

LPA No.53 of 2022 (O&M)

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

(PROCEEDINGS THROUGH V.C.)

LPA No.53 of 2022 (O&M)
Date of decision : 04.02.2022

Gurpreet Singh

.....Appellant

VERSUS

State of Punjab and others

....Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. V.K. Sandhir, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J.

CM-140-LPA-2022

Prayer in this application is for condonation of delay of 45 days
in filing the present appeal.

For the reasons stated in the application and keeping in view
the prevailing pandemic of COVID-19, this application for condonation of
delay is allowed. Delay of 45 days in filing the appeal stands condoned.

CM-141-LPA-2022

Prayer in this application is for exemption from filing certified
copies of Annexure P-1 to P-6.

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For the reasons given in the application, the same is allowed. Exemption is granted from filing certified copies of Annexures P-1 to P-6, subject to all just exceptions.

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Challenge in this appeal is to the order dated 13.09.2021 passed by the learned Single Judge, whereby the writ petition preferred by the appellant challenging the order dated 12.06.2020 passed by the Director, Department of Rural Development and Panchayats, Punjab and the order dated 03.12.2020 passed by the Financial Commissioner, Government of Punjab, Department of Rural Development and Panchayats, stands dismissed.

2. Learned counsel for the appellant has submitted that a meeting of the Gram Sabha took place on 15.09.2014, when a decision was taken to constitute a Trust under the Executive Officers of the District Administration. Pursuant to the said resolution, trust-deed was executed on 21.01.2015. Some of the villagers filed a civil suit dated 21.11.2016 seeking declaration that the constitution of the Trust is illegal as the property is owned by the Gram Panchayat, village Ralla and no private person or government official has any concern with the religious place. Permanent injunction was also sought. The said suit was dismissed on 31.10.2019 by the Civil Judge (Senior Division), Mansa. Gram Panchayat approached this Court by filing CWP No.26016 of 2019, which was withdrawn on 16.09.2019. Respondent No.6 – Avtar Singh moved a petition in the year 2019 before the Director, Department of Rural

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Development and Panchayats, Punjab, under Section 199 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as '1994 Act') praying for cancellation of resolution dated 15.09.2014. The said petition was allowed by returning the finding that the resolution dated 15.09.2014 had been passed in the absence of quorum, as required under Section 5 of the 1994 Act. The said order has been upheld by the Financial Commissioner, Government of Punjab, Department of Rural Development and Panchayats, without taking into consideration the fact that the issue raised before the Civil Court in Civil Suit No.223-A pertain to lack of quorum, which did not find favour with the Civil Court, leading to the rejection of the civil suit. Counsel contends that in the light of the above, the authorities under the 1994 Act did not have the jurisdiction to cancel the resolution dated 15.09.2014, which had been duly upheld by the Civil Court.

3. Counsel further submits that the property of the Panchayat is required to be managed by the Gram Panchayat through its limited representatives. Since the Trust had been created for the welfare of the public in order to resolve the long standing disputes and further, the Trust having been constituted, challenge thereto, without impleading the Trust would not be sustainable even in a petition under Section 199 of the 1994 Act.

4. Another argument which has been raised by the learned counsel for the appellant is that the proceedings under Section 199 have been initiated after a delay of five years. He asserts that the resolution was passed on 15.09.2014, whereas the petition under Section 199 of 1994 Act

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has been filed in the year 2019. On this ground alone, petition under Section 199 of the 1994 Act should have been dismissed.

That apart, he asserts that as per Section 5 of the 1994 Act, which deals with the 'Meeting and Quorum of Gram Sabha', sub-Section 6 of the said Section refers to any meeting of the Gram Sabha, which requires 1/5th of the total number of the members as quorum but the said meeting can also be taken as an adjourned meeting, for which requirement is 1/10th of the total members. The word 'any meeting' would also include the meeting of the Gram Panchayat and it is not in dispute that all the members of the Gram Panchayat were present in the meeting when resolution dated 15.09.2014 was passed. He, therefore, submits that the orders passed by the authorities as well as the learned Single Judge would not be sustainable and deserve to be set aside.

