

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

**Civil Writ Petition No. 2887 of 2021 (O&M)
Date of Decision: 09.02.2021**

Manjinder Kaur Cheema

..... Petitioner

Versus

State Election Commission, Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Arshdeep Singh Kler, Advocate
for the petitioner.

Mr. Suveer Sheokand, Additional Advocate General, Punjab.

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

Petitioner-*Manjinder Kaur Cheema* has filed the present writ petition challenging the order dated 04.02.2021 (**Annexure P-5**) passed by Returning Officer-cum-Tehsildar whereby her nomination papers as a Akali candidate for election as a Counsellor from Ward No.15, to the Municipal Corporation, Kapurthala have been rejected on the ground that she is in illegal occupation of Government land.

[2] Learned counsel for the petitioner has argued that the Returning officer has wrongly rejected the nomination papers of the petitioner as she is not in illegal occupation of any Government land. It is submitted that the building in which she is residing is owned by her father in law who had constructed it in the year 1985. It is further submitted that the land in question is *maafi* land and therefore the possession of petitioner's father in law cannot be said to be illegal. As far as issue of jurisdiction of this court

to entertain the petition at this stage is concerned, it is submitted that the writ petition is very well maintainable in view of the law settled by Hon'ble Supreme Court in cases ***“Nandiesha Reddy Vs Mrs. Kavitha Mahesh”***, ***2011(7) SCC 721***; ***“Election Commission of India through Secretary Vs. Ashok Kumar and others”***, ***2000(8) SCC 216***, and interim order dated **05.02.2021**, passed by a Coordinate Bench of this Court in ***CWP No. 2780 of 2021***, titled as ***“Sahibee Anand Vs. State of Punjab and others”***.

[3] We have heard learned counsel for the petitioner at length and have scrutinized the paper book.

[4] Since, the issues raised and provisions of law involved in the present case are intermingled, it would be gainful to discuss the relevant Constitutional as well as Statutory provisions pertaining to elections.

[4.1] Article 329(b) of the Constitution bars calling of any election to either House of Parliament or either House of the Legislature of State except by way of election petition. For ready reference, Article 329 is reproduced as under:

“329. [Notwithstanding anything in this Constitution²[]-]***

(a) The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature”

[4.2] Indisputably, Part IX A in the Constitution has been introduced

municipal level. The provisions incorporated by way of Article 243 P to 243 ZG give constitutional status to the municipal bodies and ensure regular and fair conduct of elections.

[4.3] Article 243ZG of the Constitution of India bars interference by the court in electoral matters of municipalities specifically provides that no election to any municipality shall be called in question except by an election petition to such authority in such manner as is provided for by or under any law made by the legislature of a State. For ready reference, Article 243ZG is reproduced as under:-

“Article-243ZG. Bar to interference by Courts in electoral matters.-
Notwithstanding anything in this Constitution,—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

[4.4] To give effect to the mandate of the afore-reproduced provisions of the Constitution, the Punjab State also framed its own act namely, the Punjab State Election Commission Act, 1994 (for short “Act 1994”) which governs not only Municipal elections but also Panchayati elections in the State of Punjab. In this Act, there is a bar under Section 74 on challenging the elections by any other mode than filing an election petition. For ready reference Section 74 is reproduced as under:-

“74. Election petitions. - No election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.”

[4.5] Further, under Section 89(1)(c) of the Act, 1994, enumerates the grounds for declaring an election to be void. In this section, one of the grounds for declaring election to be void is improper rejection of nomination paper. The said provision is reproduced as under:-

89. Grounds for declaring election to be void: (1) Subject to the provisions of sub-section (2), if the Election Tribunal is of the opinion:

(c) that any nomination has been improperly rejected

[4.6] Thus, it is evident from the aforesaid reproduction of the provisions contained in the Constitutional as well as statutory provisions that there is a complete bar on the jurisdiction of any court to entertain any challenge to an election process, which includes improper rejection of nomination.

[5] Now the next question that arises is as to whether the word "election" used in Article 329(b) and 243ZG of the Constitution as well as Section 74 of the Act, 1994 would confine to the final result thereof, or whether rejection or acceptance of the nomination paper is included in the term, "election".

