



CWP-36818-2025 & -1-
CWP-36819-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116 (02 cases) CWP-36818-2025
Date of Decision :11.12.2025

Kamal Singh ... Petitioner

Versus

State of Punjab and others ...Respondents

CWP-36819-2025

Harjit Singh and another ... Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Krishan Singh Dadwal, Advocate for the petitioner(s).

Mr. Rahul Rampal, Addl. A.G. Punjab &
Mr. Sanjay Sabherwal, Addl. A.G. Punjab.
(keeping in view advance copy served).

* * *

Harsimran Singh Sethi, J. (Oral)

1. By this common order, above mentioned two writ petitions are being disposed of as both the petitions involve the same question of law on similar facts.

2. In the present petitions, the challenge is to the impugned order dated 05.12.2025 (Annexure P/10) in CWP-36818-2025 and dated

05.12.2025 (Annexure P/7) in CWP-36819-2025 passed by respondent No.4

whereby, the nomination papers of the petitioner(s) for contesting the elections as member of Panchayat Samiti, Dasuya from Zone No.9 and 3 have been rejected by the authorities concerned on the ground that the said order is factually incorrect and is liable to be set aside and the petitioner(s) be treated as eligible candidates to contest the Panchayat Samiti and Zila Parishad elections, which are scheduled to be held on 14.12.2025.

2. Learned counsel for the petitioner(s) submits that the nomination papers of the petitioner-Kamal Singh have been rejected on the ground that the petitioner-Kamal Singh and his family is in unauthorized possession and has encroached upon the land described as *Gair Mumkin Rasta* and, therefore, keeping in view the said alleged encroachment, the ineligibility has been attributed to the petitioner Kamal Singh and his nomination papers have been rejected.

3. Learned counsel for the petitioner(s) submits that with regard to the petitioner-Harjeet Singh, it has been mentioned that his family was allotted five marlas of land by the Government being member of the scheduled castes but at the site, the family of Harjeet Singh which also includes his son, have been found in the possession of 01 kanal and 10 marlas wherein, the shops have also been constructed by him and hence, the illegal possession has been attributed to the petitioners, which is incorrect as there is no land which has been encroached upon by the petitioner(s).

4. Learned counsel for the petitioner(s) further argues that where the relief claimed in the writ petition is such that the elections are not required to be postponed, the relief should be granted by the High Court rather than directing the petitioner(s) to challenge the rejection of their

nomination papers by way of filing an election petition.

5. Keeping in view the advance copy served, Mr. Rahul Rampal, Addl. A.G. Punjab has put in appearance and submits that the assertion being raised at the hands of the petitioner(s) is that this Court should decide whether the petitioner(s) have encroached upon any land of the village or not so as to treat them eligible to contest the elections of Panchayat Samiti and Zila Parishad. Learned counsel for the respondents submits that once, a competent authority after inquiry has passed a speaking order dated 05.12.2025 (Annexure P/10) attributing encroachment of land at the hands of the petitioner(s), disputing the same creates a disputed question of fact which even otherwise cannot be dealt by the Court in a writ petition and therefore, the writ petition is even otherwise liable to be dismissed.

6. Learned counsel for the respondents further submits that rejection of nomination papers is a ground as envisaged under Section 100 of the Punjab State Election Commission Act, 1994 (hereinafter referred to as '1994 Act') for filing election petition and, therefore, the remedy which is available to the petitioner(s) of filing an election petition so as to challenge and prove that the grounds mentioned in the impugned orders dated 05.12.2025 rejecting the nomination papers of the petitioner(s) are incorrect by bringing on record the due evidence.

7. We have heard learned counsel for the parties and have gone through the record with their able assistance.

8. The question which has been raised in the present petitions is that the impugned order which has been passed by the Returning Officer in connection with the holding of election of the Panchayat Samiti which is

**CWP-36818-2025 &
CWP-36819-2025**

-4-

scheduled to be held on 14.12.2025 whereby, the nomination papers of the petitioner(s) have been rejected on the grounds are factually incorrect.

9. Once, the dispute relates to a factual assertion, the same has to be proved on the basis of the evidence to be brought on record.

10. The situation in the present petitions is such that by passing a speaking order the competent authority has rejected the nomination papers of the petitioner(s) by recording a finding that petitioner(s) have encroached upon the land belonging to the Gram Panchayat which includes the *Rasta* as well as other land of the Gram Panchayat, which fact is being disputed by the petitioner(s) in the present case.

11. As per the principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.2848-2021 titled as Shubhas Jain vs. Rajeshwari Shivam and others, decided on 20.07.2021** where the facts are being disputed, the High Court will not entertain such petition as the disputed question of fact can only be decided by leading a cogent evidence to prove the assertion being raised either in favour or to oppose any finding recorded by the authorities concerned. Relevant paragraph of the judgement is as under:-

“26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India , does not adjudicate hotly disputed questions of fact, It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable.”

12. Keeping in view the above, the assertion whether the petitioner(s) have encroached upon the land of the Gram Panchayat or not as held by the respondents while rejecting their nomination papers, has to be

proved by way of evidence, which can only be done by way of filing an election petition.

13. Further, Section 100 of the 1994 Act clearly defines the ground on which the election petition can be filed.

14. Learned counsel for the petitioner(s) concedes before this Court that the rejection of nomination papers can be a ground for filing a election petition.

15. Once, the challenge to the rejection of nomination papers can only be done by way of filing an election petition, the prayer of the petitioner(s) that the same should be entertained by this Court so as to decide the disputed question of fact, cannot be accepted.

