

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

CWP-2147-2017

Date of decision : 14.12.2023

Balwant Singh

.....Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Ms. Meena Bansal, Legal Aid Counsel,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab with
Ms. Hardeep Kaur, Sarpanch in person.

Ms. Amarjit Kaur, Advocate for
respondent No.3.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the impugned order dated 09.09.2016 (Annexure P-6) passed by respondent No.1 vide which the appeal filed by the petitioner was dismissed.

It has been submitted by counsel for the petitioner that the meeting of Gram Panchayat, Anro was held on 01.10.2001 vide which the Resolution was passed and it was decided that a free passage of 3 karams should be given from Khanauri Arno Road to Dera Sher Singha from Khasra No.71 and 15, 16, 252/5, 72 and 6, 15, 16, 73/20; 84 and 1, 10, 11, 12, 13, 14, 15, 16, 25 and 87 and 5 number and 4 number of shamlat land. It is submitted that the resolution was passed to resolve the problem faced by the people and school going children. She submits that on 28.05.2007, Kehar Singh son of Karam Singh filed a civil suit for permanent injunction restraining the defendant from blocking or

encroaching the passage on the ground that the suit land was the ownership of the Gram Panchayat and is a gairmumkin passage. The suit was decreed vide judgment and decree dated 01.05.2010. She submits that against the judgment and decree dated 01.05.2010, the defendants filed an appeal before the learned Additional District Judge, Patiala which was dismissed and thus, the findings of the trial Court were affirmed vide judgment and decree dated 10.03.2012. She has submitted that ignoring the judgments, Jaspal Singh, Member Panchayat along with others approached the Director, Rural Development and Panchayats, Punjab challenging the resolution dated 01.10.2001 vide which the passage of 3 karams was given from Khanauri-Anro Road to Dera Sher Singha. It is submitted that vide order dated 23.10.2015, respondent No.2-Director declared the resolution dated 01.10.2001 passed by the Gram Panchayat as illegal and thereby cancelled the same. She submits that aggrieved by the same, petitioner filed the appeal before respondent No.1 under Section 201 of the Punjab Panchayati Raj Act, 1994. He has submitted that respondent No.1 without appreciating the evidence on record, upheld the orders passed by the Director vide his order dated 09.09.2016.

It is submitted that both the impugned orders dated 23.10.2015 and 09.09.2016 are unsustainable in the eyes of law as respondent No.1 has not appreciated the resolution dated 01.10.2001 was passed unanimously to resolve the difficulty faced by the residents. She submits that respondent No.1 has failed to appreciate the judgment and decree passed by the Civil Court dated 01.05.2010 and 10.03.2012. She submits that the report of the DDPO relied upon by the authorities below is not based on the correct facts and thus, the impugned orders are not

based on the correct facts. She submits that 3 karams passage was in operation since 2001 and the same has been reduced to 2 karams after a period of 16 years by cancelling the resolution dated 01.10.2001 which is totally unsustainable in the eyes of law. She submits that the impugned orders being against the spirit of law, deserves to be *set aside*.

This Court has summoned the Sarpanch of the Village and BDPO as well. BDPO Ms. Paramjit Kaur appeared before this Court on 14.11.2023. Learned State counsel had submitted that the resolution was passed in violation of the statutory provisions. The land falls under the shamlat land and thus, keeping in view the resolution passed on dated 01.10.2001 found to be illegal, the impugned orders suffer from no illegality. This Court has interacted with BDPO Ms. Paramjit Kaur who had submitted that the record was perused and the site was also inspected. It was submitted that the passage was of 2 karams wide only but by virtue of the resolution, it was increased to 3 karams by encroaching upon the shamlat land and hence, the impugned orders were passed in accordance with law. Sarpanch, Ms. Hardeep Kaur, is also present in the Court and has submitted that as per the grievances raised by the petitioner, the resolution was passed for increasing the width of the passage to 3 karams by passing the resolution. She has submitted that by increasing the passage to 3 karams, shamlat land would be used.

After hearing counsel for the parties and perusing the record, it is apparent that 2 karam wide passage leads to Dera Sher Singha from Khanauri Arno link road and this rasta of 2 karams continued and existing till date. The Gram Panchayat had passed the resolution on 01.10.2001 to increase the width from 2 karams to 3 karams on the ground that the

families residing in the dera were facing the problem. However, this resolution was challenged before the Director under Section 199 of Punjab Panchayati Raj Act, 1994 and the same was cancelled by the Director vide order dated 23.10.2015. Aggrieved by the same, the order was challenged before respondent No.1. It was found that the resolution had been passed by the Panchayat without taking into consideration that shamlat land of the village would be used for implementing this resolution. The Director had directed the DDPO, Patiala to inspect the site and assess the situation whether there was any requirement for widening of the rasta to 3 karams as contended by the petitioners. The DDPO submitted its report and it was found that the existing rasta of 2 karams was sufficient for the residents of dera. Thus, it was established that the demand raised by the petitioner for increasing the width of the rasta from 2 karams to 3 karams was not legally sustainable. Thus, both the Courts below rejected the claim of the petitioner and thus, passed the impugned orders. In the overall facts and circumstances of the case, this Court do not find any infirmity in the view taken especially when the increase of rasta was utilized from the shamlat land of the village. Thus, finding no merit in the petition, the same is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

14.12.2023
m. sharma

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