

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

C.W.P.No.17645 of 2021(O&M)

Date of decision: 13.09.2021

Paramjit Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Akshay Jain, Advocate,
for the petitioners.**

ANIL KSHETARPAL, J.

The petitioners have invoked the extra-ordinary writ jurisdiction of this Court to issue a writ in the nature of certiorari to quash the orders passed on 12.06.2020(by the Director, Department of Rural Development and Panchayats, Punjab) and on 03.12.2020 (by the Financial Commissioner, Government of Punjab, Department of Rural Development and Panchayats, Chandigarh).

Some facts are required to be noticed.

There is a religious place known as “Buland Baba Jogi Peer Ralla (hereinafter referred to as 'Samadh’), located in village Ralla. The aforesaid place is worshipped by a large number of devotees. Every year two religious congregations of the believers/followers are organized to permit the devotees pay their obeisance at the “Samadh”. The Gram Panchayat of village Ralla manages the affairs of the Samadh. As per the case of the petitioners, the Buland Baba Jogi Peer Ralla owns 205 acres 6 kanals and 1 marla land. Out of the aforesaid land, 110 acres has been

given to the Punjabi University for its neighborhood campus, 6 acres 1 kanal and 1 marla has been given to Red Cross, Punjab, 5 acres used under MNREGA Scheme of the Central Government whereas 58 acres of land has been used for planting trees and bushes. The remaining land measuring 16 acres 1 kanal and 6 marlas is being utilized as Samadh for pious and religious purposes. The Samadh is also running a school having 650 students and about 45 staff members to look after the school.

It has been noticed that various writ petitions, civil suit etc. have been filed, but for deciding this writ petition, a detailed reference thereto is not necessary. It has come on record that the Gram Sabha took a decision vide a resolution on 15.09.2014 to constitute a trust under the executive officers of the District Administration. As per the aforesaid resolution, the Deputy Commissioner, Senior Superintendent of Police, Mansa or his nominee, the Sarpanch of the Gram Panchayat, 5 members (one from each Patti) were to be co-opted and five prominent members belonging to the Chahal community were to be made trustees. Pursuant to the aforesaid resolution, an indenture of trust was executed on 21.01.2015. It has also come on record that a Civil Suit No.223-A, dated 21.11.2016, was filed seeking declaration and permanent injunction. In essence, the plaintiffs sought declaration that the constitution of the trust is illegal, as the property is owned by the Gram Panchayat, Village Ralla, and no private person or government official has any concern with the religious place. The aforesaid suit was dismissed on 31.10.2019, by the Civil Judge (Sr. Division), Mansa. Thereafter, the Gram Panchayat, Ralla, filed Civil Writ Petition No.26016 of 2019, directing the officials of the District Administration as well as trust not to open the currency chest. The aforesaid

writ petition was withdrawn on 16.09.2019.

Thereafter, Avtar Singh-respondent No.6, filed a petition under Section 199 of The Punjab Panchayati Raj Act, 1994 (hereinafter referred to as 'the 1994 Act'), with a prayer to cancel the Resolution dated 15.09.2014, which has been allowed by the Director after finding that the resolution was passed in absence of the requisite quorum as required under Section 5 of the 1994 Act. The appeal filed by the petitioners has also been dismissed.

This Bench has heard the learned counsel for the petitioners at length and with his able assistance perused the paper book.

Learned counsel contends that once the civil suit has been dismissed, the authorities under the 1994 Act had no jurisdiction to cancel the resolution. While referring to the judgment of the Civil Court, learned counsel contends that the resolution of the Gram Panchayat was challenged on various other grounds including the lack of quorum but the Civil Court did not find merit in the contention. He further contends that even if the quorum of the meeting of the Gram Sabha held on 15.09.2014, was not complete, despite that the aforesaid meeting should be considered to have been passed by the elected representative of the Gram Panchayat and therefore, the order passed by the authorities is illegal. While elaborating, he submitted that as per Section 85 of the 1994 Act, the property of the Panchayat is required to be managed by the Gram Panchayat which obviously means the elected body. Further, while drawing attention of the Court to Section 9 of the 1994 Act, he contends that the functions of the Gram Sabha are defined and it does not include managing the property of the Gram Panchayat. In the end, he contends that the Trust has been created for the welfare of the public in order to resolve the long standing dispute,

therefore, the authorities have erred in interfering in the same.