16. Qua the argument of the learned counsel for the petitioner(s) that while recording the fact whether any candidate who intends to contest the elections has encroached upon any land, a summary inquiry was required to be done, which has not been done in the present case, it may be noticed that a detailed order has been passed by the authorities concerned attributing the encroachment at the hands of the petitioner(s). The said findings have been based upon certain facts which clearly shows that the order was passed by the authorities concerned rejecting the nomination papers of the petitioner(s) on the basis of the report submitted to the competent authority, which has been taken into consideration while rejecting the nomination papers of the petitioner(s) and, therefore, assertion of the petitioner(s) that without even conducting the summary inquiry, the nomination of the petitioner(s) has been rejected, cannot be accepted.

17. Even otherwise, in case, the summary inquiry has not been

conducted, the same will also be a ground to challenge the rejection of the nomination papers and to prove the fact whether a summary inquiry was conducted or not by leading cogent evidence.

18. Learned counsel for the petitioners(s) submits that certain facts have been recorded in the pendrive which has been appended with the present petition, which should convince this Court qua the assertion made.

19. It may be noticed that the High Court is not in a position to even accept the same unless and until the said videography is proved by giving due opportunity to the other side, which can only be done by way of an evidence before the competent Court, which remedy is available in case, the petitioner(s) chooses to challenge the rejection of their nomination papers by way of filing an election petition.

19. Learned counsel for the petitioner(s) places reliance upon the judgment of the Hon'ble Supreme Court of India in **Civil Appeals No.6843-44 of 1999 titled as Election Commission of India vs. Ashok Kumar and others decided on 30.08.2000** to contend that where the relief claimed does not have the effect of interrupting, obstructing or protracting, the counting of the votes, the declaration, the High Court can entertain the plea relating to elections.

20. There is no quarrel with the said proposition of law but in the present case, the facts which are being projected to claim eligibility or to contend that the order passed by the authorities concerned rejecting the nomination papers of the petitioner(s) are incorrect, same are yet to be proved by way of producing evidence. On the basis of mere allegations in the writ petition, the said allegations can not be accepted on face value so as

to declare them correct to grant the relief as such allegations require evidence hence, the judgment cited by the learned counsel for the petitioner(s) in the case of **Ashok Kumar (supra)** is not applicable in the facts and circumstances of the present case.

21. Learned counsel for the petitioner(s) also places reliance upon the judgment of Hon'ble Supreme Court of India in ***Civil Appeal No.5707-2023 titled as Union Territory of Ladakh and others vs. Jammu and Kashmir National Conference and another, decided on 06.09.2023*** to submit that the alternate remedy cannot be brought into operation to deny the relief in case the same is admissible to be granted.

22. A detailed discussion has already been made by this Court that keeping in view the assertion of the petitioner(s), the facts on the basis of which the relief is being claimed, are yet to be proved by leading evidence which evidence cannot be led before this Court and hence, the only efficacious remedy available with the petitioner(s) is the election petition. Further, this Court is not saying that the election petition is an alternate remedy which should be availed by the petitioner(s) rather, this Court is holding that in the facts and circumstances of the present case, the only efficacious remedy available is an election petition so as to prove the allegations which are being alleged hence, the said ratio will also not come to the rescue of the petitioner(s) qua the relief claimed in the present petitions.

23. The reliance is also being placed upon the judgment of ***Patna High Court in Civil Writ Jurisdiction Case No.6798-2017 titled as Navratan Choudhary vs. The State Election Commission, Sone Bhawan,***



CWP-36818-2025 &
CWP-36819-2025

-8-

Patna and others decided on 10.05.2017.

24. It may be noticed that there is no quarrel with the said proposition of law but the facts of each case are to be seen. When the judgment in the case of Navratan (supra) is put into the facts of the present case, no relief can be granted to the petitioner(s) as in the present case, the facts on the basis of which the impugned order rejecting the nomination papers of the petitioner(s) is challenged, are yet to be proved by leading cogent evidence hence, in the absence of proving the said allegations as incorrect, the judgment in the case of Navratan (supra) cannot be made applicable in the present case.

25. The law is settled regarding the alternate and efficacious remedy which is available. Reference can be made to the judgment of the Apex Court rendered in Union Bank of India vs. Satyawati Tandon and others (2010) 8 SCC 110.

26. No other argument has been raised.

27. Keeping in view the facts and circumstances recorded hereinbefore, no ground for interference by this Court is made out and the present writ petitions are accordingly dismissed. However, the petitioner(s) are free to avail appropriate remedy before the Election Tribunal qua the rejection of their nomination papers in case so advise.

28. At this stage, learned counsel for the petitioner(s) submits that in case, remedy is availed by the petitioner(s) by way of filing an election petition, the respondents be directed to decide the said petition expeditiously.

29. It goes without saying that as the matter relates to the elections

**CWP-36818-2025 &
CWP-36819-2025**

-9-

and keeping in view the settled principle of law as well as the provisions of the 1994 Act, the respondents are under an obligation to decide the said election petition within a period of six months from the date of filing the same.

30. Learned State counsel submits that in case the petitioner(s) cooperates, all the efforts will be made to decide the election petition in case filed by the petitioner(s), within a time frame allowed.

31. Civil miscellaneous application pending, if any, is also disposed of.

32. A photocopy of this order be placed on the file of connected cases.

**(HARSIMRAN SINGH SETHI)
JUDGE**

**(VIKAS SURI)
JUDGE**

December 11, 2025

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Whether speaking/reasoned : Yes

Whether reportable : No