

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-344-2020

Date of decision:11.03.2022

Hardeep Singh

...Petitioner

V/s.

State of Punjab and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Sharnav Katyal, Advocate for
Mr. Kamalpreet Bawa, Advocate for the petitioner.

Ms. Anu Pal, DAG, Punjab.

Ritu Bahri, J.

The petitioner is seeking quashing of notification dated 06.06.2018 (Annexure P-2) issued by respondent No.1 whereby new Gram Sabha has been carved out from the existing Gram Sambha areas and this notification is contrary to the Section 3(1) of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as 'Act, 1994'). A further prayer has been made to set aside order dated 02.08.2019 (Annexure P-10) whereby the claim of the petitioner taken in the representation dated 27.06.2018 (Annexure P-6) has been declined.

The brief facts of the case are that the new Gram Sabha namely Basti Ranjit Singh has been carved out from the existing Gram Panchayat namely Chak Kherewala as per notification dated 06.06.2018 (Annexure P-2). The case of the petitioner is that there was no separate distinct *abadi* as required under Section 3(1) of the Act of 1994 for carving out new Gram Sabha area. The existing Gram Sabha and separated Gram Sabha were

contiguous with each other and the respondents have separated the villages into two groups by adopting pick and choose method. Section 3(1) of the Act, 1994 is reproduced as under:-

“3. Establishment of Gram Sabha areas;

(1) The State Government may, By notification, declare any village or group of contiguous villages with a population of not less than two hundred to constitute a Gram Sabha area:

Provided that a new Gram Sabha area may be constituted for any village or group of contiguous villages in respect of a separate distinct abadi or group of abadis having a population of not less than two hundred taking into consideration its physical distance from the main village or villages, as the case may be and other relevant facts:

Provided further that neither the whole nor any part of -

- (a) xx or
- (b) xxxx; or
- (c) xxx., or
- (d) xxx”

The petitioner has also placed on record site map (Annexure P-3) to show that the respondents have failed to consider the relevant facts obtained at the site. The respondents have failed to consider the sentiments of the inhabitants of the village. The total area of the village Chak Kherewala is less than 2 km. The petitioner made a representation dated nil (Annexure P-4) to the BDPO, Block Jalalabad, but no action has been taken and thereafter, he made representations (Annexures P-5 to P-7).

On notice of this petition, reply has been filed by the Director, Department of Rural Development and Panchayats, Punjab on behalf of respondents No. 1, 2 and 4 dated 27.09.2020/08.11.2021. The stand taken in the reply is that the General Ijlas Gram Panchayat Chak Kherewala was

passed on 26.12.2017 under the chairmanship of Amandeep Kaur for establishing the new Gram Sabha Basti Ranjit Singh and 65 Gram Sabha members were present. The said resolution was sent to the respondent No. 4-Block Development and Panchayat Officer, Block Jalalabad, District Fazilka, Punjab. After considering resolution dated 26.12.2017, he made a request to Sub Divisional Magistrate, Jalalabad (West) for verifying the population. After verification, the population of Basti Ranjit Singh was 410 and population of Chak Kherewala was 850 and the total population of Gram Panchayat Chak Kherewala was 1260. The distance between the village Chak Kherewala to Basti Ranjit Singh is 1.5 km and *Aksh Sajra* is prepared regarding the distance. Thereafter, after considering the representation of the residents of the village Chak Kherewala, resolution and reports, respondent No.4- Block Development and Panchayat Officer, Block Jalalabad, District Fazilka, Punjab, made the request to District Development and Panchayat Officer, Fazilka vide letter No. 512 dated 06.03.2018 for establishing new Gram Sabha Basti Ranjit Singh from village Chak Kherewala. District Development and Panchayat Officer, Fazilka sent the same proposal to respondents No.3. The respondent No. 3 sent the proposal to respondent No.1. After considering the proposal, respondent No. 1 sent the recommendation to respondent No. 2 vide letter No. 896 dated 03.04.2018 for establishing new Gram Sabha Basti Ranjit Singh out of Gram Panchayat Chak Kherewala. After considering the proposal and office record, new Gram Sabha Basti Ranjit Singh was established by respondent No.1 vide notification dated 06.06.2018 (Annexure P-2). It is further stated in the reply that petitioner had earlier filed CWP-16702-2018 challenging the notification dated 06.06.2018 and

the said writ petition was disposed of with a direction to the Director General, Rural Development and Panchayats, Punjab to decide the representation made by the petitioner after hearing him and the concerned parties, and pass a speaking order within a period of six months.