Before proceeding to analyze the arguments of learned counsel representing the petitioners, it would be appropriate to note the statutory provisions.

By 73rd Constitutional amendment, Part IX of the Constitution was amended. Article 243 (b) defines the Gram Sabha, whereas, Clause (d) defines the Panchayat. Furthermore, the words 'Gram Sabha' and 'Gram Panchayat' have been assigned different connotations. The Government of Punjab has enacted the 1994 Act in accordance with the mandate of Part IX of the Constitution. The every expression has been defined in the 1994 Act.

The relevant provisions are extracted as under:-

“Section 2(y) “Gram Sabha” means a body consisting of persons registered as voters in the electoral rolls of the area of the Gram Panchayat, constituted under Section 3 of this Act;

Section 2(za) “Gram Panchayat” means an institution of self-government for a Gram Sabha area constituted under Section 9;

Section 2(zi) "Panch" means a member of the Gram Panchayat elected under this Act and Includes a Sarpanch;

Section 2(zj) "Panchayat" means a Gram Panchayat, Panchayat Samiti and Zila Parishad constituted under this Act;

Section 2(zt) "Sarpanch" means Sarpanch of the Gram Panchayat elected under Section 10 of the this Act;”

“4. Constitution of Gram Sabhas.

(1) The State Government may. by notification establish a Gram Sabha by name for every area declared as Gram Sabha area under section 3. (2) Every person who is entered as voter on the electoral roll prepared by the State Election Commission and for the time being in force pertaining to the area of a Gram Sabha, shall be member of the Gram Sabha.

5. Meeting and quorum of Gram Sabha.

(1) Every Gram Sabha shall hold two general meetings In each year, one in the month of December after the

harvesting of the Sawni Crop (hereinafter called the Sawni meeting) and the other In the month of June after the harvesting of the Hari crop (hereinafter called the Hari meeting) on such date as may be fixed by the Sarpanch.

(2) In the event of his failing to hold two consecutive general meetings of the Gram Sabha, the Sarpanch shall automatically cease to hold office, from the last day of the month in which, the second meeting was to be held and Block Development and Panchayat Officer shall immediately intimate the happening of such cessation to the District Development and Panchayat Officer and on receipt of such information the District Development and Panchayat Officer shall notify this fact to the Panchayat Samiti, Gram Sabha and such a Sarpanch.

(3) The Director may reinstate such a Sarpanch on his showing sufficient cause of his default to hold two consecutive meetings within a period of thirty days from the date of the notification of his cessation as Sarpanch under sub-section (2).

(4) The Sarpanch should at any time, and where a requisition in writing of the Panchayat Samiti or of not less than one-fifty of the total number of members of the Gram Sabha has been received by him shall within thirty days form the receipt of such requisition, call an extraordinary general meeting of the Gram Sabha.

(5) If a general meeting or an extraordinary general meeting is not called as required by sub-section (1) and (4), the Executive Officer of the Panchayat Samiti shall call such a meeting.

(6) For any meeting of the Gram Sabha, one-fifth of the total number of its members shall form a quorum: Provided that in the case of an adjourned meeting the quorum shall be one-tenth and the provisions of this sub-section shall not apply to any other meeting of the Gram Sabha held due to adjournment for want of knowledge.

(7) The Secretary of the Gram Panchayat and the Gram Sewak shall attend every general meeting of the Gram Sabha and in addition thereto the Gram Panchayat may call any village functionary serving in Gram Sabha area to attend such a meeting and tender advice in respect of any matter coming up before it.

