

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.20810 of 2020

Date of Decision: *January 13, 2021*

Jaswant Kumar & others

..... PETITIONER(S)

VERSUS

State of Haryana & others

..... RESPONDENT(S)

...

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

...

PRESENT: - Mr. Haneet Sharma, Advocate, for the petitioners.

Ms. Shruti Jain Goyal, Deputy Advocate General,
Haryana.

Mr. J.P. Sharma, Advocate, for respondent Nos.3 to 5.

. . .

Sant Parkash, J

The prayer in the instant writ petition is for quashing the order dated 11.09.2020 passed by respondent No. 2 (Annexure P-12) rejecting the application submitted by the petitioners. Further prayer is for a direction to respondent Nos. 2 and 3 to restore the cremation ground belonging to the petitioners and other residents belonging to Barahmins and Backward Classes.

The facts of the case are that there are five cremation grounds in village Panjokhra belonging to different castes. The cremation

ground belonging to the petitioners and other persons of the community is adjacent to the wall of Gurdwara Panjokhra Sahib and the cremation ground belonging to the Sikh Community is situated on the other side of the road, within abadi. The other cremation grounds are outside the abadi of the village. There was a dispute regarding the path initiated by one Malkiat Singh with regard to the land of the cremation ground. This matter was brought before the Panchayat. A compromise was effected between the parties on 18.03.2002 (Annexure P-1) and it was decided that the plot where barbed wires have been affixed, belongs to cremation ground and no person has any right to interfere in the said land.

In the year 2013, Joginder Singh and Malkiat Singh threatened to forcibly occupy the land. The persons belonging to Barahmin community and Backward Class made a complaint dated 16.09.2013 (Annexure P-3) in this regard to the Superintendent of Police, Ambala. The Secretary, Manager Gurdwara Panjokhra Sahib also filed a complaint. Baljit Singh, Manager of the Gurdwara made a specific statement (Annexure P-5) that the dispute was with regard to construction of a shed in the cremation ground adjoining the gate of Gurdwara Sahib. A compromise dated 20.09.2013 (Annexure P-4) was effected between the parties before the Gram Panchayat and it was decided that the site would remain as cremation ground and nobody can raise construction over it. In view of the compromise effected between the parties, SHO Police Station, Panjokhra prepared a report dated 23.09.2013 and submitted the same before the Deputy Commissioner of Police, Ambala on 27.09.2013 (Annexure P-6).

Learned counsel for the petitioners has submitted that respondent No. 5-Amarjit Singh, Sarpanch, Gram Panchayat, Panjokhra, wanted to utilize the land of cremation ground, abutting the wall of

Gurdwara, for Gurdwara or other purpose without calling the meeting of Gram Sabha or Gram Panchayat. On 12.06.2020, respondent No. 5 removed the barbed wire and cement pillar and uprooted the trees standing in the cremation ground with the help of BDPO and police personnel. In this regard, petitioners moved a detailed representation dated 13.06.2020 to the Chief Minister of Haryana, respondent Nos. 2 and 3 and DGP Haryana, complaining about the aforesaid illegal action of respondent Nos. 4 and 5. However, no action was taken on the same.

Petitioners filed CWP No. 8906 of 2020 which was disposed of by this Court on 30.06.2020 (Annexure P-10) on the submission of counsel appearing for the State to the effect that in case representation has been received in the office of Competent Authority, it shall be looked into and if circumstances so warrant, appropriate decision shall be taken at the earliest, in any case not later than one month. Thereafter, petitioners came to know that respondent No. 2 rejected their representation vide order dated 11.09.2020 (Annexure P-12) which is unsustainable in the eyes of law. No opportunity of hearing was provided to the petitioners. The impugned order (Annexure P-12) being violative of natural justice deserves to be set aside/quashed.

This Court on 04.12.2020 passed the following order:-

“The prayer in the instant writ petition is for quashing the order dated 11.09.2020 passed by respondent No. 2 (Annexure P-12) rejecting the application submitted by the petitioners. Further prayer is for a direction to respondent Nos. 2 and 3 to restore the cremation ground belonging to the petitioners and other residents belonging to Barahmins and Backward Classes.

We are not inclined to interfere in this matter. However, in view of the fact that five cremation grounds are already existing, as noticed at page 45 of the paper book, being earmarked for different communities, we deem it appropriate to seek response from the Deputy Commissioner, Ambala with regard to such divisions of the society and the common authority, who shall administer all the said cremation grounds so as to remove the apprehension of the petitioners that they would not be permitted to avail the benefit of the existing cremation grounds for cremation of members of their communities.

Ms. Shruti Jain Goyal, learned Deputy Advocate General, Haryana, is directed to do the needful.