In compliance of aforesaid order, the petitioner and opposite party appeared. After hearing both the parties, respondent No.1 passed speaking order dated 02.08.2019 (Annexure P-10) that Gram Panchayat Basti Ranjit Singh is formed after having passed resolution by Gram Panchayat, which is situated at a distance of 1.5 km from main village and newly formed panchayat is having abadi of 410. Moreover, elections of both Gram Panchayats i.e. village Chak Kherewala and Basti Ranjit Singh have already taken place. Hence, the order dated 02.08.2019 (Annexure P-10) rejecting the representation made by the petitioner has been rightly passed.

In para 4 of the preliminary submissions, it is stated that after issuing notification dated 06.06.2018 (Annexure P-2), elections of Gram Panchayat Chak Kherewala and Gram Sabha Basti Ranjit Singh have been conducted on 30.12.2018 and Sh. Raghbir Singh has been elected for the post of Sarpanch of Gram Panchayat Basti Ranjit Singh and Smt. Paramjit Kaur has been elected for the post of Gram Panchayat Chak Kherewala. After taking the oath of Sarpanches, the office of Deputy Commissioner Fazilka issued the grants to the Gram Panchayats Chak Kherewala and Basti Ranjit Singh. As per letters dated 25.02.2019, 07.09.2019 and 07.09.2019, Rs.4,50,000/-, Rs.2,50,000/- and Rs.4,50,000/- have been deposited in the account No. 50100064673711 of Gram Panchayat Chak Kherewala under the MAGANREGA Scheme and 14th finance commission. As per letters

dated 25.02.2019, 07.09.2019 and 07.09.2019, Rs.2,88,000/-, Rs.2,88,000/- and Rs.7,12,500/- have been deposited in the account No. 054441000912213 of Gram Panchayat Basti Ranjit Singh under the MAGANREGA Scheme and 14th finance commission. As per the report of respondent No.4, Rs.2.25 lakh has been spent for the construction of rooms and verandah etc. of Government Primary School by Gram Panchayat Chak Kherewala and the work of boundary wall of the school is under process. Gram Panchayat Basti Ranjit Singh has spent Rs.2.88 lakh for the purpose of dirty water and 50% amount out of Rs.4,75,000/- has been spent for street etc. and 60% amount out of Rs.2,88,000/- has been spent. Both the Panchayats are working for the welfare of the residents. The petitioner is merely harassing the Sarpanches and Panches of both the Gram Panchayats.

In the present case, notice of motion was issued on 16.01.2020 and elections in both the Gram Panchayats were held on 30.12.2018. The Gram Panchayat has been bifurcated after passing resolution and even representation of the petitioner has been considered and rejected vide order dated 02.08.2019 (Annexure P-10).

The ground taken by the petitioner in the present case is that the population of newly carved out Gram Sabha Basti Ranjit Singh was 410.

A similar issue has come up before this Court in **CWP-7428-2021** titled as ***Balwan and another vs. State of Haryana and others, decided on 18.11.2021*** wherein Gram Panchayat Barwas was bifurcated by carving out separate Sabha area and Gram Panchayat for village Basirwas vide notification dated 23.02.2021. This Court has considered that population of newly carved out Panchayat is less than 500. However as per Section 7(1) of the Haryana Panchayati Raj Act, 1994, the Government in

exceptional cases, can relax the condition of minimum population of 500 in order to create a new Gram Panchayat.

Another ground taken by the petitioner in the present case is that no resolution was passed by the existing Gram Panchayat for carving out a separate Gram Panchayat.

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.

Hence, no ground to quash notification dated 06.06.2018 (Annexure P-2) is made out.

Writ petition is dismissed.

(RITU BAHRI)
JUDGE

11.03.2022

Divyanshi

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No