23. Meeting of Gram Panchayat.

(1) The meeting of the Gram Panchayat shall be public and shall be held at least once a month at the office of the Gram Panchayat or at some other public place within the Gram Sabha area for which It is established and at such time and date as the Sarpanch may determine and notify.

(2) *The Sarpanch, when required in writing by a majority of the Panches to call a special meeting, shall do so within three days failing which these Panches, shall, with the previous approval of the prescribed authority, be entitled to call a meeting after giving a week's notice through the Panchayat Secretary to the Sarpanch and the other Panches. 25*

(3) *Seven clear days' notice of an ordinary meeting and three days' clear notice of a special meeting specifying the place, date and time of such meeting and the business to be transacted thereat, shall be given by the Secretary to the Panches and such officers as the State Government may prescribe, and affixed on the notice board of the Gram Panchayats.*

24. Quorums and Procedure.

(1) *The majority of Panches for the time being holding office shall form a quorum and if at the time appointed for the meeting, a quorum is not present - (a) (a) the presiding authority shall wait for thirty minutes, and if within such period there is no quorum, the presiding authority shall adjourn the meeting to such time on the following day or such future day as he may fix; (b) (b) similarly, the presiding authority after waiting for thirty minutes adjourn the meeting if, at any time, after it has begun attention is drawn to the want of a quorum and the business which could not be considered at the meeting postponed under clause (a) for want of quorum, shall be brought before and disposed of at the meeting so fixed or at any subsequent adjourned meeting at which there is a quorum.*

(2) *Save as otherwise provided by or under this Act, at every meeting of the Gram Panchayat, the Sarpanch and in his absence a Panch elected out of the Panches present shall preside for the occasion.*

(3) *All questions shall, unless otherwise specifically provided, be decided by a majority of votes of the present and voting and the Sarpanch or Panch presiding, as the case may be, unless he refrains from voting, shall give his vote before declaring the number of votes for and against a question and In the case of equality of votes, he may give his casting vote.*

(4) *No member of a Gram Panchayat shall vote on, or take part in the discussion of any question coming up for consideration at a meeting of a Gram Panchayat, if the question is one in which apart from its general application to the public, he has any pecuniary interest, and if the person presiding has such an interest, he shall not preside over the meeting when such question comes up for consideration.*

(5) *If the person presiding Is believed by any member*

present at the meeting to have any such pecuniary interest in any matter under discussion, and if a motion to that be carried, he shall not preside at the meeting during such discussion or vote on or take part in it and in such a case any member other than that member of the Gram Panchayat may be chosen to preside at the meeting during the continuance of such discussion.

30. Functions of Gram Panchayats. *Subject to such conditions as may be prescribed by the State Government from time to time, the Gram Panchayat having regard to the availability of funds at its disposal, shall perform the function specified below: -*

(I) General function -

(i) Preparation of annual plans for the development of the panchayat area;

(ii) Preparation of annual budget;

(iii) Mobilising reliefs in natural calamities including relief to the poor;

(iv) Removal or encroachments on public properties;

(v) Organizing voluntary labour and contribution for community works;

(vi) Maintenance of essential statistics of village;

(vii) Rendering assistance and implementation of development schemes pertaining to the village through its Gram Sabha;

(viii) Promotion of unity and harmony among all the sections of society in the village;

(II) Construction, repair and maintenance of community assets -

(a) any public place including its sanitation and drains;

(b) wells, water-pumps, baolies, springs, ponds and tanks for the supply of water for drinking, washing and bathing;

(c) burial and cremation grounds;

(d) the lighting of public places;

(e) buildings for the accommodation of travelers;

(f) ponds for animals, cattle and sheds for cart, bicycle, rickshaw, and auto stand;

(g) public gardens, playgrounds, establishment and maintenance of recreation parks, organization of games and sports, supply of sports materials and holding of tournaments;

