
(2010) 11 SHI CK 0204
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition 1042 of 2008

Sadhu Ram Guleria

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Himachal Pradesh Panchayati Raj Act, 1954 — Section 122, 180, 32

Citation : (2010) 11 SHI CK 0204

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J. 1. This writ petition has been preferred by the Petitioner herein praying that Respondents No. 1 to 3 be directed to remove Respondent No. 4 as Pradhan of Gram Panchayat, Baruna on the allegation that she is an encroacher on Government land and that according to the provisions of the Himachal Pradesh Panchayati Raj Act, 1954 and Himachal Pradesh Panchayati Raj General Rules (hereinafter referred to as the `Act and Rules"), she is disqualified to hold the office of the Pradhan.

2. It is undisputed before me that Respondent No. 4 has been declared elected as Pradhan to Gram Panchayat, Baruna. The point for determination is whether she or her family members had encroached upon the Government land.

3. The Petitioner had sought copy of the inquiry conducted against the Petitioner for encroachment on the Government land. By communication dated 15.11.2006 addressed by the District Panchayat Officer, Kangra, he was informed that no land was encroached upon by Respondent No. 4, but the encroachment found was that of the elder brother of her husband who did not fall within the definition of family within the meaning of Section 32 of the Act. The letter reads:

Letter No. 3261,

Office of the District Panchayat Officer Kangra at Dharamshala.

To Shri Sadhu Ram Guleria, Vill. Gawada, P.O. Baruna, Tehsil Fatehpur, District Kangra, H.P.

Dharamshala, dated 15.11.2006.

Subject: Regarding enquiry report of the complaint against Pradhan, GramPanchayat Baruna.

Memo, You have been supplied copies of the enquiry report of the complaint against Pradhan, Gram Panchayat, Baruna under R.T.I. Act. In connection with the same, it is also informed that encroachment over the government land was found to be of the brother of the husband of Pradhan as per enquiry report of the complaint, who does not fall within the ambit of definition of 'family' u/s 122 of the Panchayati Raj Act. Accordingly no action is contemplated against the Pradhan aforestated.

This is for your kind information please. Sd/- District Panchayat Officer Kangra at Dharamshala

4. The Petitioner being aggrieved by this order, preferred an appeal before the Director, Panchayati Raj, Government of Himachal Pradesh, Shimla, alleging therein that he was given no opportunity to show that such an encroachment had infact been made by the Petitioner. According to the report dated 5.4.2006, it was Respondent No. 4 and her other family members who filed an application for regularization of encroachment with respect to Khasra Nos. 313,316, 332, 333, 337, 342, and 346, katas 7 and Khasra Nos. 1755, 1764, 1768, 1773 and 1778, katas 5, measuring 0-3-96 hectares in the revenue record of Jaunt Kalan and Jagnoli, Tehsil Fatehpur, District Kangra. A charge was also leveled against the revenue authorities that there is connivance between them and the Respondent.

5. The appellate Authority, in its order dated 4.2.2008, placing reliance on the provisions of Section 122(1)(c) and the explanation thereto that the "family members" shall mean the spouse, their son(s), unmarried daughter(s) and adopted son and unmarried daughter, did not attract the disqualification to hold the office.

6. This Court had summoned the file relating to the application submitted for regularization of the land alleged to have been encroached upon. The application has not been made in the name of the husband of the Petitioner, but has been made in the names of a number of persons, namely, Smt. Sudershana Devi wife of Fauja Singh, Shami Devi wife of Ramesh Chand, Aruna Devi wife of Ashok Kumar, Sushma Devi wife of Balbinder Singh and Anusomal wife of Kulwant Singh. I do not find from this record that any application for regularization of the encroachment of the so called land has been made by Respondent No. 4 or her husband. In these circumstances, for this Court it is difficult to accept the submission that encroachment has been made by the husband of the Petitioner.

7. If what Annexure P-1 states is the correct position, no disqualification is attracted for the reasons that elder brother of the Respondent cannot be treated

as a member of the family u/s 122 which reads:

122(1) A person shall be disqualified for being chosen as, and for being, an office bearer, of a Panchayat -

(a) if he is so disqualified by or under any law for the time being in force for the purposes of election to the State Legislature:

Provided that no person shall be disqualified on the ground that he is less than 25 years, if he has attained the age of 21 years;

(b) if he has been convicted of any offence involving moral turpitude, unless a period of six years has elapsed since his conviction; or

(bb) if he has been found to have been guilty of any corrupt practices u/s 180 of this Act; or

(c) if he or any of his family member(s) has encroached upon any land belonging to, or taken on lease or requisitioned by or on behalf of, the State Government, a Municipality, a Panchayat or a Co-operative Society unless a period of six years has elapsed since the date on which he is ejected therefrom or he ceases to be the encroacher; or

Explanation: For the purpose of this clause the expression: family member" shall mean the spouse, their son(s), unmarried daughter(s) and adopted son and unmarried daughter.

8. But still what I find from the record is that a report of encroachment has been made in the name of the brother of the husband of the Petitioner; though not substantiated by the record. In these circumstances, I hold that though the writ petition is not maintainable, yet the government will conduct an inquiry as to whether the family members of Respondent No. 4 within the meaning of Section 122 of the Act have encroached upon the Government land as mentioned by the Petitioner in his ground of appeal as appended with this writ petition. For this purpose, inquiry shall be conducted by the Deputy Commissioner, Kangra. This petition is disposed of. No order as to costs.

9. All interim orders are vacated. All miscellaneous applications are disposed of.