

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

**CWP No.22335 of 2021 (O & M)
Date of Decision:- 02. 09.2022.**

Dilbagh Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

**CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G. Haryana assisted by
Mr. Saurabh Mago, AAG, Haryana.

Mr. Sukhdeep Singh, Advocate
for the applicant in CM-11772-CWP-2022.

NIDHI GUPTA, J.

The present Civil Writ Petition has been filed under Articles 226/227 of the Constitution of India seeking the issuance of a writ in the nature of certiorari for setting aside the order dated 25.10.2021 (Annexure P-11) passed by respondent No.2 - Deputy Commissioner-cum-District Electoral Officer, Karnal; and order dated 25.03.2021 (Annexure P-8) passed by respondent No.3-Electoral Registration Officer-cum-Additional Deputy Commissioner, Karnal—whereby the names of the petitioners have been deleted from the voter list of Village Bodsham, Tehsil Nilokheri, District Karnal.

It is the petitioners' case that they are the permanent residents

of Village Bodsham and had only temporarily shifted to District Kurukshetra and Uttar Pradesh etc. for the purposes of business, and that they have again returned to their Village Bodsham and have been residing there since the past two years. In support, the petitioners have appended their Aadhar Cards and PAN cards. It has accordingly been prayed that the orders dated 25.10.2021 (Annexure P-11) and 25.3.2021 (Annexure P-8) deleting their names from voter list for Village Bodsham be set aside, being illegal.

In response, counsel for the State took us through the record and the factual matrix of the sequence of events stating the same to be essential for the effective consideration of the entire controversy. Counsel stated that perusal of impugned order dated 25.3.2021 (Annexure P-8) reveals that one Shri Harjinder Singh s/o Man Singh, resident of village Bodsham, Tehsil Nilokheri, District Karnal had submitted an application before Respondent no. 3 stating therein that the petitioners had gone away from the village by selling their houses and land, and therefore, their names be deleted from the voter list. In pursuance thereto, the Respondent no. 3 issued notices to the petitioners through the Patwari asking them to appear before him on 23.2.2021. Accordingly, on 23.2.2021 the petitioners had appeared and were given a personal hearing. However, it was noted that the petitioners could not produce any evidence to show that they are permanent residents of the Village Bodsham. Even a spot verification was carried out by the Tehsildar, Nigdhu through the village Numberdar, Chowkidar, and Patwari, who vide his office letter no. 282 dated 22.3.2021 reported that the petitioners were not residing in the

Village Bodsham and were residing in Kurukshetra since the past 3-4 years, and had no land in the village either. It was stated that it was in view of these facts that Respondent no. 3 had passed order dated 25.3.2021 deleting the names of the petitioners from the voter list as they were not permanent residents of Village Bodsham.

Against this order dated 25.03.2021, the petitioners had filed an appeal before the Deputy Commissioner-cum-District Electoral Officer, Karnal/ Respondent no. 2 herein, who again sought a report from Naib Tehsildar, Nigdhu. Thereafter, upon hearing the parties, and considering the record and the report of the Naib Tehsildar dated 28.5.2021, the Respondent no. 2 passed order dated 9.6.2021, with the finding that the appellants/petitioners herein *“are not permanent residents of village Bodsham because they are not having any residential house or agricultural land in village Bodsham. Hence, keeping in view the abovesaid facts, it has been confirmed that the order dated 25.3.2021 under appeal passed by the Electoral Registration Officer 19-Nilokheri (A.J.) Assembly Constituency-cum-Additional Deputy Commissioner, Karnal has been passed as per the evidence brought on file and as per rules and same calls no interference. Counsel for the appellants during arguments did not produce any such evidence or document from which it proves that the order passed by the Court below is not as per rules”*. Accordingly, in appeal, the order dated 25.3.2021 was upheld.

