
(2015) 06 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 1555 of 2014 (OandM)

Sunita Bhati

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Citation : (2015) 4 RCR(Civil) 854

Hon'ble Judges : Surya Kant and P.B. Bajanthri, JJ.

Bench : Division Bench

Advocate : V.K. Jindal, Senior Advocate and Amandeep Sheoran, Advocate, for the Appellant; Ravi Dutt Sharma, D.A.G., for the Respondent

Final Decision : Partly Allowed

Judgement

Surya Kant, J.—The appellant is aggrieved by the order dated 03.09.2014 whereby learned Single Judge has upheld the appellant's removal from the office of Sarpanch of Gram Panchayat of Village Narhawali, Tehsil Ballabgarh, District Faridabad and further debarred her from contesting future elections for six years. The facts may be noticed briefly.

2. The appellant who was born and brought up in Village Sonsa, District Mathura (UP), was married in Village Narhawali, Tehsil Ballabgarh, District Faridabad. She contested the election of Sarpanch of Gram Panchayat of village Narhawali held on 06.06.2010 and was duly elected. On a complaint made by respondent No. 5 alleging encroachment on Gram Panchayat land measuring 519.713 sq. yards comprising gair mumkin johar by the husband of appellant and his brother, a fact finding enquiry was held and as per the enquiry report dated 09.07.2012 (Annexure P9), the allegations were proved. Thereafter, show cause notice was given to the appellant and her reply having been found unsatisfactory, the Deputy Commissioner-cum-Collector, Faridabad removed her from the office of Sarpanch vide order dated 13.03.2013 (Annexure P13). The appellant was further debarred from contesting election of Gram Panchayat for a period of six years. She went in appeals which were finally dismissed by Financial

Commissioner on 21.05.2013 (Annexure P15). The appellant challenged these orders unsuccessfully before the learned Single Judge, giving rise to this intra-Court Appeal.

3. It may be mentioned here that in addition to the allegation of encroachment over Gram Panchayat land by appellant's husband and his brothers, it was also alleged that she failed to get removed the other encroachments on the Gram Panchayat land in her capacity as the Sarpanch.

4. Since notice of motion in the instant appeal was issued on the limited ground to examine the justification of future disqualification of the appellant for a period of six years from contesting Gram Panchayat elections, learned State counsel vide order dated 13.05.2015 was directed to find out whether or not the family of the appellant has removed the encroachment over the Gram Panchayat land?

5. Mr. Ravi Dutt Sharma, DAG Haryana on instructions from Mrs. Upma Arora, BDPO, Ballabgarh states that the appellant's family has demolished the unauthorized construction and is no longer in possession of the Gram Panchayat land. As regards the removal of other encroachments, it is informed that BDPO has initiated action and in any case, the appellant could not pursue such proceedings as she is no longer holding the office of Sarpanch from last two years.

6. We have heard learned counsel for the parties on the quantum and nature of punishment awarded to the appellant for the encroachment made by the family of her husband on the Gram Panchayat land.

7. It is undeniable that even according to the complaint, encroachments were made by the appellant's husband and his brother prior to the appellant's marriage. It is not the case of respondents that the appellant actively participated or encouraged encroachment over the Gram Panchayat land. It is, however, equally true that as a Sarpanch she was obligated to initiate action for the removal of encroachments on the Gram Panchayat land notwithstanding the conflict of interest, if any.

8. The dereliction of duty shown by the appellant in not taking timely action against each and every encroacher of the Gram Panchayat land has cost the appellant very heavily as she was removed from the post of Sarpanch in March, 2013 though her turn would have expired in July, 2015. In this manner, the appellant has been deprived to hold the office of Sarpanch for a period of more than two years.

9. Having regard to what the appellant has already suffered for the mis-deeds of her in-laws, we are of the considered view that the punishment of her removal from the office of Sarpanch for a period of over two years is more than reasonable and proportionate to the nature of proved charges. Message has gone loud that no one, including the Sarpanch of the village, can dare to encroach upon the Gram Panchayat land which must, at any cost, be utilized only for the

welfare and purposes of the village community. The punishment awarded to the appellant being adequate in conveying such a message, we do not deem any legal necessity to deprive her from contesting the future elections. Since the encroachment by her family has already been removed, the disqualification of contesting future elections, appears to be disproportionately harsher. For the reasons afore-stated, we allow this appeal in part; modify the order passed by learned Single Judge and consequently also modify the orders passed by the Collector/Appellate Authority. Resultantly, while the removal of the appellant from the office of Sarpanch is upheld, the impugned order(s) to the extent of disqualifying her from contesting future elections for a period of six years is set aside.