in the proper perspective. Neither issues were framed so that the Tribunal could focus as to what was the main issue in question on the basis of the evidence and whether the onus had been discharged by the election-petitioner and whether it had been adequately repelled by the respondents. Resultantly, the order dated 23.12.2015 cannot be said to be

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a speaking order and liable to be upheld. Accordingly, this Court is of the opinion that the present appeal is liable to be allowed.

Accordingly, order dated 23.12.2015 is set aside and the matter is remanded to the Election Tribunal, Nawanshahar, for fresh decision, keeping in view the above observations. It is, however, made clear that any observations made herein shall not affect the final decision, since the main case is being remanded. Since considerable period has gone by, it is expected that the Tribunal shall decide the matter within a period of one month from the receipt of a certified copy of this order.

Present appeal stands allowed, in the above-said terms.

18.01.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*