List on 13.1.2021 for further consideration.”

Pursuant to the aforesaid order, status report by way of affidavit of respondent No. 2-Ashok Kumar Sharma, Deputy Commissioner, Ambala has been filed wherein it has been stated that a detailed report was sought in the matter whereupon BDPO Ambala-II submitted his report dated 31.12.2020 along with copy of resolution dated 30.12.2020 passed by the Gram Panchayat, Panjokhra and an affidavit of the Sarpanch on behalf of the Gram Panchayat. The relevant part of the status report is reproduced hereunder:-

- “2. That the deponent sought a detailed report in the matter and the Block Development and Panchayat Officer, Ambala-II submitted his report vide letter No. 3041 dated 31.12.2020 along with copy of resolution dated 30.12.2020 passed by the Gram Panchayat, Panjokhra and an affidavit of the Sarpanch on behalf of the Gram Panchayat. It has been mentioned in the reply that “an emergency

meeting was convened by the Gram Panchayat on dated 30.12.2020. A resolution was passed through which the Gram Panchayat has taken the responsibility of removing any possible trouble or hindrance arising in cremation of the people of any community by the Gram Panchayat itself and against such obstructionist proposal to take legal action is passed. Along with this an affidavit has been presented by the Gram Panchayat, through its Sarpanch, stating therein all the facts of the Resolution.” Copy of letter No. 3041 dated 31.12.2020 is attached as Annexure R-1 and copy of Resolution dated 30.12.2020 is attached as Annexure R-2 and copy of affidavit of the Gram Panchayat as Annexure R-3.

3. That as per Resolution and the affidavit of the Gram Panchayat the location and existing position of 5 cremation Yards in the village are as under:-

1) **Main Cremation yard:-**

This cremation Yard is located on the west side of village near Naraingarh Road (N.H.) on the back side of Dhami Dhaba.

2) **Harijan Cremation Yard:-**

This cremation yard is located in front of the Dhami Dhaba on the other side of Narayangarh Road (N.H.). It is situated in the west-south side of the village on the Bank of the Pond.

3) **Jagirdar Cremation Yard:-**

This is also situated on the National Highway (Naraingarh road) in the middle west side in the village.

4) **Mansad Patti Cremation Yard:-**

This cremation yard is located near the main gate of Gurdwara Sahib and is located on the east side of the village population.

5) **Ramdasiya Cremation Yard:-**

This cremation yard is located on the north side of the village on Jadaut Road.

4. That in reply to the observation qua division of the society vide interim order of this Hon'ble Court, it is respectfully submitted that all the above 5 cremation yards are in existence for more than 40-50 years prior to the existence of the present Gram Panchayat and are being used by the inhabitants of the village irrespective of their caste, creed or sect and none of the inhabitants of the village has ever been restrained to use the cremation yard for cremation of dead bodies. It is further respectfully submitted that the village abadi as per revenue record is on an area of 576 Kanal 9 Marla comprising in Khasra No. 160 (571K 4M) and Khasra No. 161 (5K 5M). The village abadi has been expanded even beyond this area due to increase in population and is expanded in about 1 Acre on all the sides around the village. The total population of the village is around 6000. The management of these Cremation Yards is being done to provide a better place for cremation to the villagers residing on different sides of the village and not to divide the society. The names of the cremation yards are symbolic and have been named just to identify the specific place of cremation yard and such type of names usually exist for the chunk of fields and wells in the villages since more than 40-50 years immemorial just for identification of that place.
5. That the Gram Panchayat, Panjokhra is managing all the above Shamshan Ghats in the village. The apprehension of the petitioner that his community members will be deprived of using the cremation

yard is baseless because the Gram Panchayat, Panjokhra has undertaken the responsibility to resolve such difficulty at its own level and if any case of such hindrance will come into the notice of Gram Panchayat, social as well as criminal action will be taken against the guilty person. An affidavit to this effect has also been given by the Sarpanch on behalf of the Gram Panchayat, in favour of their Resolution dated 30.12.2020.”

A perusal of the aforesaid reproduction depicts that an emergency meeting was convened by Gram Panchayat on 30.12.2020 and a resolution has been passed wherein Gram Panchayat has taken the responsibility of removing any possible trouble or hindrance arising in cremation of the people of any community by the Gram Panchayat itself. The Gram Panchayat has assured the smooth and peaceful funeral of each and every community of the village in any of the five cremation yards. The Gram Panchayat has further resolved to take a strict social and legal action against the offender.

Taking into consideration the totality of the circumstances as also the contents of the status report/affidavit filed by respondent No. 2, no further action is required in the matter and the petition stands disposed of accordingly.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

January 13, 2021
Avin/Maninder

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No