(h) libraries and reading-rooms;

(i) the construction, repair and maintenance of public places and buildings of public utility under its own control or transferred to it by the State Government or

any other authority;

(j) allotment of places for preparation and conservation of manure, and shifting them to far away places;

(k) construction and maintenance of culverts and bridges; and slaughter-houses;

(l) the laying out of new roads and pathways and maintenance of existing ones;

(m) supply of water for domestic use and for cattle;

(n) community listening;

(o) prevention and control of pollution;

(p) maintenance of boats, ferries and all water ways;

(q) promotion of family welfare and population control;

(r) cleaning of public roads, drains, tanks, wells and other public places;

(s) construction and maintenance of public latrines;

(t) disposal of unclaimed corpses and carcasses;

(u) management and control of washing and bathing ghats.

III Agriculture Including Agriculture Extension –

(a) Promotion and development of Agriculture and horticulture;

(b) Development of waste lands;

(c) Development and maintenance of grazing lands and preventing their unauthorized alienation and use;

(d) Destruction of weeds and pests;

(e) Training and carrying out schemes for the improved methods of cultivation and management of lands to increase production;

(f) The organization of young Farmers Clubs;

(g) Promotion of agricultural credit and of measures including establishment of provision and implement stores and credit centers to relieve rural indebtedness and poverty.

(IV) Animal Husbandry, Dairying and Poultry-

(a) Improvement of breed of cattle, poultry and other livestock;

(b) Promotion of dairy farming, poultry and piggery;

(c) Grass-land development, preparation and distribution of improved variety of seeds of fodder and grass;

(d) The voluntary registration of sales of cattle, camels and horses;

(e) Collection and destruction of stray animals;

(f) First-aid centers, dispensaries and hospitals for

animals including their health-care.

(V) Fisheries

Promotion and development of fisheries in the village.

(VI) Social and Farm Forestry, Minor Forest Produce Fuel and Fodder-

(a) Planting and preservation of trees on the sides of roads and other public lands under its control;

(b) Fuel plantations and fodder development.

(c) Promotion of farm forestry;

(d) Development of social forestry.

(VII) Khadi, Village and Cottage Industries -

(a) Promotion of Agro based rural and cottage industries;

(b) Organization of awareness caps, seminars and training programmes, agricultural and industrial exhibitions for the benefit of the rural areas.

(VIII) Rural Housing -

(a) Distribution of house sites within its jurisdiction;

(b) Maintenance of records relating to the house sites and other private and public properties.

(IX) Rural Electrification including Distribution of Electricity- *Providing for and maintenance of lighting of public streets and other places.*

(X) Non-Conventional Energy Source

(a) promotion and development of non-conventional energy schemes;

(b) maintenance of community non-conventional energy devices, including bio-gas plants;

(c) propagation of improved chulhas and other efficient energy devices.

(XI) Poverty Alleviation Programme-

(a) promotion of public awareness and participation in poverty alleviation programmes for fuller employment and creation productive assets etc.;

(b) selection of beneficiaries under various programmes through Gram Sabhas;

(c) participation in effective implementation and monitoring.

(XII) Education including primary and secondary schools -

(a) Promotion of public awareness and participation in primary and secondary education;

(b) ensuring full enrolment and attendance in primary schools and its management;

(c) providing such educational facilities as may be deemed necessary and desirable.

