

LPA No.1024 of 2021 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.1024 of 2021 (O&M)

Date of decision : 01.11.2021

Ranjit Kaur and others

.....Appellants

VERSUS

State of Punjab and others

....Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Ajay Bhardwaj, Advocate, for the appellants.

AUGUSTINE GEORGE MASIH, J.

CM-2409-LPA-2021

Prayer in this application is for exemption from filing certified copies of Annexure A-1 and A-2 and placing the same on record as these documents are stated to be necessary for adjudication of the main appeal.

For the reasons stated in the application, the same is allowed. Exemption is granted from filing certified copies of Annexures A-1 and A-2 and the same are taken on record, subject to all just exceptions.

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In this intra court appeal, challenge has been posed to the order dated 22.04.2021 passed by the learned Single Judge dismissing the writ petition preferred by the appellants challenging order of their suspension dated 13.08.2019 (Annexure P-20) passed by the Director, Rural Development and Panchayat Department, Punjab and order dated 19.11.2020 (Annexure P-24) passed by the Financial Commissioner to Government of Punjab, Department of Rural and Panchayat, whereby,

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appeal preferred by the appellants stands dismissed.

2. It is the contention of the learned counsel for the appellants that the basis for placing the appellants under suspension was resolution, which has been passed by the Gram Panchayat, of which the appellants are members and the Sarpanch, for withdrawal of the petition, which has been filed under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as '1961 Act'), being contrary to the observations of the High Court in the writ petition and the LPA preferred by the Gram Panchayat and against the interest of the Gram Panchayat giving precedence to their personal interest as withdrawal of the said proceedings would have benefited the appellants directly. He contends that these grounds are not based upon proper appreciation of the facts and without taking into consideration the reply which the appellants have filed to the show cause notice issued to them. The proceedings as preferred under Section 11 of the 1961 Act were withdrawn as the judgments in which the Gram Panchayat was a party was brought to the notice of the Panchayat, wherein the Court had dismissed the said writ petitions filed by the Gram Panchayat. They, on the basis of the legal advice given by the counsel, had passed the resolution for withdrawing the proceedings so that the complete records could be collected and thereafter, appropriate petition could be filed under Section 11 of the 1961 Act. The intent was to file a consolidated and fresh petition on the same cause of action by furnishing better particulars and details. The inference drawn by the authorities is that the interest of the Panchayat has been overlooked giving precedence to the personal benefit which is uncalled for and without any basis, thus, deserves to be set aside.

3. Counsel for the appellants has further gone to the extent of submitting that the learned Single Judge has also misdirected himself without taking into consideration the real intent and purpose, for which the proceedings under Section 11 were withdrawn. His submission is that the impugned order passed by the learned Single Judge as also the orders passed for suspension of the appellants followed by the dismissal of the appeal by the Appellate Authority cannot sustain and deserve to be set aside.

4. We have considered the submissions made by the learned counsel for the appellants and with his assistance have gone through the impugned judgment, the orders passed by the authorities under the Punjab Village Common Lands (Regulation) Act, 1961 as also the pleadings and the orders passed by the High Court which have been made the basis for coming to a conclusion that the resolution of the Gram Panchayat was against the interest of the Gram Panchayat for withdrawing the proceedings under Section 11 of the 1961 Act.

5. On consideration of the above, we see no ground for interfering with the order passed by the learned Single Judge. The two judgments, reference of which has been found in the impugned order i.e. judgment passed in CWP No.782 of 1976, titled as 'Gram Sabha Salina Vs. Nahar Singh and others', decided on 15.12.1977 (Annexure P-5), wherein order of the Commissioner, Ferozepur Division, was challenged by the Gram Panchayat, which was dismissed by returning a finding that the petition under Section 7 of the 1961 Act was not maintainable as no resolution had been passed by the Gram Panchayat authorizing the Sarpanch to launch the

