

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-24931-2022

Date of decision: 29.10.2022

Monika

....Petitioner

V/s.

The State of Haryana and others

.....Respondents

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

Present: Mr. Harish Bhardwaj, Advocate for the petitioner.

Mr. Ankur Mittal, Addl.A.G., Haryana with
Mr. Saurabh Mago, A.A.G., Haryana.

Ritu Bahri, J.

The petitioner is seeking writ of mandamus directing respondents No. 1 to 6 to cancel the Nomination Form of respondent No. 7- Rajbala wife of Suresh Kumar for the post of Sarpanch for Gram Panchayat Bardu Jogi Tehsil Loharu, District Bhiwani on account of her being disqualified as per the provisions of the Section 175 of the Haryana Panchayati Raj Act, 1954 (hereinafter referred to as "the Act, 1954'), as she, her husband and his family members are in unauthorized possession of the Rasta land comprised in Khewat No. 46 of the said Gram Panchayat.

The brief facts of the case are that the petitioner is secondary standard pass and married to Hoshiar Singh who is the permanent resident of village Bardu Jogi in Tehsil Loharu District Bhiwani. She is enlisted as voter in voter list of village Bardu Jogi. Respondent No.7-Rajbala is the legally wedded wife of Suresh Kumar and is residing alongwith her husband in the residential house bearing No.02, Main Road, Bardu Jogi Village Bardu Jogi PO Buddhara. Vide notification dated 28.09.2022, the entire

process of general election of all Panches and Sarpanches of all Gram Panchayat (except the Gram Panchayat Sabhalkha of Block Ladwa, District Kurukshetra) and members of all Panchayat Samitis and Zila Parishads must be completed in the State of Haryana by 30/11/2022. Respondent No. 3 issued notice specifying last date, time and place for making nomination for the post of Panches and Sarpanch including the Gram Panchayat Bardu Jogi, which is reserved for women of BC-A category as per draw. The petitioner being eligible filled up her nomination form for the post of Sarpanch for Gram Panchayat village Bardu Jogi. Similarly, respondents No. 7 and 8 also filled up their nomination forms, which were found to be valid.

The grievance of the petitioner is that respondent No. 7 is not qualified being in unauthorized possession of Rasta comprising in Khasra No. 46 which belongs to the Gram Panchayat Bardu Jogi and her nomination form ought to have been cancelled in view of the provisions of the Section 175 of the Act, 1954. She has placed on record copy of application for getting done demarcation (measurement) (Annexure P-8) to Naib Tehsildar Sahab by Gulab Singh son of Ranjit Singh, resident of Village Bardu Jogi.

Learned counsel for the petitioner argued that as per report nishandehi dated 30.08.2022 (Annexure P-9), after the demarcation, some area of the Gram Panchayat was found under the unauthorized possession. As per site plan of Khasra No. 39/2, 46 situated at Village Bardu Jogi, Sub Tehsil Bahal, Tehsil Loharu, District Bhiwani, Suresh s/o Chater Singh, Rakesh s/o were found to be in illegal possession of the said land. The encroachment details have been given at page No. 52 of the writ petition. The jamabandi for the year 2020-2021 has also been placed on record as

Annexure P-10 to show that owner of khasra No. 46 is Panchayat. He has further argued that respondent No. 7, her husband and his family members are in unauthorized possession of the Gram Panchayat land and hence, her nomination papers should be rejected being disqualified as per provisions of the Section 175 of the Act, 1954.

Learned counsel for the State has referred to Division Bench judgment passed in the case of *Manjit Kaur vs. State of Haryana 1995(1) R.R.R. 601* on the proposition that nomination papers can only be rejected if a person who has filed the nomination papers, commits one of the acts specified in Section 175 (1)(i) of the Act, 1994 and not by the family members. The acts specified in the said Section committed by the family members of the person who has filed nomination papers, cannot be made a ground to reject nomination papers. A perusal of the said judgment shows that nomination papers of the petitioner were rejected on the ground that her husband owns Rs.41,000/- of the Gram Panchayat in the capacity of ex-Sarpanch. The writ petition was allowed by observing that only that person who commits one of the acts specified in Section 175 (1)(i) of the Act, 1994 incurs disqualification. Further direction was given to the Returning Officer to treat the nomination papers filed by the petitioner to be a valid one and take further appropriate action.

In the present case, even as per the report nishandehi dated 30.08.2022 (Annexure P-9) and encroachment details (at page No. 52 of the writ petition), the names of the encroachers have been mentioned as Suresh s/o Chater Singh and Rakesh s/o Chater Singh and they are in illegal possession of the Panchayat land. Hence, the nomination papers of respondent No.7 cannot be rejected, being disqualified as she did not

commit any act as specified in Section 175 (1)(i) of the Act, 1994 and not found to be in illegal possession of Gram Panchayat land.

Writ petition is dismissed.

(RITU BAHRI)
JUDGE

29.10.2022

Divyanshi

(NIDHI GUPTA)
JUDGE

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