
(2019) 12 RAJ CK 0111

In the Rajasthan High Court

Case No : Civil Writ Petition No. 18269 Of 2019

Fateh Mohd And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Rajasthan Panchayati Raj Act, 1994 — Section 2(xiii), 9, 10, 12(2), 101
Rajasthan Panchayati Raj (Election) Rules, 1994 — Rule 3, 3(4), 4

Citation : (2019) 12 RAJ CK 0111

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : G.R. Punia, Mahaveer Bhanwariya, Sunil Beniwal

Final Decision : Disposed Of

Judgement

1. By way of present writ petition, petitioners have challenged notification dated 26.11.2019, whereby their Dhanis, part of revenue village Bandha, have been included in Gram Panchayat Asutar, while forming wards of such Gram Panchayat.

2. Mr. G.R. Punia, learned Senior Counsel submitted that three dhanis, namely, Kunde ki Dhani, Dhanne Ki Dhani and Jani ki Dhani (Nati Ki Dhani) (sic) are part of revenue village Bandha, which itself is a separate Gram Panchayat, yet by way of impugned notification dated 26.11.2019, respondent No.3 has shown them to be wards of Gram Panchayat Asutar, while treating these dhanis to be part of village Mirwala.

3. While inviting Court's attention towards Section 12(2) of the Rajasthan Panchayati Raj Act, 1994, learned Senior Counsel argued that all the villages or dhanis of Panchayat Circle are required to be included in corresponding Gram Panchayat and while determining number of wards or creating constituencies, such villages/dhanis cannot be included in other Gram Panchayat. Having read the relevant provisions and canvassed his point, he submitted that by way of impugned notifications, three dhanis, namely, Kunde ki Dhani, Dhanne ki Dhani

and Jani ki Dhani, have been made a part of wards of Gram Panchayat, Asutar, whereas these dhanis fall in revenue village Bandha, which is a separate Gram panchayat and they ought to have been included in Gram Panchayat Bandha.

4. Mr. Sunil Beniwal, learned Additional Advocate General, in response, submitted that three out of these four petitioners, are residents of Meerwala, which is evident from the job cards and ration cards, issued to them. He added that Meerwala is a part of Gram Panchayat Asutar, hence, petitioners' dhanis have been rightly included in Gram Panchayat Asutar and the notification under challenge is perfectly valid.

5. Heard.

6. Before proceeding to embark upon the arguments advanced, it is to be borne in mind that prior to 15.11.2015, Gram Panchayat, Bandha, comprised of three revenue villages, Bandha, Asutar and Meerwala. By way of notification dated 15.03.2019 (published in Official Gazette on 16.03.2019), issued under Sections 9, 10 and 101 of the Act of 1994, a new Gram Panchayat in the name of Asutar has been framed, in such a manner that Gram Panchayat Bandha consists of village Bandha, whereas newly constituted Gram Panchayat, Asutar consists of village Asutar and Meerwala.

7. On a conjoint reading of Sections 2(xiii) and 12(2) of the Act of 1994 and Rule 3 of the Rajasthan Panchayati Raj (Election) Rules, 1994 (hereinafter referred to as 'the Rules of 1994'), this Court is of the firm view that a part of village or a Dhani falling in a particular revenue village, is required to be included in corresponding Gram Panchayat only and the same cannot form part of ward of other Gram Panchayat.

8. A careful reading of sub-rule (4) of Rule 3 of the Rules of 1994 shows that it talks of dividing Panchayat Circle into wards and so is the effect of provision contained in sub-section (2) of Section 12 of the Act of 1994. Both these provisions are reproduced hereunder for ready reference:-

"3. Matters to be taken into consideration in formation of wards and constituencies :-

(1) XXX XXX XXX

(2) XXX XXX XXX

(3) XXX XXX XXX

(4) While dividing a Panchayat circle into wards under Section 12, the Officer authorised by the government shall form, as far as practicable, a contiguous group of houses into a ward."

"12. Composition of a Panchayat.-

(1) XXX XXX XXX

(2) The State Government shall, in accordance with such rules as may be framed in this behalf, determine the number or wards for each Panchayat Circle, and thereupon so divide the Panchayat Circle into single member wards that the population of each ward is, so far as practicable, the same throughout the Panchayat Circle."

9. The State's stand that the documents of three petitioners show that they are residents of Meerwala, based on job cards and ration cards, cannot be countenanced. Such stance taken by the State in the adjudicating process envisaged under Rules 3 and 4 of the Rules of 1994, is per se illegal and arbitrary. Formation of ward is required to be made on the basis of location of an area in a particular dhani or revenue village. This post decisional exercise to justify the act, that too on the basis of job cards/ration cards of three out of four petitioners cannot be approved by any Court of law.

10. The State has failed to show that the aforesaid three dhanis fall in revenue village Meerwala. No documentary evidence has been placed. On the contrary, there is enough material to show that these three dhanis are part of revenue village Bandha, which is a Gram Panchayat in itself.

11. Dhanis forming part of revenue village Bandha cannot be included in another Gram Panchayat, namely, Asutar.

12. In view of the aforesaid, the writ petition is allowed. The impugned notification No.1450 dated 26.11.2019 determining and notifying wards of Gram Panchayat Asutar and notification No.1451 dated 26.11.2019 issued in relation to Gram Panchayat Bandha are quashed and set aside, to the extent it includes Kunde Ki Dhani, Dhanne Ki Dhani and Jani ki Dhani in Gram Panchayat, Asutar and corresponding excludes these dhanis from Gram Panchayat, Bandha.

13. Needless to observe that the residents of these dhanis will be considered as residents and voters of Village/Gram Panchayat, Bandha.

14. The respondent No.3 will forthwith issue consequential notifications for Gram Panchayat, Bandha and Asutar in terms of the order instant. The election for these Panchayati Raj Institutions shall thereafter be held in accordance with amended notifications.

15. The stay application also stands disposed of.