

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CWP-20797-2020

Date of decision: 25.02.2021

Harkesh Chopra

.....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. Chanakya Pandit, Advocate for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

Mr. Vikram Singh, Advocate for the caveator.

GIRISH AGNIHOTRI, J. (Oral)

The matter has been taken up through video-conferencing on account of restrictions due to outbreak of pandemic COVID-19.

Petitioner-Harkesh Chopra, stated to be aged 45 years approximately, has filed the present petition *inter alia* with a prayer for issuance of a writ in the nature of certiorari for quashing the impugned order dated 03.02.2020 (Annexure P-1), whereby the petitioner was dismissed from the post of Sarpanch.

Records of the case show that on 07.12.2020, while issuing notice of motion, this Court had passed the following order:-

“The petitioner Harkesh Chopra aged 45 years has filed the present writ petition inter alia with a prayer seeking quashing of the orders dated 03.02.2020 (P1) passed by respondent No.3 as well as the order dated

10.11.2020 (P2) passed by respondent No.2, dismissing the petitioner from the post of Sarpanch.

Learned counsel for the petitioner based upon the pleadings submits that the petitioner was elected as Sarpanch of Gram Panchayat of village Badhi, Block Gannaur, District Sonapat in January, 2016. It is submitted that the petitioner was issued a show cause notice on 24.07.2017. Thereafter it is pleaded in para 3 (b) of the petition that a report was sought from SDM Gannaur who in his report dated 05.10.2018 (P4) stated about some persons Ram Sarup, Rohtash, Rakesh and Kartar having allegedly encroached upon the Panchayat land. It is submitted with emphasis that the report suggested that the petitioner had constructed a metalled way upon the street that belongs to Panchayat for his personal use. Learned counsel then makes reference to para 3(d) to submit that when the proceedings were initiated by the Deputy Commissioner, the Deputy Commissioner was seemingly satisfied with the petitioner's explanation to the extent of metalling 30 sq.yards of Panchayat land leading to his house so as to ensure better access to his house. It is further pleaded that the petitioner had ensured that 7 persons who remained in unauthorized possession of Panchayat land, proceedings under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 would be initiated against them. However, vide order dated 03.02.2020 (P1), the Deputy Commissioner issued orders dismissing the Sarpanch under Section 51(3)(e) of the Haryana Panchayati Raj Act. It is submitted that an appeal was filed against the said order but the said appeal has also been dismissed on 10.11.2020 (P2). Learned counsel has made reference to photographs (P3 page 44) to show that

only a very small portion which is outside the gate of the house of the petitioner has been metalled which under the orders of this Court, has been further marked as A, B, C & D on Annexure P3. Mr. Vikram Singh, Advocate for the caveator (Surjit Singh) submits that in spite the fact that the petitioner was party before the Principal Secretary to Govt. Haryana but the said person has not been impleaded as respondent.

Faced with this, learned counsel for the petitioner makes an oral prayer that Sh. Surjit Singh (from the caveat petition) be impleaded as party respondent No.4. Oral prayer is accepted. Sh. Surjit Singh is ordered to be impleaded as party respondent No.4. Registry is directed to carry out necessary amendment in the memo of parties.

Notice of motion.

On the asking, Mr. Sumeet Gupta, Addl. AG Haryana accepts notice on behalf of the State and Mr. Vikram Singh, Advocate accepts notice on behalf of respondent No.4. List on 15.12.2020.

Respondent No.3 in the meantime is directed to file a short status report only on the point as to whether the petitioner has allegedly encroached upon the area A, B, C & D on photographs (P3) (i.e. starting from street No.91- 92 till the entry point of his house 6 yards x 5 yards only).

At this stage, learned counsel further submits that he has instructions to state that he applied for demarcation report so that proper proceedings could be initiated against the 7 persons. After the receipt of demarcation report dated 05.10.2018, the petitioner has filed appropriate proceedings under Section 7 against 7 persons on 05.02.2020. He further submits that this fact although he has specifically mentioned in para 3(f) of the

petition but in spite of this, the appellate authority i.e. respondent No.1 has wrongly recorded that the petitioner herein did not file eviction petition against 7 encroachers. He also submits that the original impugned order dated 03.02.2020 the effect of which was stayed by this Court in CWP No.3707 of 2020 till the decision of the appeal. He therefore in the above circumstances submits that the impugned order (P2) be stayed so that the petitioner continues working as Sarpanch.

