

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

CWP-23925-2019

Date of decision:- 13.09.2022

Akko Bai

....Petitioner

vs.

State of Punjab and ors.

...Respondents

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

Present: Mr. Raman Goklaney, Advocate
for the petitioner.

Ms. Anu Pal, Sr. DAG, Punjab

Ms. Amrita Garg, Advocate
for the caveator/respondent.

Ritu Bahri, J. (Oral)

In the instant petition, petitioner is seeking quashing of notification dated 16.11.2018 issued by respondent No. 1, vide which earlier notification dated 14.03.2018 (P-1) constituting new Gram Panchayat-Shiv Nagar has been withdrawn. Further prayer is for quashing of orders dated 18.06.2019 (P-7) and 21.01.2019 (P-5).

On notice of the petition, a written reply by way of affidavit of respondent Nos. 1 to 4 has been filed and as per this reply, the above notification dated 16.11.2018 has already been challenged in CWP no. 32518-2018 and this Court passed the following order on 08.03.2019 (P-6 colly):-

"Heard learned counsel for the rival parties.

Counsel for the rival parties are ad idem on the issue that the Director, Rural Development and Panchayat which is the competent authority to take a decision before issuance of notification under Section 3 of the Punjab Panchayati Raj Act, 1994 for amalgamation or division of Gram Panchayat did not either hear the parties or pass any reasoned order as held by the Division Bench of this Court in the

care of Punjab Pradesh Congress Committee Vs. State of Punjab and others reported as 2013 (3) RCR (Civil) 1023 (DB)

*CM-999-CWP-2019:
CM-1017-CWP-2019 and
CM-1019-CWP-2019 in
CWP-32518-2018*

In view of the above admitted position, we think the only course left open is to ask the authority to decide the issue by hearing all the stakeholders and thereafter pass a reasoned order as contemplated in the judgment cited supra. We, therefore, make the following order :

ORDER

(i) CWP-32518-2018 is partly allowed.

(ii) The proceedings of the notification Annexure P-8 dated 16.11.2018 in the matter of amalgamation/ bifurcation are remitted to the Director, Rural Development and Panchayat for decision according to law after hearing parties and also recording reasons within a period of six months from the supply of certified copy of this order by the petitioner or respondent to the Director, Rural Development and Panchayat. No order as to costs. Interim order is vacated."

In compliance of the above order dated 08.03.2019 passed in CWP No. 32518 of 2018 by this Hon'ble Court, the department passed the speaking order dated 18.06.2019 that the reports received through the Deputy Commissioner, Fazilka as well as submissions made by the parties during the course of hearing were thoroughly gone into.

It has been alleged by the applicant in her application that the false signatures have been got appended by some notorious persons by calling the relatives/friends from the villages adjoin to the village. No name of any such person has been stated by her, who do not belongs to this village. All the 1-Card, passport, aadhar cards, ration cards, caste certificate, border area, voter cards and school certificate of the village people, which have been issued in the name of village Hasta Kalan. The aadhar cards of 850 voters have been produced in which they have given consent that only one panchayat should subsist. While considering all these aspects, the following order was passed:-

“The proceedings carried out by the Government for merging the newly constituted gram panchayat shiv nagar into gram panchayat hasta kalan is proper. On account of having no substance in the application submitted by the applicant against merging of the newly formed gram panchayat is hereby rejected.”

It has further been stated in the reply that the BDPO Fazilka informed the Deputy Commissioner Fazilka for de-notifying the new constituted panchayat shiv nagar because Gram Panchayat Hasta Kalan and Shiv Nagar are joint and the population of both the panchayats are 3600. Approximately 1000 gram sabha members passed the resolution that the new panchayat shiv nagar is not required. After considering the above report of the BDPO by the Deputy Commissioner, Fazilka, the recommendation was sent to respondent No. 2 for de-notifying the new constituted Panchayat vide letter dated 31.08.2018.

Thereafter, after conducting the inquiry into the representation dated 18.10.2018, the Deputy Commissioner, Fazilka sent the recommendation for de-notifying the new constituted Panchayat shiv nagar, vide letter dated 31.10.2018 (R-1).

The petitioner has not filed any replication to the above reply. The majority of the villagers have given sufficient evidence to show that both the villages should remain joint and there is no need of newly constituted Panchayat Shiv Nagar to maintain brotherhood of the village. The resolution had been thus unanimously passed.

Further the gernal ajlas (meeting) of the Gram Panchayat Hasta Kalan was called on 12.10.2018 and more than 1000 voters had participated and thereafter, the resolution had been unanimously passed that

there is no need of newly constituted Shiv Nagar.

Reference at this stage can be made to judgment of this Court in a case of ***Hardeep Singh vs. State of Punjab and others, passed in CWP No. 344-2020, decided on 11.03.2022***, wherein also petitioner was challenging notification dated 06.06.2018 whereby new Gram Sabbha has been carved out from the existing Gram Sabha areas. This Court dismissed the writ petition and held that new Gram Sabha Basti Ranjit Singh has been created by following proper procedure of law such as passing resolutions and verification. The operative part of the judgment reads as under:-

“Reference was made to Division Bench judgment passed by this Court in ***CWP-15594-2015*** titled as ***Latif vs. State of Haryana and others, decided on 03.09.2015***, wherein it has been held that there was no provision that resolution is necessary to be passed by existing Gram Panchayat for carving out a new Gram Panchayat.

However, in the facts of the present case, on 26.12.2017 General Ijlas Gram Panchayat Chak Kherewala was passed under the chairmanship of Amandeep Kaur for establishing the new Gram Sabha Basti Ranjit Singh and 65 Gram Sabha members were present. Then the said resolution was sent by respondent No. 4-Block Development and Panchayat Officer, Block Jalalabad, District Fazilka, Punjab to Sub Division Magistrate, Jalalabad (West) for verifying the population and after adopting due procedure, new Gram Sabha Ranjit Singh was established by respondent No. 1 vide notification dated 06.06.2018 (Annexure P-2).

At this stage, reference can be made to 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***. After examining Sections 52, 241, and 242 of the Punjab Municipal Act, 1911, the Full Bench 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 which invites 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.

In the facts of the present case, new Gram Sabha Basti Ranjit Singh has been created by following proper procedure of law such as passing resolution and verification and, thereafter, respondent No. 1 established new Gram Sabha Basti Ranjit Singh vide notification dated 06.06.2018 (Annexure P-2). Moreover, election in Gram Sabha Basti Ranjit Singh has been conducted on 30.12.2018 and Sh. Raghbir Singh has been elected for the post of Sarpanch, and Panchayat is working for the welfare of the residents.

In view of the above mentioned judgment, no ground is made out to quash impugned notification/order.

No merits.

Dismissed.

(RITU BAHRI)
JUDGE

13.09.2022

G Arora

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No