

(2016) 05 P&H CK 0430
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9684 of 2016

Sanjeev Rana

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 243W
Punjab Municipal Act, 1911 — Section 52(2)

Citation : (2016) 4 PLR 271

Hon'ble Judges : Mr. S.S. Saron and Mr. Gurmit Ram, JJ.

Bench : Division Bench

Advocate : Mr. Bikramjit Singh Randhawa, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. S.S. Saron, J.—The petitioner states that he is an elected Municipal Councilor of Ward No.3 of the Municipal Council, Nangal; besides, he is a social worker of the area. He prays that a mandamus be issued to the respondents to carry out development works in Municipal Council, Nangal according to Rules and develop the roads, streets in accordance with the maps.

2. No rule in accordance with which the development works are to be conducted has been mentioned by the petitioner. A reference has been made to Article 243-W of the Constitution of India and Section 52 (2) of Punjab Municipal Act, 1911.

3. Article 243-W of the Constitution of India relates to powers, authority and responsibilities of Municipalities, etc. It is envisaged therein that subject to the provisions of the Constitution, the Legislature of a State may, by law, endow:-

(a) The Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to:-

- (i) the preparation of plans for economic development and social justice;
- (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relations to the matters listed in the Twelfth Schedule;
- (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibility conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

4. The said Article 243W, therefore, envisages a law to be made by the State endowing upon the Municipalities the powers as contained in Clauses (a) and (b). The said Article is to endow on the Municipalities the powers, authority and responsibilities. No such powers, authority and responsibilities that may have been endowed has been shown.

5. A reference has also been made to Section 52 (2) of the Punjab Municipal Act, 1911. Section 52 (2) falls under Chapter IV relating to "Municipal Fund and Property". The same reads as under:-

Section 52(2)

52(2) Subject to the charge specified in sub-section (1) and to such rules as the State Government may make with respect to the priority to be given to the several duties of the committee, the municipal fund shall be applicable to the payment in whole or part, of the charges and expenses incidental of the following matters within the municipality, and with the sanction of the [State Government] outside the municipality, namely: -

(a) the construction, maintenance, improvement, cleansing and repair of all public streets, bridges, town-walls, town-gates, embankments, drains, privies, latrines, urinals, tanks and water-courses [and the preparation of compost manure];

(b) the watering and lighting of such streets or any of them:

(c) the construction, establishment and maintenance of schools, hospitals and dispensaries and other institutions for promotion of education or for the benefit of the public health, and of rest-houses, sarais, poor-houses, markets, [stalls], encamping grounds, ponds, and other works of public utility, and the control and administration of public institutions of any of these descriptions:

(d) grant-in-aid to schools, hospitals, dispensaries, poorhouses, leper-asylums, and other educational or charitable institutions;

(e) the training of teachers and the establishment of scholarships;

(f) the giving to relief and the establishment and maintenance of relief works in time or famine or scarcity;

(g) the supply, storage and preservation from pollution of water for the use of

men or animals;

(h) the planting and preservation of trees; and the establishment and maintenance of public parks and gardens;

(i) the taking of a census, the registration of births, marriages and deaths, public vaccination and any sanitary measure;

(j) the holding of fairs and any industrial exhibitions;

(k) the preparation and maintenance of a record of rights in immovable property; and

(l) all acts and things which are likely to promote the safety, health, welfare or convenience of the inhabitants or expenditure whereon may be declared by the committee, with the sanction of the [State] Government to be an appropriate charge on the municipal fund.

6. A perusal of the above shows the manner in which the fund is to be applied and not that Municipalities are to carry out development work.

7. It may be noticed that the petitioner earlier filed CWP No.25571 of 2015, which was permitted to be withdrawn with liberty to file a public interest litigation as in the writ petition general directions for development of Municipal Council, Nangal were sought. The petitioner then filed CWP No.968 of 2016 in the nature of public interest, which was withdrawn on 19.01.2016 by him with liberty to raise the issue with the concerned authority for the development of the area or raise the matter in the Meeting of the Municipal Council. Thereafter the petitioner it is stated made a representation dated 12.04.2016 (Annexure P-8) to the Deputy Commissioner, Ropar for carrying out development works in Municipal Council, Nangal according to Rules and develop the roads and streets in accordance with maps. It is not shown by the petitioner as to whether he being a member of the Municipal Council had raised such issues in any meetings of the Council or had made request for the development of the area of Municipal Council, Nangal incorporated in any of the agendas of the meetings. It is not shown as to the manner in which the representation dated 12.04.2016 (Annexure P-8) was submitted to the Deputy Commissioner, Ropar. In other words there is no diary number or receipt number of the representation. It is not shown whether it was submitted by hand or was sent by post. The date on the representation, i.e. 12.04.2016 is written by hand.

8. Therefore, no materials have been placed on record to show that the issue of development was raised in any of the meetings of the Municipal Council, Nangal. As already noticed, no Rule has been shown for carrying out the development works. The writ petition has been filed by making omnibus prayers for carrying out development works. In order to invoke the mandamus jurisdiction of the High Court under Article 226 of the Constitution of India, the petitioner is to show a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can seek a mandamus. For the issue of a writ of

mandamus, the Court has to first come to the conclusion that the aggrieved person has a legal right, which entitles him to seek its enforcement through a writ of mandamus. The petitioner has not shown any statutory right and neither have any materials been placed on record to show that these issues were raised in the Meetings of the Municipal Council. He has not placed any materials on record for including these in the agenda items of the Municipal Council, Nangal.

9. In the circumstances, the petition is clearly mis-conceived and is accordingly dismissed.