(XIII) Adult and Non-formal Education-Promotion of Adult Literacy-

(XIV) Cultural Activities -

(a) promotion of social and cultural activities;

(b) the organisation of Mahila Madals, organisation of Youth Clubs for promoting games and sports and execution of development, social and cultural activities in the Sabha areas;

(XV) Fairs and festivals –

(a) organisation and celebration of public festivals and fairs other than religious festivals;

(b) to organise, regulate and control local markets for sale and purchase of any product;

(XVI) Public Health and Family Welfare –

(a) implementation of family welfare and population control programmes;

(b) prevention and remedial measures against epidemics;

(c) regulation of sale of meat, fish and other perishable food articles;

(d) participation in programmes of human and animal vaccination;

(e) licensing of eating and entertainment establishments;

(f) destruction of stray dogs;

(g) regulation of curing, tanning and dyeing of skins and hides;

(h) regulation of offensive and dangerous trades;

(XVII) Women and Child Development –

(a) participation in the implementation of women and child welfare programmes;

(b) promotion of school health and nutrition programmes;

(c) establishment, maintenance and management of maternity and child welfare centres and the construction and repair of all buildings connected therewith;

(XVIII) Social Welfare including welfare of the handicapped and mentally retarded –

(a) participation in the implementation of the social welfare programmes, including welfare of the handicapped, mentally retarded and destitute;

(b) monitoring of the old age and widows pension schemes.

(XIX) Welfare of weaker: sections and in particular the

Scheduled Caste-

(a) promotion of public awareness with regard to welfare of Scheduled castes and other weaker sections;

(b) participation in the implementation of the specific programmes for the welfare of the weaker sections;

(XX) Public Distribution System –

(a) promotion of public awareness with regard to the distribution of essential commodities;

(b) monitoring the public distribution system.

85. Property of Gram Panchayat.

(1) A Gram Panchayat shall have power to acquire, hold and dispose of property and to enter into contract: Provided that in all cases of acquisition or disposal of immovable property by the Gram Panchayat, it shall obtain the prior approval of the State Government.

(2) All property within the local limits of the jurisdiction of Gram Panchayat of the nature hereinafter in this section specified, other than property maintained by the Central Government or the State Government or a local authority or any other Gram Panchayat, shall vest in and belong to the Gram Panchayat, and shall, with all other property of whatsoever nature of kind which may become vested in the Gram Panchayat, be under its direction, management and control, that is to say –

(a) All common properties;

(b) All public streets, including the soil, stones and other materials thereof and all drains, bridges, culverts, street, erections, materials, implements and other things provided for such streets;

(c) All public channels, water courses, springs, tanks, ghats, reservoirs, cisterns, wells, aqueducts, conduits, tunnels, pipes, pumps and other water works whether made, laid or erected at the cost of the Gram Panchayat or otherwise, and all bridges, buildings, engineer works, materials and things connected therewith or appertaining thereto and also any adjacent land (not being private property) appertaining to any public tank; Provided that water pipes and waterworks, connected therewith or appertaining thereto which with the consent of the Gram Panchayat are laid or set up in any street by the owners of any mill, factory, workshop on the like primarily for the use of their employees shall not be deemed to be public waterworks by reason of their use by the public:

(d) All public sewers and rains, and all works, materials and things appertaining thereto and other conservancy work: Provided that for the purpose of enlarging, deepening or otherwise repairing or maintaining any

such sewer or drain the sub-soil appertaining thereto shall also be deemed to vest in the Gram Panchayat.

(e) All sewage, rubbish and offensive matter deposited on streets or collected by the Gram Panchayat from streets, latrines, urinals, sewers, cesspools and other places;

(f) All public lamps, lamp-posts and apparatus connected therewith or appertaining thereto; and

(g) All buildings erected by the Gram Panchayat and all lands and buildings or the property transferred to the Gram Panchayat by the Central Government or the State Government or acquired by gift, purchase or otherwise for local public purposes.

(3) The State Government may, by notification, exclude any street, bridge or drain from the operation of this Act or of any specified section of this Act Provided that if the cost of the construction of the work had been paid from the Gram Panchayat Fund, such work shall not be excluded from the operation of this Act or any specified section of this Act, except after consideration of the views of the Gram Panchayat at a meeting.

(4) The State Government may allocate to a Gram Panchayat any public property situated within its local jurisdiction and thereupon such property shall vest in and come under the control of the Gram Panchayat.

