

(1993) 11 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 499 of 1992

Darshan Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 02-11-1993

Acts Referred:

Punjab Gram Panchayat Act, 1952 — Section 4(1)

Citation : (1993) 105 PLR 576

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : R.S. Longia, for the Appellant; Suresh Monga, D.A.G. for Respondent Nos. 1 and 2 and Chander Singh Kaushik, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—Petitioners who are residents of village Harigarh, Tehsil Pehowa, District Kurukshetra have filed this petition under Article 226 of the Constitution challenging the action of the State Government in amalgamating Gram Panchayats of two villages namely Harigarh and Bhorakh Madadan in the District of Kurukshetra.

2. Prior to the year 1988 there was one Gram Panchayat for the two villages Bhorakh Madadan and Harigarh known by the name of Gram Panchayat Bhorakh. The residents of both the villages represented to the State Government as also to the Deputy Commissioner to declare both the villages as separate Sabha areas so that separate Gram Panchayats could be established for each of them. It was represented that the villages were large enough to have separate Gram Panchayats and that the bifurcation would put an end to the long-standing disputes between the residents of the two villages regarding their representation in the Panchayat. It was stated that as a result of disputes between the residents of the two villages, no development work was carried out. The previous Gram Panchayat Harigarh Bhorakh had also passed a resolution in March, 1987 wanting bifurcation of the Gram Panchayat. The Block Development and Panchayat Officer

also recommended two separate Panchayats for these villages. The Deputy Commissioner of the District Examined the representation of the residents and referred the matter to the Director, Panchayats, Haryana with a recommendation that both the villages deserved separate Gram Panchayats in public interest. The recommendation of the Deputy Commissioner seems to have been accepted since the State Government as per its notification of June 30, 1988 declared the two villages as separate Sabha areas u/s 4(1) of the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as "the Act") and constituted separate Gram Panchayats for each of them known as Gram Panchayat Bhorakh Madadan and Gram Panchayat Harigarh. Thereafter, elections to the newly constituted Gram Panchayats were held in accordance with the provisions of the Act and the Rules framed thereunder. Some of the defeated candidates challenged the action of the State government in bifurcating the Gram Panchayat Bhorakh into two Gram Panchayats by filing Civil Writ Petition No. 7124 of 1988 on the ground that two Sabha areas namely Bhorakh Madadan and Harigarh could not be declared out of one revenue estate and that there could be only one Sabha-area for each revenue estate or group of revenue estates. The writ petition was allowed by a learned Single Judge holding that two Sabha-areas could not be established out of one revenue estate of Harigarh Bhorakh and the notification of June 30, 1988 was quashed. Gram Panchayat Bhorakh went up in appeal before a Division Bench which was allowed and it was held that the Government was competent to carve out any number of Sabha-areas in a village which bears a revenue estate subject to the condition of population of five hundred people. The order of the learned single Judge was set aside and the notification constituting separate Gram Panchayats by declaring the two villages as separate Sabha-areas was upheld.

3. Elections to the Gram Panchayats in the State of Haryana were again held in December, 1991. The State Government as per its practice declared by its notification of December 18, 1991 (Annexure P-7) with the writ petition) some villages or group of villages to be Sabha-areas and also established a Gram Panchayat for each of such Sabha-areas by the names specified in the schedule to the notification. It will be seen that village Bhorakh Madadan and Harigarh were declared as different Sabha-area with separate Gram Panchayats. Immediately, thereafter on the same day the State Government in partial modification of its notification December 18, 1991 and in exercise of its powers under Sub-section (1) of the Sections 4 and 5 of the Act amalgamated the two Sabha-areas and, consequent, the Gram Panchayats. It is this amalgamation of the two Gram Panchayats that has been impugned in the present writ petition.

4. The contention of the petitioners is that having declared the two villages as separate Sabha-areas in 1988 and again on December 18, 1991 as per annexure P-7 with the writ petition, there was neither any justification nor any basis for the Government to amalgamate the two on the same day by modifying the notification of December 18, 1991. It was further contended that the action of the State Government even though administrative in nature suffered from the

vice of arbitration and the State Government has not disclosed any valid or cogent reason for its impugned action.