[5.1] The answer to that question can be found in the Judgment passed by Constitution Bench of Hon'ble Supreme Court in "**N.P. Punnuswami v. Returning Officer, Namakkhal**", AIR 1952 SC, 64, whereby the candidate filed a writ petition under Article 226 of the Constitution of India assailing the validity of the rejection of nomination for election to the Madras Legislative Assembly from the Namakkal Constituency in Salem District. The petition was **rejected** by the High Court on the ground that High Court had no jurisdiction to interfere with the

order passed by the Returning Officer rejecting the nomination form in view of the provisions of Article 329(b) of the Constitution of India, which bars interference by the court in the matters of election to either House of the Parliament or either House of the Legislature of State except by way of election petition. The validity of the decision of the High Court was assailed by the candidate whose nomination was rejected before the Hon'ble Supreme Court inter alia on the ground that the Article 329(b) of the Constitution of India did not bar or exclude the jurisdiction of the High Court under Article 226 of the Constitution of India. The Hon'ble Supreme Court **upheld the dismissal of the writ petition and opined that the word "election" as used in Article 329(b) comprehends the entire process of election starting from the notification calling upon the constituency to elect a member and culminating in the candidate being declared elected.** The Hon'ble Supreme Court held that a person aggrieved by any of these stages has to wait till the result is declared and the election of the returned candidate can be questioned only thereafter by way of an election petition. The court categorically held that anything done with the process is not open to the writ jurisdiction of the High Court. For ready reference relevant paragraphs of the judgment are reproduced as under:

“6. Now, the main controversy in this appeal centres round the meaning of the words "no election shall be called in question except by an election petition" in Article 329(b), and the point to be decided is whether questioning the action of the Returning Officer in rejecting a nomination paper can be said to be comprehended within the words, "no election shall be called in question". The appellant's case is that questioning something which has happened before a candidate is declared elected is not the same thing as

questioning an election, and the arguments advanced on his behalf in support of this construction were these:

- "(1) That the word 'election' as used in Article 329(b) means what it normally and etymologically means, namely, the result of polling or the final selection of a candidate;*
- (2) That the fact that an election petition can be filed only after polling is over or after a candidate is declared elected, and what is normally called in question by such petition is the final result, bears out the contention that the word "election" can have no other meaning in Article 329(b) than the result of polling or the final selection of a candidate;*
- (3) That the words "arising out of or in connection with" which are used in Article 324(1) and the words "with respect to all matters relating to, or in connection with" which are used in Articles 327 and 328, show that the framers of the Constitution knew that it was necessary to use different language when referring respectively to matters which happen prior to and after the result of polling, and if they had intended to include the rejection of a nomination paper within the ambit of the prohibition contained in Article 329(b) they would have used similar language in that article; and*
- (4) That the action of the Returning Officer in rejecting a nomination paper can be questioned before the High Court under Article 226 of the Constitution for the following reason: Scrutiny of nomination papers and their rejection are provided for in section 36 of the Representation of The People Act, 1951. Parliament has made this provision in exercise of the powers conferred on it by Article 327 of the Constitution which is "subject to the provisions of the Constitution". Therefore, the action of the Returning Officer is subject to the extraordinary jurisdiction of the High Court under Article 226."*

7. *These arguments appear at first sight to be quite impressive, but in my opinion there are weightier and basically more important arguments in support of the view taken by the High Court. As we have seen, the most important question for determination is the meaning to be given to the word "election" in Article 329(b). That word has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected. In *Srinivasalu v. Kuppuswami* [(1928) AIR Mad 253 at 255] , the learned Judges of the Madras High Court after examining the question, expressed the opinion that the term "election" may be taken to embrace the whole procedure whereby an "elected member" is returned, whether or not it be found necessary to take a poll. With this view, my brother, Mahajan, J. expressed his agreement in *Sat Narain v. Hanuman Prasad* [(1945) AIR Lah. 85] ; and I also find myself in agreement with it. It seems to me that the word "election" has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression "conduct of elections" in Article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including Article 329(b). That the word "election" bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins. The subject is dealt with quite concisely in Halsbury Laws of England in the following passage [See page 237 of Halsbury's Laws of England, 2nd*

Edn. Vol. 12] under the heading Commencement of the Election":

"Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is 'reasonably imminent'. Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when 'the conduct and management of' an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case."

The discussion in this passage makes it clear that the word "election" can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.