5. We have considered the submissions made by the learned counsel for the appellant and with his assistance have gone through the pleadings and the impugned judgment.

6. As regards the argument of the learned counsel for the appellant that petition under Section 199 of the 1994 Act would not be maintainable as jurisdiction would not be available with the Director, Department of Rural Development and Panchayats, Punjab, to entertain the same in the light of the judgment passed by the Civil Court on 31.10.2019, suffice it to say that respondent No.6 – Avtar Singh was not a party to the civil suit. The said judgment being a suit in *personam* not in *rem* and thus, not binding upon respondent No.6 – Avtar Singh and therefore, he could file

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a petition under the above referred provisions of the 1994 Act.

7. As regards the contention of the learned counsel for the appellant that the word 'any meeting' used in sub-Section 6 of Section 5 relating to the 'Meeting and Quorum of the Gram Sabha' would include the meeting of the Gram Panchayat as well, suffice it to say that so far as the 'Meeting of the Gram Panchayat' is concerned, the same has been provided in Section 23 of the 1994 Act. Section 24 provides for the 'Quorum and Procedure' for holding of the meeting of the Gram Panchayat. With the different provisions being applicable for the meeting and the quorum for the Gram Sabha and Gram Panchayat, the same has to be applied qua the respective meetings. This argument of the learned counsel for the appellant that since the members of the Gram Panchayat were present in the meeting held on 15.09.2014 and resolution was passed by all the members present and voting, would not be acceptable when it is the pleaded case of the parties that the said meeting was of the Gram Sabha.

8. The argument with regard to the delay on the part of the approach made by respondent No.6 – Avtar Singh in filing a petition under Section 199 of the 1994 Act, suffice it to say that there is no limitation provided for exercising the powers by the Director, Department of Rural Development and Panchayats, Punjab, while cancelling the resolution passed by the Gram Sabha, which includes not only the elected body but the Gram Sabha as such. This has rightly been appreciated by the learned Single Judge while referring to Section 2 (zj) of the 1994 Act. Exhaustive meaning given by the learned Single Judge to the said expression is based

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upon the intention of the legislature and in furtherance thereto. Otherwise also, it is not in dispute that the quorum was not complete so far as the meeting of the Gram Sabha is concerned. This aspect is apparent from the order passed by the Director, Department of Rural Development and Panchayats, Punjab, on facts, where it has been mentioned that out of the total 5664 members of the Gram Sabha, only 156 members have signed the resolution, whereas the requirement would have been 1/5th of the members, if it was a regular meeting, as has been asserted i.e. 1132 members and had it been an adjourned meeting, then also the members present and voting should have been at least 566. In the absence of the quorum, the resolution of the Gram Sabha cannot sustain.

9. The Trust which has been created in pursuance to the above-said resolution had the effect on the property situated within the boundary of Baba Jogi Peer and Baba Jogi Peer and Baba Jogi Peer Public School which stood transferred to the Trust. Transfer of immovable property of the Gram Panchayat cannot be effected without the permission of the Government, as the same is expressly prohibited under proviso to sub-Section (1) of Section 85. The aspect with regard to the non-seeking of prior permission of the State Government and therefore, there being no such approval, has not been disputed by the counsel for the appellant.

10. In the light of the above, when the resolution of the Gram Sabha dated 15.09.2014, is illegal being not in consonance with the statutory procedure, the challenge to the validity thereof, in the absence of there being any limitation prescribed for challenge thereof, has rightly been

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entertained by the Director, Department of Rural Development and Panchayats, Punjab, in the proceedings initiated by respondent No.6 – Avtar Singh under Section 199 of the 1994 Act.

11. As regards the assertion of the learned counsel for the appellant that the Trust has not been impleaded as a party, suffice it to say that the Trust had not approached the Court till date and for the obvious reason that the constitution of the said Trust has been found to be not in accordance with law and therefore, the said ground also cannot sustain.

12. In the light of the above, finding no merit in the present appeal, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

04.02.2022
Harish

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No