Let a status report be filed within a week. It is made clear that in case status report is not filed within one week from today and in view of the submission of learned counsel for the petitioner that the term of 5 years would end in January, 2021, this Court would take up the interim prayer of the petitioner for staying the operation of the impugned order (P2) dated 10.11.2020.”

In response to the notice of motion issued, respondent no.3 filed a status report dated 15.12.2020. In the status report, it has been inter alia mentioned that in the second regular enquiry, the petitioner was found having constructed *pakka gali* for personal use leading to his house. Thereafter on 17.12.2020, this court passed the following order;-

“This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Status report by way of affidavit dated 15.12.2020 of respondent No.3 has been circulated by learned counsel for the State on WhatsApp group created for the purpose of Video Conferencing, in compliance with order dated 07.12.2020. Perusal of the same reveals that it is woefully inadequate and does not answer the specific direction of this Court, relevant part of which reads as under:-

“Respondent No.3 in the meantime is directed to file a short status report only on the point as to whether the petitioner has allegedly encroached upon the area A, B, C & D on photographs (P3) (i.e. starting from street No.91-92 till the entry point of his house 6 yards x 5 yards only).”

Learned counsel for the State prays for a short adjournment to file a proper affidavit of respondent No.3.

At request, adjourned to 22.12.2020.

Printout of the affidavit circulated in the WhatsApp group be taken and attached with the file.”

In response thereof, on 22.12.2020, a status report was filed, wherein, it has been inter alia mentioned that the petitioner was found having encroachment on Gali No.93 in the area (area shown in the Annexure P-3) in east 4 feet 5 inch, in west 4 feet 5 inch, in north 12 feet and in the south 9 feet 8 inch, total area 5 square yards.

Thereafter, this court further passed the order dated 22.12.2020 to the following effect:-

“This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

A copy of the status report by way of affidavit dated 21.12.2020 of Sh. Shyam Lal Poonia, Deputy Commissioner, Sonipat filed on behalf of respondent no.3, has been circulated on the e.mail created for the purpose of video conferencing. Print out of the same be taken and attached with the file.

Learned counsel for the State to file the said affidavit with the registry within a week.

Learned counsel for the petitioner, at this stage, is unable to deny that the green wall depicted in the photograph on page no 46 as well as the 'Charpai', are on public land. He seeks a short adjournment.

At request, adjourned to 14.01.2021."

Today, on the resumed hearing of the case learned counsel for the respondents have forwarded a notification/order dated 12.02.2021 through whatsapp in VC group. Vide which, it has been ordered that in exercise of powers conferred under Sub section 4 of section 158 read with Subsection 4 of Section 3 of the Act, the Governor of Haryana, hereby appoints the Chief Executive Officer, Zila Parishad as Administrator of the concerned Zila Parishad. On the basis of above, it is submitted by counsel for the respondent that the petitioner's term has expired on 23.02.2021 and since then, in pursuance to the said order, the Administrator has taken over the charge.

Learned counsel for the petitioner, faced with the above situation, submits that the petitioner, on the basis of his hard work, has been elected as Sarpanch. He completed his term as Sarpanch for 04 years and 10 months, but, was aggrieved of the order dated 03.02.2020 and also order dated 10.11.2020, whereby, inter alia the petitioner was dismissed as Sarpanch from Gram panchayat, Badhi, primarily on the facts and short issue(s) noticed above. Secondly, he submits that in compliance of the orders passed by this court, especially the order dated 22.12.2020, the petitioner has removed the green colour culverts on the side of the entry to his house. He further submits that level of the road/gali and the pattern is

the same upto the gate of his house. Therefore, in these peculiar facts and circumstances, the alleged encroachment, if any, of allegedly small portion of five square yards, also does not stand. He also repeats the contention as noticed by this Court in the order dated 7.12.2020, to submit that in fact no disqualification survives.

This court, in the above circumstances, deems it appropriate to dispose of the writ petition, especially when the term has already expired on 23.02.2021 and thus, no urgency is involved. Accordingly, the following directions are being issued:-

- (i) The authorities under the Act, especially respondent no.3 shall have a re-look over the matter, grant hearing to the parties concerned and pass a fresh order dehors the earlier order dated 03.02.2020 and the order dated 10.11.2020.*
- (ii) While passing the fresh order, regard shall be had to the facts noticed by this Court in the foregoing paragraphs.*
- (iii) Let the decision be taken as expeditiously as possible after granting adequate opportunities to the parties.*

Ordered accordingly.

(GIRISH AGNIHOTRI)
JUDGE

25.02.2021
anju rani

Whether speaking/ reasoned:	Yes/No
Whether Reportable:	Yes/No