8. ***The next important question to be considered is what is meant by the words "no election shall be called in question". A reference to any treatise on elections in England will show that an election proceeding in that country is liable to be assailed on very limited grounds, one of them being the improper rejection of a nomination paper. The law with which we are concerned is not materially different, and we find that in section 100 of the Representation of The People Act, 1951, one of the grounds for declaring an election to be void is the improper rejection of a nomination paper.***
9. *The question now arises whether the law of elections in this country contemplates that there should be two attacks on*

*matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which, as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a Special Tribunal and should not be brought up at an intermediate stage before any court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Article 329 (b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question, could be urged. **I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Article 329(b) and in setting up a Special Tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it.***

10. *I think that a brief examination of the scheme of Part XV of the Constitution and the Representation of the People Act, 1951, will show that the construction I have suggested is the*

correct one. Broadly speaking, before an election machinery can be brought into operation, there are three requisites which require to be attended to, namely, (1) there should be a set of laws and rules making provisions with respect to all matters relating to, or in connection with, elections, and it should be decided as to how these laws and rules are to be made; (2) there should be an executive charged with the duty of securing the due conduct of elections; and (3) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections. Articles 327 and 328 deal with the first of these requisites, Article 324 with the second and Article 329 with the third requisite. The other two articles in Part XV, viz, Articles 325 and 326 deal with two matters of principle to which the Constitution-framers have attached much importance. They are: (1) prohibition against discrimination in the preparation of, or eligibility for inclusion in, the electoral rolls, on grounds of religion, race, caste, sex or any of them; and (2) adult suffrage. Part XV of the Constitution is really a code in itself providing the entire ground-work for enacting appropriate laws and setting up suitable machinery for the conduct of elections.

- 11. The Representation of the People Act, 1951, which was passed by Parliament under Article 327 of the Constitution, makes detailed provisions in regard to all matters and all stages connected with elections to the various legislatures in this country. That Act is divided into 11 parts, and it is interesting to see the wide variety of subjects they deal with. Part II deals with "the qualifications and disqualifications for membership", Part III deals with the notification of General Elections, Part IV provides for the administrative machinery for the conduct of elections, and Part V makes provisions for the actual conduct of elections and deals with such matters as presentation of nomination papers, requirements of a valid nomination, scrutiny of nominations, etc., and procedure for polling and counting of votes. Part VI deals with disputes regarding elections and provides for the manner of*

presentation of election petitions, the constitution of election tribunals and the trial of election petitions. Part VII outlines the various corrupt and illegal practices which may affect the elections, and electoral offences. Obviously, the Act is a self-contained enactment so far as elections are concerned, which means that whenever we have to ascertain the true position in regard to any matter connected with elections, we have only to look at the Act and the rules made thereunder. The provisions of the Act which are material to the present discussion are Sections 80, 100, 105 and 170, and the provisions of Chapter II of Part IV dealing with the form of election petitions, their contents and the reliefs which may be sought in them. Section 80, which is drafted in almost the same language as Article 329(b), provides that "no election shall be called in question except by an election petition presented in accordance with the provisions of this Part". Section 100, as we have already seen, provides for the grounds on which an election may be called in question, one of which is the improper rejection of a nomination paper. Section 105 says that "every order of the Tribunal made under this Act shall be final and conclusive". Section 170 provides that "no civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election". These are the main provisions regarding election matters being judicially dealt with, and it should be noted that there is no provision anywhere to the effect that anything connected with elections can be questioned at an intermediate stage.

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14. *It was argued that since the Representation of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution. This argument however is completely shut out by reading the Act along with Article 329(b). **It will be noticed that the language used in that***

article and in Section 80 of the Act is almost identical, with this difference only that the article is preceded by the words "notwithstanding anything in this Constitution". I think that those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress.

15. *It may be stated that Section 107(1) of the Representation of People Act, 1949 (12 & 13 Geo. 6, c. 68) in England is drafted almost in the same language as Article 329(b). That section runs thus: "No parliamentary election and no return to Parliament shall be questioned except by a petition complaining of an undue election or undue return (hereinafter referred to as a "parliamentary election petition") presented in accordance with this Part of this Act."*
16. *It appears that similar language was used in the earlier statutes, and it is noteworthy that it has never been held in England that the improper rejection of a nomination paper can be the subject of a writ of certiorari or mandamus. On the other hand, it was conceded at the bar that the question of improper rejection of a nomination paper has always been brought up in that country before the appropriate tribunal by means of an election petition after the conclusion of the election. It is true that there is no direct decision holding that the words used in the relevant provisions exclude the jurisdiction of the High Court to issue appropriate prerogative writs at an intermediate stage of the election, but the total absence of any such decision can be accounted for only on the view that the provisions in question have been generally understood to have that effect. Our attention was drawn to Rule 13 of the rules appended to the Ballot Act of 1872 and a similar rule in the Parliamentary Elections Rules of 1949, providing that the decision of the Returning Officer disallowing an objection to a nomination paper shall be final, but allowing the same shall be subject to reversal on a petition questioning the election or return. These rules however do not affect the main argument. I think it can be*

legitimately stated that if words similar to those used in Article 329(b) have been consistently treated in England as words apt to exclude the jurisdiction of the courts including the High Court, the same consequence must follow from the words used in Article 329(b) of the Constitution. The words "notwithstanding anything in this Constitution" give to that article the same wide and binding effect as a statute passed by a sovereign legislature like the English Parliament.

