

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

CWP-38048-2018

Date of decision:- 12.10.2022

Harbhajan Singh

....Petitioner

vs.

State of Punjab and ors.

...Respondents

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

Present: Mr. Vikram Singh, Advocate
for the petitioner.

Ms. Anu Pal, Sr. DAG, Punjab

Mr. Nakul Sharma, Advocate
for respondent No. 7.

Ritu Bahri, J. (Oral)

In the instant petition, petitioner is seeking quashing of resolution dated 17.07.2012 passed by Gram Panchayat Lakhanpur and order dated 13.12.2018 (P-8) passed by respondent No. 1, vide which new Gram Panchayat-Lakhanpur Garcha Patti is being constituted from Gram Panchayat Lakhapur.

It is not in dispute that the petitioner along with other applicants approached this Court by way of filing CWP No. 228-2013 challenging the same resolution dated 17.07.2012 and this Court vide order dated 09.01.2013 disposed of the writ petition by giving a direction to consider the objections-cum-representation submitted by the petitioners by passing a speaking order in accordance with law.

Pursuant to this order, respondent No. 1 after hearing the parties passed order dated 01.06.2013 (P-3) vide which creation/formation

making it clear that there will be only one Panchayat in future. It was observed that there is no wall in existence between village Lakhanpur and Lakhanpur Garcha Patti.

This order was further challenged by Sarwan Singh and others by filing CWP No. 13421-2013, which was dismissed on 30.10.2014. LPA No. 1941-2014 was then filed and on 15.10.2015, and in compliance of order dated 15.10.2015 and 22.03.2016, the Departmental Committee consisting of Deputy Director (LD), Addl. Deputy Commissioner (D), Fatehgarh Sahib was constituted by this Court. The report was presented in this Court. On the basis of the department committee report, this Court observed that the proposed Gram Panchayat, namely, Lakhanpur Garcha Patti does not fulfill the statutory requirement as required under Section 3 (1) of Punjab Panchayati Raj Act, 1994. Accordingly, the appeal was partly allowed on 08.08.2018 (P-6) to the extent that the order dated 30.10.2014 passed by learned Single Judge is modified and the writ petition is disposed of with a direction to the Principal Secretary, Rural Development and Panchayat Departments, Punjab to call for the records, hear the appellants as well as office bearers of Gram Panchayat, Lakhanpur or other stake holder and take an appropriate decision within the framework of the 1994 Act.

Thereafter, respondent No. 1 passed order dated 13.12.2018 (P-8), vide which new Gram Panchayat-Lakhanpur Garcha Patti is being constituted from Gram Panchayat Lakhapur.

The petitioner is now challenging the above said order on the ground that the same is against Article 15 of the Constitution of India.

Further the impugned order dated 13.12.2018 is against the instructions

issued by respondent No. 1 on 26.05.2017 (P-10) whereby detailed guidelines/instructions have been issued to all the BDPO regarding constitution of new Gram Sabhas and change of sabha areas.

On notice of the petition, a reply has been filed by respondent Nos. 1 to 5 and as per this reply, the above order passed by respondent No. 1 is as per directions and guidelines by this Court in LPA No. 1941-2014 decided on 08.08.2018 titled as ***Sarwan Singh vs. State of Punjab and others.*** The establishment of new Gram Panchayat is essentially a policy decision, which has to be taken by the competent authority within a framework of its power exerciseable under Section 3 of the Punjab Panchayati Raj Act, 1994 and it shall also taken in account that while establishing or constituting a new Gram Panchayat various relevant factors like development of the area, growth of the residents and for the further development and for better basic amenities are to be kept in view while taking such decision.

Further it has been stated that in compliance with the orders of this Court in LPA No. 1943-2014, both the parties were afforded full opportunity of hearing and after hearing the oral as well as written arguments of the parties, respondent No. 1 has passed the order dated 13.12.2018 (Annexure P-8). The new Gram Panchayat has been constituted in view of the development of the village and demand of the people. Therefore, a separate Gram Panchayat namely Lakhanpur Patti has been formed from Gram Panchayat Lakhanpur.

Before passing the impugned order, a self speaking report has been duly sought from the Additional Deputy Commissioner (D) Fatehgarh Sahib, in which, it was mentioned by the Block Development and Panchayat

Officer Khamano that a representation received from the inhabitants of village Lakhanpur for making a separate Panchayat and as the development works of Garcha Patti, Lakhanpur are ignored due to which, the inhabitants of Garcha Patti wants a separate Gram Panchayat so that the area of the Garcha Patti may be looked after by their individual Gram Panchayat and development works of this Patti may also be taken up and for the betterment of the area Garcha Patti, new Gram Panchayat may kindly be constituted. Report of ADC (D) is Annexure R-1.

It is also written in the site report of Block Development and Panchayat Officer Khamano that presently, there are about 1287 voters in village Lakhanpur and as per the census for the year 2011, out of the total population 1662, there are 635 votes are of the Garcha Patti and 652 votes are of Lakhanpur. There are two Patties in the village Lakhanpur and almost all the inhabitants of Garcha Patti, Laddar Patti want to form a new Gram Panchayat. It is also written in the report that there is a legal dispute pending between the Laddal Patti and Garcha Patti in different courts since long and the Patties of which, the Sarpanch and Panches are elected with majority, the development works of the inhabitants of the said Patti only are given priority and the inhabitants of other patties are deprived of from the development of the village and basic amenities. And it is the suggestion of the Block Development and Panchayat Officer Khamano that if two separate panchayats are formed by sharing the source of income of both the villages, the development works of both the Patties can be executed better and the basic amenities and development works can also be provided to the people of both the panchayats. Therefore, taken into account various relevant factors like development of the area, inclusive growth of the residents, for

basic amenities etc., the respondent No. 1 has passed the order dated 13.12.2018 (Annexure P-8).

While passing the order, it was also taken into consideration that when two separate panchayats shall formed, the inhabitants of both the panchayats can avail maximum facilities and opportunities of development works from the government of India as well as from Govt. of Punjab likewise MGNREGA, PMRY, Rural Development Mission and under the Pradhan Mantri Awas Yojna etc. The formation of new Gram Panchayat will lead to proper development works and all over growth of both the Gram Panchayats which can be done properly from all aspects and the residents and inhabitants of both the village can utilize the grants and funds issued under the various schemes for the development of the village. Both the Gram Panchayats can do the all relevant development works for the betterment of the inhabitants. Both the Panchayats can get maximum facilities and the development. Therefore, after observing all these factors and for the betterment of all the inhabitants, the new Gram Panchayat namely Lakhanpur Patti has been constituted from Gram Panchayat Lakhanpur.

To the same effect, respondent No. 7 has also filed separate reply.

The short question for consideration in the present writ petition would be whether separate Gram Panchayat can be created for development of the village.

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 the present case as well, separate Gram Panchayat has been created keeping in view the fact that both the Gram Panchayats can avail the benefit of different schemes and the formation of new Gram Panchayat will lead to proper development works and all over growth of both the Gram Panchayats

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

No merits.

Dismissed.

(RITU BAHRI)
JUDGE

12.10.2022

G Arora

(NIDHI GUPTA)
JUDGE

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