
(2008) 11 P&H CK 0117
In the Punjab And Haryana At Chandigarh

Gram Panchayat Saskaur	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 21-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 153 PLR 184 : (2009) 3 RCR(Civil) 665

Hon'ble Judges : Satish Kumar Mittal, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—Gram Panchayat, Village Saskaur, Tehsil Anandpur Sahib, District Roopnagar, has filed this petition under Articles 226/227 of the Constitution of India for quashing the order dated 5.10.2006, passed by the Joint Director, Rural Development and Panchayat Punjab, Chandigarh, in exercise of the powers of the Director, Panchayat, Punjab, whereby the resolution dated 6.1.2006, passed by the Gram Sabha was cancelled; and the order dated 29.10.2007, whereby the revision filed by the Gram Panchayat against the said order has been dismissed by the Secretary, Rural Development and Panchayat, Punjab, Chandigarh.

2. The brief facts of the case are that during the consolidation in the village, an area of 1 Kanal 18 Marias bearing khasra No. 41 was reserved for cremation ground. Since then, the said land was being used as cremation ground of village without any difficulty.

3. On 6.1.2006, the Gram Sabha", Village Saskaur, passed a resolution for shifting the said cremation ground from Khasra No. 41 to an area of 2 kanals out of the total area of 15 Kanals 19 Marias, in Khasra No. 7//16/4, 14/2 and 15, belonging to the Gram Panchayat on the ground that the existing cremation ground adjoins Hadda Rori and skinning of dead animals and is emitting of foul smell. In pursuance to this resolution, the petitioner Gram Panchayat passed a

resolution dated 29.5.2006, approving the expenses of Rs. 70,000/- for construction of the shed in the new cremation ground.

4. The above said resolution dated 6.1.2006 was challenged by some of the inhabitants of the village by filing a petition u/s 199 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as "the Act"), which empowers the Director to cancel any resolution passed by a Panchayat if, in his opinion, such resolution (a) is not legally passed; or (b) is in excess of abuse of the powers conferred by or under this Act or any other law; or (c) is contrary to the interests of the public or, likely to cause waste or damage of Samiti Fund or Zila Parishad Fund or of property of a Panchayat Samiti or Zila Parishad; or (d) on its execution is likely to cause danger to human life, health or safety or is likely to lead to a riot or affray.

5. The Joint Director, while exercising the powers of Director, vide order dated 5.10.2006, cancelled the said resolution, while observing as under:

The Gram Sabha Saskaur had passed resolution dated 6.1.2006 to the effect that Khasra No. 41 (1 Kanal 18 Maria) was reserved for cremation ground during consolidation and the area where the Panchayat wants to change the cremation ground having Khasra No. 6/11/1 measuring 7 Kanals 2 Marias was kept reserved for grazing ground. The place where the present shamshanghat is situated is connected with a passage and is at a distance of approximately 1 K.M. from the village. At the spot no water was stagnant on the place. The place where the Gram Panchayat wants to shift the cremation ground is not connected with a passage and is meant for grazing ground. The Khasra No. 41 where the present cremation ground is existing is adjacent to the land owned by Jasbir Singh Sarpanch. The place where the cremation ground is desired to be shifted is away from the road and is not connected with any passage. As such, the resolution of the Gram Sabha dated 6.1.2006 passed in connection with shifting of cremation ground has not been signed by 1/5 members of Gram Sabha. This resolution has been passed by him keeping in view his personal interest.

6. Against the said order, the petitioner Gram Panchayat filed revision petition before the Government. The Secretary, Rural Development and Panchayats, Punjab, Chandigarh, vide his order dated 29.10.2007, dismissed the said revision, while observing as under:

The record shows that on 18.8.2006, both the parties before respondent No. 1 agreed that the matter be decided after the spot inspection. The respondent No. 1 inspected the spot on 8.9.2006 in the presence of the parties. On the basis of this inspection, the respondent No. 1 has recorded a categorical finding that the existing cremation ground in Khasra No. 41 is more conveniently placed as compared to the proposed new place. The existing cremation ground is at a distance of only 1 Kilometer from the village comparatively at a longer distance. It was further found as a matter of fact that the existing cremation ground is not a low lying area. It has also been recorded that the existing cremation ground in

Khasra No. 41 is connected by a proper path whereas the new cremation ground which is at a far of place from the main road, is not connected by any proper path. The respondent No. 1 has also recorded a finding that since the existing cremation ground is abutting the personal land of Sarpanch Sh. Jasbir Singh, therefore, he wanted to shift the cremation ground to the new place.