17. *It may be pointed out that Article 329(b) must be read as complimentary to clause (a) of that article. Clause (a) bars the jurisdiction of the courts with regard to such law as may be made under Articles 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies. It was conceded before us that Article 329(b) ousts the jurisdiction of the courts with regard to matters arising between the commencement of the polling and the final selection. The question which has to be asked is what conceivable reason the legislature could have had to leave only matters connected with nominations subject to the jurisdiction of the High Court under Article 226 of the Constitution. If Part XV of the Constitution is a code by itself i.e., it creates rights and provides for their enforcement by a Special Tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject-matter of contest before the High Courts and thereby upset the timeschedule of the elections. The more reasonable view seems to be that Article 329 covers all "electoral matters".*

18. *The conclusions which I have arrived at may be summed up briefly as follows:*

"(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of

elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

- (2) *In conformity with this principle, the scheme the election law in this country as well as in England is that no significance should be attached to anything which does not affect the 'election'; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a Special Tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress.*

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26. *And now a word as to why negative language was used in Article 329(b). It seems to me that there is an important difference between Article 71(1) and Article 329(b). Article 71(1) had to be in an affirmative form, because it confers special jurisdiction on the Supreme Court which that Court could not have exercised but for this article. Article 329(b), on the other hand, was primarily intended to exclude or oust the jurisdiction of all courts in regard to electoral matters and to lay down the only mode in which an election could be challenged. The negative form was therefore more appropriate, and, that being so, it is not surprising that it was decided to follow the pre-existing pattern in which also the negative language had been adopted.*
27. *Before concluding, I should refer to an argument which was strenuously pressed by the learned counsel for the appellant and which has been reproduced by one of the learned Judges of the High Court in these words:*

"It was next contended that if nomination is part election, a dispute as to the validity of nomination is a dispute relating to election and that can be called in

question only in accordance with the provisions of Article 329(b) by the presentation of an election petition to the appropriate Tribunal and that the Returning Officer would have no jurisdiction to decide that matter, and it was further argued that Section 36 of Act 43 of 1951 would be ultra vires inasmuch as it confers on the Returning Officer a jurisdiction which, Article 329(b) confers on a Tribunal to be appointed in accordance with the article."

This argument displays great dialectical ingenuity, but it has no bearing on the result of this appeal and I think it can be very shortly answered. Under section 36 of the Representation of The People Act, 1951, it is the duty of the Returning Officer to scrutinize the nomination papers to ensure that they comply with the requirements of the Act and decide all objections which may be made to any nomination. It is clear that unless this duty is discharged properly, any number of candidates may stand for election without complying with the provisions of the Act and a great deal of confusion may ensue. In discharging the statutory duty imposed on him, the Returning Officer does not call in question any election. Scrutiny of nomination papers is only a stage, though an important stage, in the election process. It is one of the essential duties to be performed before the election can be completed, and anything done towards the completion of the election proceeding can by no stretch of reasoning be described as questioning the election. The fallacy of the argument lies in treating a single step taken in furtherance of an election as equivalent to election. The decision of this appeal however turns not on the construction of the single word "election", but on the construction of the compendious expression - "no election shall be called in question" in its context and setting, with due regard to the scheme of Part XV of the Constitution and the Representation of the People

Act, 1951. Evidently, the argument has no bearing on this method of approach to the question posed in this appeal, which appears to me to be the only correct method.

28. We are informed that besides the Madras High Court, seven other State High Courts have held that they have no jurisdiction under Article 226 of the Constitution to entertain petitions regarding improper rejection of nomination papers. This view is in my opinion correct and must be affirmed. The appeal must therefore fail and is dismissed. In view of the nature and importance of the points raised in this appeal, there should be no order to costs."