199. Power to cancel or suspend resolutions of Panchayat.

(1) The Director may, by order in writing, cancel any resolution passed by a Panchayat if, his opinion, such resolution: -

(a) is not legally passed; or

(b) is in excess of abuse of the powers conferred by or under this Act or any other law; or

(c) is contrary to the interests of the public or, likely to cause waste or damage of Samiti Fund or Zila Parishad Fund or of property of a Panchayat Samiti or Zila Parishad ; or

(d) on its execution is likely to cause danger to human life, health or safety or is likely to lead to a riot or affray.

(2) The Director shall, before taking action under sub-section (1), give the Panchayat an opportunity for explanation.

(3) If in the opinion of the Deputy Commissioner, immediate action is necessary to suspend a resolution on any of the grounds referred to in clause (c) of sub-section (1), he may, by order in writing, suspend the resolution and make a report to the Director.

(4) The State Government may, either suo motu or on a representation made by the Panchayat Samiti or the Zila Parishad aggrieved by the order made under sub-section (3) call for the record of the case in which such order was made and pass such order in relation thereto as they may deem fit but the Government shall not pass any order prejudicial to the Panchayat unless it is given an opportunity for explanation.”

On careful perusal of the Scheme of the 1994 Act, it is crystal clear that the Gram Sabha means a body consisting of persons registered as voters in the electoral rolls of the area of the Gram Panchayat. In other words, Gram Sabha is a body consisting of persons who are registered as voters, whereas, under Section 2(za), the Gram Panchayat means an institution of self-government for a Gram Sabha area. The Panches and Sarpanches are elected to the Gram Panchayat. The expression Panchayat has been defined in Section 2(zj) to include a Gram Panchayat, Panchayat Samiti and Zila Parishad, constituted under the 1994 Act.

Section 4 provides that the State Government may by notification establish a Gram Sabha. Section 5 lays down the procedure for holding meetings of Gram Sabha. It obviously means that the meeting of the persons registered as voters in the electoral rolls of the area of the Gram Panchayat is required to be held. The functions of the Gram Sabha are enlisted in Section 9 of the 1994 Act. It is apparent that the Gram Sabha is a supreme body as it has the power to seek clarification under Section 9(g) of the 1994 Act from Sarpanch and Panches of Gram Panchayat about any particular activity, scheme, income or expenditure. Under Clause (h), it has to perform such other functions as may be prescribed.

Section 23 provides for the meeting of Gram Panchayat. The reference is to the elected body of the Gram Panchayat. In every Gram Panchayat, Sarpanch and Panches are elected as officer bearers to perform

the functions of the Gram Panchayat. Section 24 provides for the requirement of the quorum and the procedure to be followed for holding such meetings. Section 30 enlist the functions of Gram Panchayats. Thereafter, Section 85 provides that the Gram Panchayat shall have the power to acquire, hold and dispose of the property or to enter into a contract. It is evident that Proviso to sub-Section (1) of Section 85 of the 1994 Act provides that in all cases of the acquisition or disposal of immovable property by the Gram Panchayat, prior approval of the State Government is necessary. Section 199 of the 1994 Act enables the Director to cancel or suspend resolutions of Panchayat.

Keeping in view the aforesaid Scheme, it is clear that there is a distinction between the expression 'Panchayat', 'Gram Panchayat' and 'Gram Sabha'. No doubt, Gram Panchayat is some time referred to as the elected body of the Gram Panchayat. In spite of that there is a marked distinction between the Constitution of a Gram Sabha and a Gram Panchayat.

The first argument of learned counsel representing the petitioners is with regard to the judgment passed by the Civil Court. It may be noted here that Sh. Avtar Singh was not party to the aforesaid civil suit. The judgment has been passed in a suit for declaration and, therefore, it is a judgment in *personam* not in *rem*. Hence, the aforesaid judgment is not binding on Avtar Singh.

