

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(115)

CWP-13647-2020

Date of Decision : 04.09.2020

RAVINDER KAUR @ ARVINDER KAUR

....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

.....Respondents

(through video conferencing)

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Nakul Sharma, Advocate for the petitioner.

Harsimran Singh Sethi, J. (Oral)

1. The present petition has been filed by the petitioner challenging the order dated 30.10.2019 (Annexure P-5) passed by respondent No. 2, by which the petitioner was suspended as well as the order passed by respondent No. 1 dated 30.07.2020 (Annexure P-15), by which the appeal filed by the petitioner against the said order, has also been rejected.

2. Learned counsel for the petitioner argues that the petitioner has been suspended by the respondents by invoking powers under Section 20(4) of the Punjab Panchayati Raj Act, 1994, though, there is no material with the respondents against the petitioner so as to justify the suspension of the petitioner. Learned counsel for the petitioner submits that the allegation that the petitioner has encroached upon the land belonging to the Gram Panchayat is incorrect and, therefore, once the basis for suspension is incorrect, the order of suspension dated 30.10.2019 (Annexure P-5) is contrary to the actual facts and even the order passed by respondent No. 1

rejecting the appeal, cannot be sustained on the same analogy.

3. I have learned counsel for the petitioner and have gone through the record with his able assistance.

4. Learned counsel for the petitioner concedes that the respondents have power to suspend a Sarpanch under Section 20(4) of the Punjab Panchayati Raj Act, 1994.

5. In the present case, the petitioner has been suspended by invoking the said provisions on the allegation of encroachment of the panchayat land by the petitioner. The assertion of the learned counsel for the petitioner that allegations are incorrect and there is no material with the respondent to connect the petitioner with the said allegations, cannot be accepted as a finding has been recorded by the authorities that the petitioner has been found in the illegal possession of the land of the gram panchayat. In the order dated 30.07.2020 (Annexure P-15) passed by the appellate authority i.e. respondent No. 1 following has been recorded :-

“Counsel for the complainant appeared and brought into the notice that as per the earlier demarcation report, Appellant was found to be in illegal possession over the Panchayat land and after affording her full opportunity, the impugned order has been passed. After filing of appeal, regular enquiry report was received from the ADC (D) Ferozepur, whereby Appellant has been found to be in illegal possession over the land of Gram Panchayat. According to law being in illegal possession over the Panchayat land, Appellant has no right to be remained on the post. Therefore, this appeal may be dismissed because the charge has been proved against the Appellant in regular enquiry also.

On perusing the written arguments submitted by the counsel for the Appellant as well as on hearing the counsel for

the complainant and on considering the record, I come to the conclusion that two complaints were received against the Appellant vide dated 29.07.2019 and 31.07.2019 that the Sarpanch and her family have encroached upon 2042 ft area pertaining to Sem drain of the Government and included into their house. In this regard demarcation report dated 16.06.2019 is enclosed. On perusing the complaint, preliminary enquiry was handed over to the District Development and Panchayat Officer vide letter dated 29.08.2019, who further got the enquiry conducted through BDPO Guruharsahai and he informed that according to the demarcation report conducted by the Patwari and Kanugo, Sarpanch Arvinder Kaur is in illegal possession over the land pertaining to Sem drain and on the basis of report of BDPO, DDPO Fazilka sent his report dated 06.08.2019 for taking action against the Appellant and accordingly, on 11.09.2019, Respondent Director, Panchayat while sending the report of DDPO Ferozepur directed the Appellant to file her reply within 15 days. Upon which, the Appellant filed her reply on 19.09.2019 that she is not in illegal possession and further, claimed the demarcation report to be false. Thereafter, the Lower Court vide letter dated 22.10.2019 afforded the Appellant full opportunity of hearing and then passed the suspension order as per law. As the Appellant has not challenged the demarcation report before the competent Court, thus, this demarcation report has become final. As per Section 208 (1) (k) of Punjab Panchayati Raj Act, 1994, if any Panchayat Member is in illegal possession over the Panchayat land, then he can disqualify from the membership. Therefore, according to this section, as the Appellant being in possession over the land of Government/Local Authority, she does not have any right to remain on the post of Sarpanch. The order passed by the Lower Court is correct as per law. Therefore, this appeal of the Appellant is hereby dismissed on the basis of

above said facts.

Order has been pronounced.”

7. The petitioner has only been suspended. For suspending, only a prima-facie case is to be established. Suspension being not a matter of punishment, the authorities are competent to pass an order if the perusal of the record, prima-facie, case is made out in respect of the allegation alleged.

6. A bare perusal of the above show that there are two enquiries, which have been conducted by the respondent authorities. In both the said enquiries, petitioner has been found having unauthorized occupation of the land belonging to the gram panchayat. Findings in the enquiry is a sufficient material with the respondent to arrive at a decision to place the petitioner under suspension. The decision of suspending the petitioner, which has been taken by the respondent, on the basis of the finding of the enquiry, cannot be faulted in any manner. Findings of the enquiry are not under challenge. That being so, it cannot be said that there was no material on record so as to implicate the petitioner in any manner with the allegations. The respondents were well within their power to suspend the petitioner by invoking the power under Section 20(4) of the Punjab Panchayati Raj Act, 1994 in the facts and circumstances of this case.

8. In the present case, keeping in view the findings recorded in the impugned order, the respondents have, prima-facie, made out a case against the petitioner of suspension being in the illegal possession of the panchayat land and there was sufficient material on record to arrive at the said decision.

9. It is not the case that the petitioner has no remedy hereinafter.

Learned counsel for the petitioner has conceded that the regular enquiry

has been conducted against the petitioner by associating her and the findings have been recorded against the petitioner and those findings will be put to the petitioner by the Director, Rural Development and Panchayat, Punjab, before deciding as to whether the petitioner is liable to be removed from the post of Sarpanch or not by way of show cause notice after which authorities will take appropriate decision.

10. That being so, if the petitioner is aggrieved against the regular enquiry or the finding recorded in the regular enquiry, in any manner, she has the remedy of raising the same before the Director, in case a show cause notice is received by the petitioner proposes her removal from the post of Sarpanch. That being so, no ground is made out to interfere with the impugned orders.

11. The present writ petition is, accordingly, dismissed.

September 04, 2020
kanchan/naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No