Counsel for the State pointed out that (prior to present writ petition), the petitioners have already challenged the aforesaid orders dated 25.3.2021 and 09.06.2021 before this Court by way of earlier Civil Writ Petition No.11700 of 2021, titled 'Dilbagh Singh and others vs. State

of Haryana and others', which was disposed of on 24.09.2021, with the following order :-

“Present petition has been filed by the petitioners for issuance of writ in the nature of certiorari for setting aside the order dated 09.06.2021 (Annexure P-11) passed by respondent No.2 and order dated 25.03.2021 (Annexure P-10) passed by respondent No.3 vide which the votes of the petitioners have been deleted from the voter list of Village Bodsham, Tehsil Nilokheri, District Karnal wrongly and illegally.

Notice of motion.

Mr. Ankur Mittal, Addl. A.G., Haryana, assisted by Mr. Saurabh Mago, Asst. A.G., Haryana, accepts notice on behalf of respondent-State Authorities.

Learned State counsel has informed that pursuant to order dated 27.08.2021, the petitioners had approached respondent No.3—Electoral Registration Officer—cum—Additional Deputy Commissioner, Karnal and have submitted their relevant documents. He further states that after completing the exercise of verifying the documents of the petitioners, fresh orders can be passed.

Keeping in view the above fact, the present petition is being disposed of and order dated 09.06.2021 (Annexure P-11) passed by the Deputy Commissioner-cum-District Electoral Officer, Karnal is set aside and a direction is being given to the Deputy Commissioner-cum-District Electoral Officer, Karnal, to complete the process of verification and pass a fresh speaking order, in accordance with law.”

It was stated that in pursuance to the above order, verification of the petitioners' case was once again got done through the Naib

Tehsildar, Nigdhu, who, vide his office letter No.868 dated 10.09.2021 once again reported that the petitioners have no property or agricultural land in village Bodsham and nor are they residing on rent in any house in the village. On 14.10.2021 Respondent no. 2 gave the petitioners a personal hearing and their statements were recorded, wherein the petitioners stated that they had been residing in Village Bodsham since the year 1947 and they have their own house in the village. The petitioners now admitted that they are residing in District Kurukshetra since the past 1-½ years and doing the work of milk dairy and had moved to Kurukshetra to provide education to their children. However, as the petitioners *“could not produce any such evidence/documents etc from which it can be proved that they are having ordinarily residence in the village”*, thus, keeping in view the abovesaid facts and report, Respondent no. 2 passed order dated 25.10.2021 whereby it was not considered necessary to interfere/amend the order dated 25.3.2021 passed by the Electoral Registration Officer 19-Nilokheri (A.J.) Assembly Constituency-cum-Additional Deputy Commissioner, Karnal.

It was pointed out by Counsel for the State that it was in this background that the petitioners had now challenged orders dated 25.10.2021 and 25.3.2021 by way of present CWP-22335-2021.

Counsel for the petitioners brought our attention to CM-16567-2021 filed by them under Section 151 CPC with present CWP, for placing on record certain photographs, wherein it was inter-alia, averred that *“the petitioners have sold only their agricultural land and the residential house has not been sold by them which is still in existence”*.

Accordingly, on 30.11.2021, this Court passed the following order :-

“CM-16567-CWP-2021

Notice of this application.

Mr. Ankur Mittal, Additional Advocate General, Haryana with Mr. Saurabh Mago, Assistant Advocate General, Haryana accepts notice on behalf of the non-applicant/official respondents.

Application is allowed.

CWP-22335-2021

Learned counsel for the State seeks time to verify the contents of the affidavit of the petitioner-Dilbagh Singh as well as photograph (Annexure P-12) attached with the above-said application.

List on 16.12.2021.”

Per contra, the respondent State has filed an affidavit/status report dated 15.12.2021 wherein it has been stated that on 10.12.2021 Tehsildar, Nilokheri and Election Tehsildar, Karnal jointly visited the Village Bodsham and enquired about the alleged residential house of the petitioners and it was found that the petitioners are not residing in the village and that the house, as shown in the photographs with said CM-16567-2021, is in the name of brothers of petitioner Dilbagh Singh. It was reported that other villagers confirmed that the petitioner Dilbagh Singh had sold his land and property in the village and was now residing with his family in district Kurukshetra since many years. The aforesaid report dated 10.12.2021 was appended at Annexure R1. A report was also sought from the Patwari Halqa, Village Bodsham, who reported that the petitioners had sold all their land and did not own any land any longer in

village Bodsham.