(Emphasis supplied)

[5.2] The view taken by the Hon'ble Supreme Court as aforesaid has been followed in "***Manda Jaganath v. K.S. Rathnam***", (2004) 7 SCC 492 as well. In the said case, while considering the maintainability of the writ petition against the illegal rejection of the nomination form filed for elections to the Parliament from 28 Nagarkurnool Constituency, the Hon'ble Supreme Court observed as under:-

- "12. In our opinion, whether the Returning Officer is justified in rejecting this Form B submitted by the first respondent herein or not, is not a matter for the High Court to decide in the exercise of its writ jurisdiction. This issue should be agitated by an aggrieved party in an election petition only.
13. It is to be seen that under Article 329(b) of the Constitution of India there is a specific prohibition against any challenge to an election either to the Houses of Parliament or to the Houses of Legislature of the State except by an election petition presented to such authority and in such manner as may be provided for in a law made by the appropriate legislature. The Parliament has by enacting the Representation of the People Act, 1951 provided for such a forum for questioning such elections hence, under Article

329(b) no other than such forum constituted under the R.P. Act can entertain a complaint against any election."

[5.3] Relying upon the afore-referred judgments of Hon'ble Supreme Court as well as a few other similar judgments, a Co-ordinate Bench of this Court in *CWP No. 3195 of 2021*, titled as "*Balwinder Khattra Vs. State of Punjab and others*", decided on 23.02.2021; *CWP No. 3125 of 2021*, titled as "*Harpal Singh Vs. State of Punjab and others*", decided on 12.02.2021, and *CWP No. 2904 of 2021*, titled as "*Pankaj Sharma Vs. State of Punjab and others*", decided on 12.02.2021, have also recently held that writ petitions are not maintainable against rejection of nomination papers of a candidate.

[5.4] To the contrary, in ***Election Commission of India through Secretary Vs. Ashok Kumar and others, 2000(8) SCC 216***, a three Judges Bench of Hon'ble Supreme Court, while referring to previous precedents including ***N.P Punnuswami's case (supra)*** as well another Constitution Bench decision of Hon'ble Supreme Court rendered in ***Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi, AIR 1978 Supreme Court 64***, held that previously the two Constitution Benches had not considered a few more issues which may not attract the complete bar of Article 329(b) of the Constitution. In the said case, an interim order passed by the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution, during the currency of the process of election, whereby the High Court has stayed the Notification issued by the Election Commission of India containing direction as to the manner of counting votes and has made directions of its own on the subject, was put in issue by the Election

Article 136 of the Constitution. In the said case, a Notification dated 1.10.1999 was issued by the Election Commission of India whereby it was decided that all the votes would be counted by mixing them from the ballot boxes of all the polling booths, instead of counting them Polling Station-wise. In the writ petitions filed by two prospective candidates, the High Court of Kerala vide its interim order dated 4.10.1999 directed the Election Commission and Chief Electoral Officer to make directions in such a way that counting was conducted booth wise consistently with the guidelines issued prior in time on 22.9.1999. When the said decision was put to challenge, the Hon'ble Supreme Court in Paragraphs 20 and 21 of the judgment held as under:-

“20. *Vide para 29 in Mohinder Singh Gill's case, the Constitution Bench noticed two types of decisions and two types of challenges : The first relating to proceedings which interfere with the progress of the election and the second which accelerate the completion of the election and acts in furtherance of an election. A reading of Mohinder Singh Gill's case points out that there may be a few controversies which may not attract the wrath of Article 329(b). To wit :*

(i) power vested in a functionary like the Election Commission is a trust and in view of the same having been vested in high functionary can be expected to be discharged reasonably, with objectivity and independence and in accordance with law. The possibility, however, cannot be ruled out where the repository of power may act in breach of law or arbitrarily or mala fide. (ii) A dispute raised may not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. The Election Commission may pass an order which far from accomplishing and completing the process of election may thwart the course of the election and such a step may be wholly unwarranted by the

Constitution and wholly unsustainable under the law. In Mohinder Singh Gill's case, this Court gives an example (vide para 34). Say after the President notifies the nation on the holding of elections under Section 15 and the Commissioner publishes the calendar for the poll under Section 30 if the latter orders Returning Officers to accept only one nomination or only those which come from one party as distinguished from other parties or independents, which order would have the effect of preventing an election and not promoting it, the Court's intervention in such a case will facilitate the flow and not stop the election stream.

*21. A third category is not far to visualise. Under Section 81 of the Representation of The People Act, 1951 an election petition cannot be filed before the date of election, i.e., the date on which the returned candidate is declared elected. During the process of election something may have happened which would provide a good ground for the election being set aside. Purity of election process has to be preserved. One of the means for achieving this end is to deprive a returned candidate of the success secured by him by resorting to means and methods falling foul of the law of elections. But by the time the election petition may be filed and judicial assistance secured material evidence may be lost. Before the result of the election is declared assistance of Court may be urgently and immediately needed to preserve the evidence without in any manner intermeddling with or thwarting the progress of election. **So also there may be cases where the relief sought for may not interfere or intermeddle with the process of the election but the jurisdiction of the Court is sought to be invoked for correcting the process of election taking care of such aberrations as can be taken care of only at that moment failing which the flowing stream of election process may either stop or break its bounds and spill over.** The relief sought for is to let the election process proceed in conformity with law and the facts and circumstances be*

such that the wrong done shall not be undone after the result of the election has been announced subject to overriding consideration that the Court's intervention shall not interrupt, delay or postpone the ongoing election proceedings. The facts of the case at hand provide one such illustration with which we shall deal with a little later. We proceed to refer a few other decided cases of this Court cited at the Bar.”