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proceedings and Letters Patent Appeal preferred by the Gram Panchayat against the said order i.e. LPA No.124 of 1978, titled as 'Gram Sabha Salina Vs. Nahar Singh and others', was dismissed on 12.03.1982 (Annexure P-6). The result of these judgments was that the petition under Section 7 of the 1961 Act was held to be not maintainable without resolution of the Gram Panchayat in support of the petition but that did not bar filing of a petition under Section 11 of the 1961 Act, which relates to declaration of title. Therefore, filing of the petition under Section 11 of 1961 Act cannot be said to be barred in the light of the judgments passed by this Court and referred to above. Legal advise, if any, being contrary and patently erroneous, therefore, could be because of extraneous consideration by resorting to said process when the proprietors of the village were likely to be the beneficiaries.

6. Now coming to the plea of the counsel for the appellants that the petition under Section 11 of the 1961 Act, which was preferred by the Gram Panchayat, was withdrawn with liberty to file a fresh one by giving details and collecting relevant records so that the interest of the Gram Panchayat could be protected but the said plea as has been sought to be raised by the counsel for the appellants is not reflected nor is it discernible from the order dated 17.07.2019 (Annexure P-15) passed by the Additional Deputy Commissioner (Development), Moga, exercising the powers of the Collector, Moga. The said order reads as follows:-

“Dated:- 17.07.2019

Called for hearing. Counsel Sh. Sukhwinder Singh Sandhu came present for Sarpanch Gram Panchayat Salina and stated that as per letter dated 17.07.2019 of

Sarpanch Ranjit Kaur, Gram Panchayat Salina, and Resolution dated 17.07.2019 of Gram Panchayat Salina and directions that the Gram Panchayat do not want to continue the Proceedings, therefore, Gram Panchayat Salina is withdrawing this case through its Counsel and submits that the present case be dismissed as withdrawn. Regarding not proceeding with this case, the letter of Gram Panchayat Salina and copy of Resolution as proof is produced.

The case filed by Gram Panchayat is dismissed as withdrawn.”

7. A perusal of the above would show that the letter dated 17.07.2019 of the Sarpanch i.e. appellant No.1 – Ranjit Kaur and the resolution of the even date of the Gram Panchayat Salina was produced before the said authority, according to which directions were issued to the counsel that the Gram Panchayat did not want to continue the proceedings and therefore, Gram Panchayat is withdrawing the case through its counsel. There is no mention with regard to any liberty having been sought or stated before the authority while withdrawing the petition under Section 11. There was no rider whatsoever imposed or pleaded before the authority. It is a simpliciter withdrawal of the petition by the Gram Panchayat, Salina, on the basis of the resolution referred to above.

8. Nothing has come on record which would justify the plea which has been taken by the counsel for the appellants before this Court. Perusal of the resolution passed by the Gram Panchayat (Annexure P-14) would also indicate that there was no such intention to file a fresh petition after collecting the records. What has been said therein was that the Gram Panchayat did not want to continue with the case which has been filed under

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Section 11 of the 1961 Act and by withdrawing the said case, will try to settle it at their own level as various decisions have already been passed by the Supreme Court and the High Court in respect of the land in question. There is no mention of any of the judgments, copies of which have been appended as Annexures P-5 and P-6 nor is there any utterance with regard to the legal advise, if any, received by the Gram Panchayat from the counsel. The stand, therefore, of the counsel for the appellants is contrary to the records and thus, cannot be accepted.

9. In view of the above, we do not find any ground for interfering in the present appeal as it would not be unjustified on the part of the authorities under the 1961 Act to *prima facie* come to a conclusion that the withdrawal of Section 11 petition on the part of the Gram Panchayat on the basis of the resolution, which has been passed by the appellants, was not justified or *bona fide* and there was some other considerations which had weighed other than the interest of the Gram Panchayat.

10. The appeal being devoid of merit, therefore, stands dismissed.

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In the light of the dismissal of the main appeal, no order is required to be passed in the present application for stay as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

01.11.2021
Harish

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No