To satisfy the petitioners, this Court on 05.8.2022 yet again, directed the respondents and passed the following order :-

“Heard learned counsel for the parties at length.

A direction is being given that the petitioners will approach the BDPO of village Bodhsam and thereafter, BDPO will go to the house shown to be in the ownership of the brother of the petitioner, as per status report dated 10.12.2021 (R-1) and photographs (R-2). The BDPO will verify the contents of the affidavits (P-16 to P-19) filed by the petitioners as per Sections 10 & 19 of Representation of People Act, 1950 to see that whether the petitioners ordinarily are staying in the house.

Parties can appear before the BDPO of village, Bodhsam on 06.08.2022 at 10 A.M.

List on 10.08.2022.”

In compliance of the above order passed by this Court on 05.8.2022, a Status report affidavit dated 20.8.2022 was filed by Respondent no. 3, wherein it was stated that upon direction the Block Development and Panchayat Officer, Nilokheri, carried out spot inspection wherein respectables of the village were present and that during inspection petitioner Dilbagh Singh did not produce any documentary evidence, which could prove that the house in question belongs to him or that he is owner of any land in the village Bodhsam. In this regard report was also sought from the Patwari Halqa, who vide report dated 06.8.2022 reported that the petitioner had sold his entire land measuring 35 Kanal 10 Marlas to Shri Rajvir Singh vide sale deed No.282 dated 21.6.2018, and mutation in this regard was also entered and sanctioned in the revenue

record. The Tehsildar, Nighdu also reported on 16.8.2022 that the petitioner Dilbagh Singh is residing in Kurukshetra and running a dairy there. It was stated in said affidavit dated 20.8.2022, that the entire inquiry was videographed and the CD (compact disk) of the video of the inquiry was also duly appended as Annexure R-5 with the said affidavit.

We have heard learned counsel for the parties. We find no merit in the conflicting and continually changing averments set forth by the petitioners from time to time.

In our view, at this stage it would be apposite to refer to Section 19 of the Representation of the People Act, 1950 (Act of 1950), which stipulates as follows :-

“19. Conditions of registration—Subject to the foregoing provisions of this Part, every person who -

- (a) is not less than [eighteen years] of age on the qualifying date, and
- (b) is ordinarily resident in a constituency, shall be entitled to be registered in the electoral roll for that constituency.”

As per the above provision, in order to be registered in the electoral roll of a constituency, it is necessary to be “ordinarily resident” in that constituency. It is but elementary, that in order to be “ordinarily resident” at a place, one would have their residence, dwellings, livelihood, business, family etc. in said place. However, from the above facts and record it is established beyond any doubt that the petitioners no longer reside in Village Bodsham, nor do they own any property or house or land in the Village, nor did they even live on rent in a house in the village, nor

they had any business or occupation in the village. In fact, by the petitioners' own admission, they were residing in Kurukshetra and were carrying on the business of Milk Dairy in Kurukshetra, and had moved there for the education of their children. The petitioners' claims to the contrary have been proven to be patently false, and they have been unable to produce any documents or evidence in support thereof.

In view of the above discussion, the petitioners cannot be said to be "ordinarily resident" in Village Bodsham, as required under Section 19 of the Act of 1950. Accordingly, we find that the petitioners' names have rightly been deleted from the voter list, and no ground is made out to set aside the orders dated 25.03.2021 and 25.10.2021.

The writ petition is therefore, dismissed. All pending applications, if any, stand disposed of.

(NIDHI GUPTA)
JUDGE

(RITU BAHRI)
JUDGE

02 September, 2022
Vijay Asija

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