5. In the written statement filed on behalf of the respondents 1 and 2, the justification given for amalgamating the two Gram Panchayats is that a resolution dated November 13, 1991 passed by Gram Panchayat Borakh was received by the Director Panchayats, Haryana with a request to amalgamate the two Gram Panchayats. The resolution was sent to the Deputy Commissioner for his comments who, according to the written statement recommended the amalgamation "so that shamlat land could be saved from misuse." Some of the inhabitants of village Borakh, however, represented that the two Gram Panchayats should not be amalgamated. It is stated that the State Government after considering the report of the Deputy Commissioner and the representations of both the Gram Panchayats of Borakh and Harigarh thought it appropriate to amalgamate the two. The learned State counsel also produced in court the record which has been perused. It is clear from this record that Gram Panchayat Borakh passed a resolution on November 13, 1991 requesting the State Government to amalgamate the two Gram Panchayats. A copy of this resolution though addressed to the Director, Panchayats was delivered to the Development Minister, Haryana who marked the same to the Director. The office of the Director sent the same to the Deputy Commissioner for his comments. The Deputy Commissioner in turn sent for the comments of the Block Development and Panchayat Officer who reported that it would not be in public interest to amalgamate the two Gram Panchayats even though Gram Panchayat Borakh had resolved in favour of amalgamation. The Deputy Commissioner while agreeing with the Block Development and Panchayat Officer also recommended on December 2, 1991 that it would not be in public interest to amalgamate the two Panchayats and that such a step would lead to disputes and create friction between the residents of the two villages. Surprisingly, the same Deputy Commissioner again after a week on an enquiry from the Director, Panchayats made another recommendation on December 10, 1991 recommending that the two Gram panchayats be amalgamated. The only reason that he mentioned in this recommendation was that Atma Ram, Sarpanch of village Harigarh Borakh had obtained a collusive decree in connivance with the residents of the village in regard to land measuring 86 acres and 2 kanals belonging to the Panchayat. He, therefore, suggested that with a view to protect the shamlat land from being usurped by the Sarpanch and some other residents, it was necessary to amalgamate the two Panchayats. When the matter was placed before the Director, Panchayats, he also held his own enquiry into the matter and while disagreeing with the subsequent recommendations of the Deputy Commissioner, he was of the view that the two Panchayats should not be amalgamated. His note dated December 12, 1991 when translated in English reads as under:-

"I have held enquiries at my own level on the basis of which I am not in favour of putting an end to the bifurcation of the two Gram Panchayats. The notification is in the process of being published and even otherwise, there is no time left for

any cancellation or alteration therein.

Sd/-."

The Development Minister then discussed the matter with the Commissioner (Development) and the Director, Panchayats and approved the subsequent recommendation of the Deputy Commissioner without giving any reasons. It appears that the notification for having separate Sabha-areas and Gram Panchayats had already been sent for publication to the press. The modification amalgamating the two Gram Panchayats was issued on the same day. In nutshell, the Government had decided to amalgamate the two Gram Panchayats solely on the ground that the Sarpanch of village Harigarh had usurped 86 acres and 2 kanals of land belonging to the Panchayat by obtaining a collusive decree in connivance with the residents and that he was in occupation of the said land. The earlier recommendations of the Deputy Commissioner and also of the Commissioner who found that it was not in public interest to merge the two sabha areas and that the same would result in disputes and create friction between the residents of the villages were overruled.

6. The question that now arises is whether the State Government was justified in amalgamating the two Gram Panchayats on account of the aforesaid reasons. In my opinion it was not. The Act is a complete code in itself and there are ample provisions therein for taking action against a defaulting Sarpanch who may have usurped the land of the Panchayat. Action could be taken against Atma Ram, Sarpanch for his removal u/s 102 of the Act and the land under his unauthorised occupation could be got vacated. Proceedings could have been initiated for the eviction of the unauthorised occupant and the collusive decree, if any obtained by him could have been challenged in appropriate proceeding. In fact, the Sarpanch who was in unauthorised occupation of the property had incurred the disqualification of being a member of the Gram Panchayat. Any of these steps could have been taken but instead of resorting to any of these remedial measures, the State Government decided to amalgamate the two Gram Panchayats. The State Government could not under any rules of fair play deprive the residents of village Harigarh from having a separate Gram Panchayat which is a democratic set up at the village level merely because the Sarpanch was allegedly in unauthorised occupation of some land. It was only a few days earlier that both the Deputy Commissioner and the Commissioner had recommended that it was in public interest to have separate Gram Panchayats for the two villages. The State Government does not seem to have applied its mind to the question of public interest but was led away by a extraneous consideration of the Sarpanch being in unauthorised occupation of a piece of land. An action based on such a consideration is wholly arbitrary. The residents of both the villages had been clamouring for a separate Gram Panchayat for the last few years which demand was conceded by the State Government in the year 1988 and separate Gram Panchayats had actually been functioning. Again in 1991 the two Gram Panchayats were separately notified but for the aforesaid queer and untenable

reason it was decided to amalgamate the two. The order of merger should be passed only as a matter of last resort but in the circumstances of the present case the State Government resorted to it without any justification and contrary to its earlier decision without assigning any valid reason as to how such a step would be in public interest. I have, therefore, no hesitation in setting aside the impugned notification Annexure P-8 with the writ petition.

7. In the result, the writ petition is allowed and the impugned notification quashed. Petitioners shall have their costs which are assessed at Rs. 1,000/-.