Ultimately, the Hon'ble Supreme Court summed up its conclusions in the following terms in paragraph 32 of the judgment, which reads as under:-

“32. For convenience sake, we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:-

- (1) If an election, (the term 'election' being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in election.*
- (2) Any decision sought and rendered will not amount to “calling in question an election” if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.*
- (3) Subject to the above, the action taken or ordered issued by Election Commission are open to judicial review on the well settled parameters which enable judicial review of decisions of statutory bodies such as on a*

case of malafide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

- (4) *Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievably by the time the results are declared and stage is set for invoking the jurisdiction of the Court.*
- (5) *The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see it as there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext or achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.”*

On merits the Hon'ble Supreme Court found that the writ petitioners before the High Court had failed to make out a case for intervention of High Court amidst the progress of election proceedings and thus, the appeal was allowed and the interim order dated 4.10.1999 passed

[5.5] Another decision which is relevant for adjudication in the present case is *Nandiesha Reddy Vs. Mrs. Kavitha Mahesh, 2011(7) SCC 721*, also rendered by Hon'ble Supreme Court, whereby in a controversy pertaining to rejection of nomination to Karnataka Assembly from KR Pura Assembly Constituency was involved. In the said case, the election petitioner had challenged the election of returning candidate on the ground that nomination paper of election petitioner was illegally not accepted by the Returning Officer by way of filing an election petition before the Hon'ble Karnataka High Court. In the said election petition, two applications were moved by the returning candidate viz. i) under Order 6 Rule 16 of CPC for striking out pleading from election petition; and ii) under Sections 83 and 86 of the Representation of The People Act, 1951 read with Order 7 Rule 11 of CPC for dismissal of election petition. Both the applications were considered and dismissed by the High Court and thus, Special Leave Petitions were filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court, while dismissing the petitions and making a passing reference to Section 33(4) of the Representation of the People Act, 1951 (for short "the Act, 1951"), held that the Returning Officer was required to accept the nomination paper and point out defects, if any and allow the candidate to rectify them. The relevant paragraph 12 and 13 of the Judgment reads as under:-

"12. From a plain reading of these averments it is evident that the Election Petitioner has averred that nomination paper was signed by 10 electors. It was delivered to the Returning Officer with a request to make available latest electoral roll of K.R. Pura Constituency for filling up the new part number and serial number of the proposers in the respective columns.

However, the Returning Officer stated that he is not in possession thereof and asked the Election Petitioner to approach the revenue office located at the ground floor for verifying and extracting the part number and serial number of the proposers. Attempts made on behalf of the Election Petitioner to get those details from the revenue office were rendered futile. Thereafter, the Election Petitioner approached the Returning Officer again for delivering the nomination paper with the explanation. It did not yield any result and the Returning Officer stated that he "will not receive your nomination paper without complying the requirement of new part number and serial number against the proposers in Part-II of Annexure 'A' and if you compel me to receive now, tomorrow I will reject it". These averments at this stage have to be accepted as true and, therefore, the question is as to whether Election Petitioner can be said to be a candidate so as to maintain the election petition and further the Returning Officer was right in refusing to accept the nomination paper on the purported ground that it did not contain the serial number and part number of the proposers. Section 81 of the Act inter alia provides for presentation of election petition. It reads as follows :

"81. Presentation of petitions. (1) An election petition calling in question any election may be presented on one or more of the grounds specified in Sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

Explanation. In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates,

whether he has voted at such election or not.

