

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18171-2019

Decided on: 03.08.2022

Sukhmander Singh

.....Petitioner

V/s.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Deepak Aggarwal, Advocate for the petitioner.

Ms. Anu Pal, DAG, Punjab.

Ritu Bahri, J.

The petitioner is seeking writ of certiorari for quashing notification dated 04.06.2018 (Annexure P-13) whereby the existing Gram Panchayat of Sekha Mehar Singh Wala has been illegally merged into Sekha Kalan (128) and the same is against the instructions issued by the department for the exchange and creation of New Gram Sabha/Gram Panchayat and further quashing order dated 18.04.2019 (Annexure P-15) whereby Government of Punjab has merged Gram Panchayat Sekha Mehar Singh Wala into Gram Panchayat Sekha Kalan after accepting the recommendation made by the Deputy Commissioner, Moga vide letter dated 26.04.2018.

On notice of this petition, short reply by way of affidavit of the Special Secretary, Rural Development and Panchayats, Punjab, Vikas Bhawan, Sector 62, SAS Nagar on behalf of respondents No. 1 to 6 dated 22.08.2019 has been filed. The stand taken in the short reply is that the impugned order dated 18.04.2019 was passed after giving proper

opportunity to the concerned parties. It was further held in the said order that there was no physical distance in both the Panchayats as required under Section 3(1) of the Punjab Panchayati Raj Act, 1994. Even the consent of Gram Sabha for merger of Gram Panchayat Sekha Mehar Singh Wala into Gram Panchayat Sekha Kalan was taken in the presence of about 500 residents. The total population of village Sekha Kalan is 4834 out of which 3135 is of Sekha Kalan and 999 of Sekha Mehar Singh. It is further mentioned in the short reply that the election in all the Gram Panchayats were held on 30.12.2018 and now no fresh proposal for carving out a new Gram Sabha is pending with the department. The fresh proposals will be entertained only one year before the new general elections of the Gram Panchayats which are due in 2024. As per order dated 01.02.2008 (Annexure R-1), the State Government has delegated the powers of the Government to carve out new Gram Panchayat to the Special Secretary-cum-Director Rural Development and Panchayat. The Department of Rural Development and Panchayat, Punjab issued guidelines vide letter dated 26.05.2017 (Annexure R-2) to the field authorities who send proposal to the State Government for change of areas of Gram Panchayat's and for establishing new Gram Sabha's/Gram Panchayat's.

Learned counsel for the State has further referred to a judgment passed by this Court in CWP-344-2020 titled as Hardeep Singh vs. State of Punjab and other, decided on 11.03.2022 wherein bifurcation of Gram Sabha has been considered. The said writ petition was dismissed by referring to the Full Bench judgment passed by this Court in the case of Gram Sabha Begowal vs. *The State of Punjab and others, 1981 Air (Punjab and Haryana) 101* wherein it has been held that the State

Government had to apply its mind fully to consider the pros and cons whether area can be constituted as a municipality or to constitute that area into a notified area. There was no provision in the Act to invite objections from the inhabitants of the area and hence such provision is not *ultra vires* to Articles 14 and 19 of the Constitution of India. The said judgment was followed thereafter in **CWP-17225-2008** titled as ***Gram Panchayat, Manne Majra and others vs. State of Punjab***, decided on 02.04.2012. In ***Gram Panchayat, Manne Majra's case (supra)***, Division Bench of this Court was considering notification dated 07.03.2008, whereby Chamkaur Sahib was notified as a transitional area under the Punjab Municipal Act, 1911. While dismissing the said petition, reference was made to the Full Bench judgment passed in ***Gram Sabha Begowal's case (supra)*** and the judgment passed by the Supreme Court in ***Sub-Divisional Officer vs. Mehar Singh, (1988) 4 SCC 200*** in which the judgment of ***Gram Sabha Begowal's case (supra)*** was approved.

After the judgment of ***Sub-Divisional Officer's case (supra)***, consistent view has been taken in ***State of Punjab vs. Tehal Singh (2002) 2 SCC 7*** and in ***Sundarjas Kanyalal Bhatija & others vs. Collector, Thane, Maharashtra and others, AIR 1990 SC 261*** that establishing of a separate Gram Sabha or Municipality do not require providing opportunity of hearing to the residents of the concerned area.

Finally, the Division Bench in ***Gram Panchayat, Manne Majra's case (supra)***, referred the judgment passed by the Supreme Court in ***State of U.P. vs. Pradhan Sangh Kshettra Samiti, 1995 Supp (2) SCC 305*** wherein establishment of common Gram Sabha was under challenge and the Supreme Court held that the Court cannot substitute the concept of village

and it is for the Government to decide in what manner the panchayat areas and the constituencies in each panchayat area will be delimited. It is not for the Court to dictate the manner in which the same should be done. So long as the panchayat areas and the constituencies are delimited in conformity with the constitutional provisions or without committing a breach thereof, the courts are not supposed to interfere with the same.

Keeping in view of the above observations, no ground to interfere order dated 18.04.2019 (Annexure P-15) is made out.

Writ petition is hereby dismissed.

(RITU BAHRI)
JUDGE

03.08.2022

Divyanshi

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No