The counsel for the petitioner failed to rebut any of the factual findings recorded by respondent No. 1. The only explanation given by the appellant is that the construction was raised by the petitioner over the new place, which was damaged by the respondent No. 1 along with his party man and the matter was reported to the police.

It is to be noted that there is a procedure prescribed by the legislature for exchange of the land. Without following the procedure and without sanction of the competent authority, the appellant was not justified in deciding to raise the construction. Further nothing has been brought on record whether there is any construction or not. The photographs only show that there was move to raise shed. Even if the construction had been raised, it was totally without any authority. It seems that the Sarpanch Sh. Jasbir Singh was in hurry so that his plan for shifting the cremation ground from Khasra No. 41 which is adjacent to his personal land is not frustrated. That is why he rushed to pass the second resolution without getting the approval.

Hence, this petition.

7. We have heard learned Counsel for the parties and perused the aforesaid impugned orders.

8. Learned Counsel for the petitioner Gram Panchayat argued that the order passed by the Joint Director, exercising the powers u/s 199 of the Act of Director, canceling the resolution dated 6.1.2006, passed by the Gram Sabha, as wholly without jurisdiction. He submits that u/s 199 of the Act, the Director can cancel a resolution, only passed by a Gram Panchayat and not by "the Gram Sabha". He further submits that "the Gram Sabha" in the best interest of the inhabitants of the village had taken the decision of shifting the cremation ground on the ground that it cannot be effectively used, due to skinning of dead animals, which result in emitting foul smell and also due to the fact that the existing cremation ground is a low lying area.

9. On the other hand, learned Counsel for the respondents submit that the Gram Panchayat was not competent to pass the resolution dated 6.1.2006 and the said decision was to be taken by the elected members of the Gram Panchayat. They further submit that the meeting dated 6.1.2006 of the Gram Sabha was not convened and held according to Section 5 of the Act. Therefore, any decision taken in such kind of meeting, which was neither convened nor proceeded in accordance with the Act, could not have been implemented, and any such decision, which was illegally taken, even if passed by the Gram Sabha, can be set aside by the Director in exercise of the powers u/s 199 of the Act. It has been

further submitted by learned Counsel for the respondents that even during the spot inspection by the authorities, it was found that the existing cremation ground is fully functional and the new site is not suitable for the cremation ground. Therefore, the authorities under the Act have rightly cancelled the resolution dated 6.1.2006 and no interference is required in the same.

10. After hearing learned Counsel for the parties, we do not find any ground to interfere in the impugned orders, passed by the authorities under the Act. In our opinion, even the resolution of "the Gram Sabha", if the same is without jurisdiction and contrary to the provisions of the Act, can be cancelled by the Director in exercise of the powers conferred upon him u/s 199 of the Act. In our opinion, "the Gram Sabha" has no power under the Act to take a decision to shift a cremation ground from one place to any other land, belonging to the Gram Panchayat. Such a decision can only be taken by the elected members of the Gram Panchayat. Therefore, the resolution dated 6.1.2006, passed by the Gram Sabha, was wholly without jurisdiction. Even, if, the contention of the petitioner Gram Panchayat that u/s 199 of the Act, resolution passed only by a Gram Panchayat can be cancelled by the Director is accepted, even then this writ petition can not be allowed and the order of the Director cannot be set aside, because setting aside of the said order will result into revival of an illegal and void resolution. Thus, we do not find any ground to interfere in the impugned orders, which have been passed by the competent authorities in the best interest of the inhabitants of the village, after inspecting the spot and coming to the conclusion that the new site is fit for cremation ground of the village.

11. Consequently, the instant writ petition is dismissed.

Sd/- Jaswant Singh, J.