*1. * * * * **

*[(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition [***], and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.]"*

13. *From a plain reading of the aforesaid provision it is evident that an election petition calling in question any election can be presented by any candidate at such election. Candidate, in our opinion, would not be only such person whose nomination form has been accepted for scrutiny or whose name appears in the list of validly nominated candidate, that is to say, candidates whose nominations have been found valid. Here, in the present case, the Election Petitioner's plea is that the Returning Officer declined to accept the nomination paper. **We are of the opinion that when a nomination paper is presented it is the bounden duty of the Returning Officer to receive the nomination, peruse it, point out the defects, if any, and allow the candidate to rectify the defects and when the defects are not removed then alone the question of rejection of nomination would arise. Any other view, in our opinion, will lead to grave consequences and the Returning Officers may start refusing to accept the nomination at the threshold which may ensure victory to a particular candidate at the election. This is fraught with danger, difficult to fathom. Section 33(4) of the Act casts duty on a Returning Officers to satisfy himself that the names and the electoral roll numbers of the candidates and their proposers as entered in the nomination paper are the same as in the electoral rolls and, therefore, in our opinion, the Election Petitioner for the purpose of maintaining an election petition shall be deemed to be a candidate.**"*

(Emphasis supplied)

[5.6] In our opinion, a cumulative reading of the judgments referred herein above leads to the following conclusions:-

- a) the word "election" embraces in itself the entire process of election which consist of several stages right from issuing the notification calling for election, till the declaration of the result;
- b) It is further now equally well settled that the election process once started should not be held up or interfered with at the intermittent stage and adjudication of all disputes with regard to the election which has affected the ultimate result of the election should wait till the election process is over; and
- c) At the same time, a petition challenging any part of election under Article 226 of the Constitution is not completely barred in case facts and circumstances of the case demand which can be broadly categorized into following:
 - (i) Any decision sought and rendered, that would not amount to calling in question an election and it actually subserves the progress of the election and facilitates its completion or is in furtherance of the election proceedings
 - (ii) If assistance of the Court is sought to correct or smoothen the progress of the election proceedings and to remove the obstacles therein or to preserve a vital piece of evidence, without interrupting, obstructing or delaying the progress of the election.

[6] It is to be noticed that Article 243ZG of the Constitution of India (as reproduced herein before) is *pari-materia* to Article 329(b) so far as the bar to interference by the courts in electoral matters is concerned.

Further, similar bar is contained in Section 74 of the 1994 Act as well. Thus,

in view of the bar contained in Article 243ZG of the Constitution of India as well as Section 74 and 89(1)(c) of the Act, 1994 and the position of law settled by the Hon'ble Supreme Court as above, the validity of any election under the provisions of the Punjab Municipal Act, 1994 can ordinarily be called in question only by way of election petition before the Election Tribunal under the provisions of the relevant statute and not by invoking the provision of Article 226 of the Constitution except it falls into any one of the exceptions as carved by Hon'ble Supreme Court in Paragraph 32 of ***Ashok Kumar's case (supra)*** and summarized by us in paragraph 5.6.

MERITS OF PRESENT CASE:-

[7] Once the aforesaid Constitutional as well statutory provisions read with judicial precedents are applied to the facts of present case, we find that the instant petition is not maintainable at this stage. As per Section 11(q) of the Punjab State Election Commission Act, 1994, a candidate is disqualified if he/she has not paid tax imposed by the Panchayat or Municipality. Further as per 11(r) the candidate can also be disqualified if he/she is in un-authorized occupation of property belonging to any local authority. For sake of convenience, section 11(q) and (r) are reproduced as under:

“11. Disqualifications for membership of a Panchayat or a Municipality.

A person shall be disqualified for being chosen as, and for being a member of a Panchayat or a Municipality, -

- (q) if he has not paid the arrears of tax imposed by the Panchayat or the Municipality, as the case may be; or*
- (r) if he is in un-authorized occupation of property belonging to any local authority;”*

[7.1] It is an admitted fact that the address given by petitioner in her nomination paper is of Cheema House, Jalandhar Road, Kapurthala and this address finds mention in her aadhar card as well. It is further not in dispute that on a complaint moved by another candidate, the returning officer had called for report regarding status of petitioner being in illegal occupation of a building. As per the said report, it was found that indeed petitioner was in illegal occupation of a building whose site plan had not been sanctioned. Further, it was reported that no tax had been paid to any authority as well. Although, it has been argued by the counsel for petitioner that the building is owned by petitioner's father in law and therefore petitioner cannot be disqualified, however, the said argument is meritless as the wording of Section 11(r) is not being in un-authorized "occupation" and not being an owner.

[7.2] Not only this, as per the revenue record appended by petitioner with her petition, her father in law has been shown to be in possession of land as Gair Marusi (without payment of rent/ un-authorized occupant) under the column of cultivation and the land is shown to be owned by Punjab Government under column of ownership. Although it is argued that land was given to father in law on maafi, however, the record of the case speaks otherwise, as the word used in Jamabandi is marfat (means through) and not maafi (which means grant). Thus, *prima-facie* the revenue record speaks against the contentions raised by petitioner.