The next argument of learned counsel is with reference to the fact that even if the quorum for the meeting of the Gram Sabha was not complete, still the quorum of the meeting of the Gram Panchayat was complete and therefore, the resolution is to be considered to have been

passed by the Gram Panchayat.

The procedure for calling meetings of the Gram Sabha and the Gram Panchayat are different. Section 5 of the 1994 Act lays down the procedure for calling the meeting of the Gram Sabha, whereas, the procedure for calling the meeting of Gram Panchayat is provided in Section 23 of the 1994 Act. Ordinarily, in the meeting of the elected representative of the Gram Panchayat, registered voters in the area of Gram Sabha are not invited. The meeting of the Gram Panchayat takes place in between the elected representatives including Sarpanch and Panches. Thus, the argument of learned counsel that even in the absence of requisite quorum of Gram Sabha, in the meeting held on 15.09.2014, it can be considered to be a meeting of Gram Panchayat, does not have substance.

The next argument of learned counsel is with reference to the power of the Director under Section 199 of the 1994 Act. The learned counsel contends that the Director has no power to cancel the resolution passed by the Gram Sabha.

On careful perusal of Section 199 of the 1994 Act which has been extracted above, it becomes clear that the legislature has used the expression 'Panchayat' and not 'Gram Panchayat'. On reading of Section 2(zj), the Panchayat means a Gram Panchayat, Panchayat Samiti and Zila Parishad. Hence, the expression "Panchayat" has been given a wider meaning which only include the elected body of the Gram Panchayat but also includes Panchayat Samiti and Zila Parishad. The Gram Sabha is a body consisting of persons registered as voters in the electoral rolls of the area of the Gram Panchayat. Obviously, the resolution passed by the Gram Sabha is a decision of the Panchayat and therefore, validity and correctness

thereof, can be examined by the Director in exercise of powers under Section 199 of the 1994 Act. Obviously, the intent of the Legislature is to enable the Director to cancel any resolution passed by a Panchayat which includes not only Gram Panchayat but also Panchayat Samiti and Zila Parishad. Thus, the Legislature envisioned that the resolutions of the institutions created under Part-IX of the Constitution of India would fall within the sweep of expression “Panchayat”. Hence, Section 199 cannot be construed narrowly.

This matter can be examined from another perspective.

A careful perusal of the Trust Deed, it is evident that while passing the resolution for which, admittedly, quorum was not complete, the property situated within boundary of Baba Jogi Peer including Baba Jogi Peer and Baba Jogi Peer Public School was transferred to the Trust. Such transfer of immovable property without seeking permission of the State Government is expressly prohibited under Proviso to sub-Section (1) of Section 85. The attention of the Court has not been drawn to any prior permission of the State Government in this regard.

Moreover, it is clear from the order passed by the Director that out of total 5664 members of the Gram Sabha, only 156 members signed the resolution, whereas, as per Section 5(4) of the 1994 Act, 1132 members were required to sign. Hence, the resolution of the Gram Sabha in any case is wrong in the absence of the required quorum.

The last argument of learned counsel is that the resolution was passed in public interest. In the considered view of this Bench, before taking a decision the authorities are required to follow the procedure laid down in the Statute. Once the statute lays down a procedure for taking a particular

decision, the same can be permitted to be circumvented. A decision taken in alleged public interest cannot be upheld after noting the infringement of mandatory provision of the Act. From a perusal of the paper book, it is crystal clear that the decision taken in the meeting of the Gram Sabha is being fiercely contested by the Gram Panchayat. There are allegations that the District Administration hijacked the meeting and got the resolution passed by putting pressure on the elected office bearers. Learned counsel representing the petitioners has fairly admitted that now the elected body of the Gram Panchayat is not supporting the decision of Constitution of the Trust.

Keeping in view the aforesaid fact, no ground to issue the writ of certiorari is made out.

Hence, dismissed.

13th September, 2021
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(ANIL KSHETARPAL)
JUDGE

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