

(2001) 01 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 1763 of 1985 697 of 1993, 14920 of 1988 and 24811 of 2000

Mukhtiar Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 23-01-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 32
Haryana Municipal Act, 1973 — Section 4(1), 4(2)

Citation : (2001) 3 RCR(Civil) 416

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : Mr. S.C. Sibal and Mr. Deepak Sibal, Mr. C.B. Goel, for the Appellant;
Mr. N.S. Bhinder, DA, for the Respondent

Judgement

V.K. Jhanji, J.—At the request of counsel for the parties, writ petitions are taken on Board for final disposal.

2. This will dispose of Civil Writ Petition Nos. 1763 and 2159 of 1985. Pacts have been taken from Civil Writ Petition No. 1 763 of 1985.

3. State of Haryana issued a notification dated 29.6.1984 inviting objections to its proposed intention in regard to inclusion of certain area of Gram Panchayat. Sukhrali in the limits of Municipal Committee, Gurgaon. Petitioner Gram Panchayat filed objections dated 30.7.1984 to the said proposal stating therein that land of the Gram Panchayat cannot be deviated from the ownership right of the Shamlat Deh without payment of compensation because proprietor and inhabitants of the village would be deprived of amenities available to them from Shamlat Deh and the inclusion is not in the public interest. In the objections, petitioner-Gram Panchayat also prayed for personal hearing. State Government issued notification dated 9.1.1985 published in the Haryana Government Gazette on 19.3.1985 ordering the inclusion of area lying between Gram Panchayat Sukhrali and Municipality Gurgaon, in the area of Municipality Gurgaon.

4. The area included in the limits of Municipality, Gurgaon was shown red in the site plan annexed with the petition. After issuance of the notification Block Development and Panchayat Officer, Gurgaon vide its letter dated 27.2.1985 directed Sarpanch of Petitioner Gram Panchayat to deposit the record of moveable and immovable property and cash book etc., of the area included in the Municipal limits and also to submit a list of regular staff. In the present writ petition challenge has been made to notification dated 9.1.1985 and the letter dated 27.2.1985 on the ground that petitioner Gram Panchayat was not afforded an opportunity of hearing before finalizing the matter in regard to inclusion of the area of Gram Panchayat Sukhrali in the limits of Municipality Gurgaon and that respondent No, 3 namely Block Development and Panchayat Officer was not competent to direct the Sarpanch of petitioner Gram Panchayat to deposit the entire record of the Gram Panchayat because there was partial inclusion of Sabha area and the Gram Panchayat was alive and as such said B.D.P.O. had no jurisdiction in this regard. The case of the petitioner is that land has been taken away from the Gram Panchayat without payment of any compensation and that the Gram Panchayat alone is competent to transfer the land in view of provisions of Punjab Village Common Lands Act, 1961.

5. Upon notice only respondent No. 2 namely Municipal Committee, Gurgaon filed written statement "inter-alia" contending therein that the land has rightly been included in the area of the Gram Panchayat. It is further stated in the written statement that petitioner has no locus standi to file the writ petition because the entire Abadi-Deh of village Sukhrali has been included within the Municipal limits. No written statement on behalf of the State was filed.

6. Learned counsel appearing on behalf of the petitioner contended that before issuing notification for inclusion of the area, no notice of hearing was given to the petitioner Gram Panchayat though it was specifically requested in the objection petitions filed by it. He further contended that the area has been included without payment of compensation and also without deciding the objections filed by the Gram Panchayat. He further contended that there cannot be a partial inclusion of Sukhrali area within municipal limits and that the Shamlat Deh in the area of Gram Panchayat included in the Municipal limits remains the property of the Gram Panchayat. In this regard he has placed reliance upon a decision of this Court in case *Nasrali v. State of Punjab and others* 1984 P.L.J. 113. On the other hand, counsel appearing on behalf of the respondent contended that u/s 4(2) of the Haryana Municipal Act, 1973 only the inhabitants of the Municipal area or a local area are entitled to raise objections in regard to the inclusion of area of Gram Sabha into the Municipal Area and that Gram Panchayat is not competent to challenge the action of the State. In this regard, reliance has been placed upon a decision of this Court in *Gram Panchayat village Khara v. State of Haryana and others* 1989(2) RRR 511 : 1989 PLJ 683.

7. After hearing learned counsel and going through the record of the case, I am of the view that present writ petition is not maintainable. It is not in dispute that

the present writ petition has been filed by Mukhtiar Singh Sarpanch of village Sukhrali on behalf of the Gram Panchayat and not in his individual capacity as an inhabitant. Section 4(2) of the Haryana Municipal Act provides for notification of intention to alter limits of Municipality. Sub Section (2) of Section 4 of the Act provides for filing of objection to the alteration proposed. The said sub-section reads as under :-

"(2) Any inhabitant of a municipality or local area in respect of which a notification has been published under sub-section (1), may, should be (he ?) object to the alteration proposed, submit his objection in writing through the Deputy Commissioner to the State Government within six weeks from the publication of the notification; and the State Government shall take such objection into consideration."

8. The question regarding validity of filing of writ petition by Gram Panchayat has already been determined by this Court in case Gram Panchayat, Khaira (supra) wherein a Division Bench of this Court held as under :-

"Under Section 4(2) of the Haryana Municipal Act, 1973, any inhabitant of the municipal area of a local area, on alteration of the boundaries of the Municipal area, is entitled to raise objections. The petitioner herein is a Gram Panchayat of village Khaira and is supposedly aggrieved of the alteration of the boundaries of the Municipal area. In our view, the Gram Panchayat, which is a juristic person and not a natural one, cannot be termed as "inhabitant" so as to object u/s 4(2) about the alteration of the boundaries of the municipal area. That privilege is with natural persons and not juristic ones like the Panchayat. For this reason we dismiss the petition in limine."

A conjoint reading of Section 4(2) and the judgment of Division Bench of this Court referred to above clearly lays down that the writ petition filed by someone else on behalf of Gram Panchayat is not competent. Only the inhabitants of the Municipal area or a local area, are competent to challenge alteration of the boundaries of Municipal Area. Thus the present writ petition filed by the Sarpanch on behalf of Gram Panchayat is not maintainable and is dismissed as such. No order as to costs.

9. Writ petition dismissed.