[7.3] Be that as it may, there are disputed questions of fact which have been raised by the petitioner as she has called upon us, through this writ petition, to adjudicate the actual nature of possession of the address

mentioned by her in her nomination paper and as to whether she is liable to local taxes or not. This is completely beyond the purview and scope of a writ petition even under normal circumstances, let alone when we are called upon to adjudicate an issue pertaining to election.

[7.4] The interim order relied upon by the counsel for petitioner passed in ***Sahibee Anand's case (supra)*** cannot come to his rescue for two reasons; ***firstly***, an interim order does not hold as a binding precedent especially when same is passed without seeking reply from respondents; ***secondly***, we are of the view that the issue involved therein and the issue involved in the present case is entirely different. ***Sahibee Anand's case*** pertains to rejection of nomination form on account of missing signatures of proposers, whereas the present case is of rejection of nomination in view of disqualification given under Section 11(q) and (r) of Punjab State Election Commission Act, 1994 as she is allegedly in illegal occupation of Municipal land.

Apart from this, we feel that the Court in ***Sahibee Anand's case*** is required to decide the true import and intent of Section 38 (4) of the Act, 1994, as the crux issue to be adjudicated therein is “*whether only clerical and other errors can be permitted to be rectified or whether missing signatures of the proposer can also be permitted to be affixed at a later point of time?*” This we say so in view of the wording of Section 38(4) of Act, 1994, which reads as under:-

“**38 (4)** *On the presentation of nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidates and his proposer as entered in the nomination paper are the same as those entered in the rolls.*

Provided that no misnomer or inaccurate description or clerical or technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical or technical or printing error in regard to the electoral rolls numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the Returning Officer shall permit any such misnomer or inaccurate description or clerical or technical or printing error to be corrected and where necessary direct that any such misnomer, inaccurate description, clerical or technical or printing error in the electoral roll or in the nomination paper shall be overlooked.”

A direct judgment on this issue is “***Mukhtiar Singh Vs. State of Punjab and others***”, 2009(1) PLR 260, whereby it has been held that only clerical and other errors covered by the *proviso* to Section 38 (4) of the Act, 1994 can be permitted to be rectified, however, the missing signature of the proposer cannot be affixed at a later point of time and the petitioner's nomination was liable to be rejected owing to a defect of a substantial character. Although one of us (Jaswant Singh, J.) was part of the coram who rendered the judgment, however, we find that the said judgment has not discussed in detail the wording of *proviso* attached to this Section. Further, the judgment passed by Hon'ble Supreme Court in ***Nandeisha Reddy's case*** was not brought to notice, especially observations made in paragraph 13 (reproduced by us in paragraph 5.5 hereinabove), which has discussed Section 33(4) of the Act, 1951. On a cursory reading of Section 33(4), we

find that the wording of this Section is similar to that of Section 38(4) of the Act, 1994. For ready reference, Section 33(4) of the Representation of People Act, 1951 is reproduced as under:-

“33 (4) *On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:*

[Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.]

It is thus seen that the view taken in ***Mukhtiar Singh's case*** may not be wholly correct in view of the interpretation given by Hon'ble Supreme Court to Section 33(4) of the Act, 1951 which seems to be *pari-materia* to Section 38(4) of the Act, 1994. Not only this, the stage at which a candidate approaches the Court in such like cases is also required to be examined and thus, interpretation of Section 38(4) may require a detailed

consideration in an appropriate case.

[8] Facts of the present case bars the petitioner to invoke our powers under Article 226 of the Constitution as it does not fall under any of the exceptions are carved out under paragraph 5.6(c) of our judgment. Further, while exercising writ jurisdiction, undisputed questions of fact can be adjudicated and not disputed ones. The facts of the present case show that the candidature of petitioner has been rejected on the ground that she is in illegal occupation of Government land by building a house. To counter this, the plea taken by writ petitioner is that the house belongs to her father-in-law and not to her. Still it is not explicable as to why writ petitioner would give address of the house owned by his father-in-law. This question can only be gone into after evidence is lead and not while adjudicating a writ petition. Thus, only an election petition would be maintainable and not a writ petition.

[9] In view of the above, finding no merit, present writ **petition** is hereby ordered to be **dismissed**, being not maintainable. The petitioner would be at liberty to file an election petition, if so advised. Further, nothing said herein on merits of the case above would influence the adjudicating authority in its final decision in case an election petition is indeed filed.

(JASWANT SINGH)
JUDGE

February 09, 2021

'dk kamra'

(SANT PARKASH)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes