Before S. S. Saron & Lisa Gill, JJ.

DAVINDER SINGH AND OTHERS—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No.24692 of 2016

December 01, 2016

Constitution of India, 1950—Art. 226—Alternate remedy to writ to order enquiry regarding embezzlement of Gram Panchayat funds—Whether appropriate— Availability of other statutory remedies—Effect of—Allegations against village Sarpanch of grabbing village lands worth crores of rupees in connivance with landlords and misuse of Panchayat funds—No action by the Gram Panchayat—Held, in case a cognizable offence is made out as regards embezzlement of Panchayat funds and government grants, the proper course for the petitioner is to lodge an FIR under S.154 Cr.P.C.—Regarding grabbing Panchayat land, the appropriate remedy is to seek redress under the Punjab Village Common Lands (Regulations) Act, 1961 or Civil Court—As held by the Supreme Court in Singhara Singh case, if a statute had conferred a power to do an act, and had laid down a method in which that power had to be exercised, it necessarily prohibits the doing of the act in any other manner than that had been prescribed—Therefore, the petitioners are liable to proceed as per statutory provisions—Petition disposed of.

Held that, nothing has been placed on record by the petitioners to show that they had approached the police station concerned regarding embezzlement, if any. In case a cognizable offence of embezzlement is stated to have been committed, the petitioners were liable to show that they had approached the concerned SHO of the police station for registration of a case/FIR.

(Para 7)

Further held that, as regards grabbing of Panchayat land, it is to be noticed that the appropriate remedy for the petitioners is to seek their remedies in accordance with the Punjab Village Common Lands (Regulation) Act, 1961 or the Civil Court depending on the nature of the common land that is alleged to have been grabbed, i.e. whether it is 'shamlat deh' or 'jumla mushtarka malkan'.

(Para 8)

Further held that, in State of UP v. Singhara Singh and others, AIR 1964 SC 358 the Supreme Court quoted with approval the principle applied in Taylor v. Taylor (1875) 1 Ch D 426 (431) namely that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. It was held that the said rule was well recognized and was founded on a sound principle. Its result is that if a statute had conferred a power to do an act and had laid down the method in which that power had to be exercised, it necessarily prohibits the doing of the act in any other manner than that which had been prescribed. The principle behind the rule is that if this were no so, the statutory provision might as well not have been enacted.

(Para 9)

Further held that, therefore, the petitioners are liable to proceed in accordance with the statutory provisions and the law as referred to above and not rush to this Court by way of a petition to seek investigation in a case where a cognizable offence, if any, is said to have been committed.

(Para 10)

Kehar Singh Hissowal, Advocate
for the petitioners.

S.S. SARON, J.

(1) The petition has been filed by Davinder Singh and others (petitioners) under Articles 226/227 of the Constitution of India for issuance of a writ, order or direction to the Secretary, Department of Home Affairs, Civil Secretariat, Punjab (respondent No.2) and the Director, Department of Vigilance Bureau, Punjab (respondent No.3) to consider the representation dated 29.08.2016 (Annexure P4) filed by the petitioners and to conduct an inquiry from any high level agency regarding embezzlement of funds of Gram Panchayat, Khokhar, District Hoshiarpur and also regarding misuse of the government grants stated to have been made to the Gram Panchayat, village Khokhar.

(2) It is submitted that Sarpanch of village Khokhar (respondent No.8) in connivance with landlords of the village has grabbed the village lands that is worth crores of rupees. However, the Gram Panchayat is not taking any action as regards the irregularities in the works of the village Panchayat and for misuse of the Panchayat funds. In fact according to the petitioners, an enquiry is liable to be conducted

for the misuse of Panchayat funds.

(3) A perusal of the representation dated 29.08.2016 (Annexure P4) shows that it has been filed for conducting a thorough inquiry regarding embezzlement of Panchayat funds and grants given by the Punjab Government; besides, grabbing of Panchayat land by influential persons of the area.

(4) As regards embezzlement of Panchayat funds and government grants, in case a cognizable offence is made out, the proper course for the petitioners is to lodge a first information report (FIR) with the concerned SHO of the police station, as provided for in terms of Section 154 of the Code of Criminal Procedure ('Cr.P.C.' - for short).

(5) The Supreme Court in ***Sakiri Vasu*** versus ***State of Uttar Pradesh and others***[1], has held that the High Court is to discourage writ petitions or petitions under Section 482 Cr.P.C. where alternative remedies under Section 154 (3) read with Section 36 or Section 156 (3) or Section 200 CrPC have not been exhausted. It was held that in case the police is not registering an FIR, the first remedy of the complainant is to approach the Superintendent of Police under Section 154 (3) Cr.P.C. or other police officer as referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 Cr.P.C., the grievance of the complainant still persists, then he can approach a Magistrate under Section 156 (3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. It has further been held that the complainant has a remedy of filing a criminal complaint under Section 200 Cr.P.C. Therefore, a writ petition or a petition under Section 482 Cr.P.C. is not to be entertained when there are other alternative remedies.

(6) In ***Aleque Padamsee and others*** versus ***Union of India and other***[2], information was given to the police regarding the commission of a cognizable offence and the accused therein it was alleged had made speeches likely to disturb communal harmony but no action was taken by the Police. It was held that the proper remedy in such a case would be that the complainant who has been given powers to file a complaint under Section 190 read with Section 200 Cr.P.C. to lay a complaint in that regard before the concerned Magistrate. The Magistrate is required to inquire into the complaint as provided in

[1] (2008) 2 SCC 409
[2] (2007) 6 SCC 171

Chapter XV Cr.P.C. but a writ petition in that regard, it was held would not be maintainable.

(7) Nothing has been placed on record by the petitioners to show that they had approached the police station concerned regarding embezzlement, if any. In case a cognizable offence of embezzlement is stated to have been committed, the petitioners were liable to show that they had approached the concerned SHO of the police station for registration of a case/FIR.

(8) As regards grabbing of Panchayat land, it is to be noticed that the appropriate remedy for the petitioners is to seek their remedies in accordance with the Punjab Village Common Lands (Regulation) Act, 1961 or the Civil Court depending on the nature of the common land that is alleged to have been grabbed, i.e. whether it is 'shamlat deh' or 'jumla mushtarka malkan'.

(9) In ***State of UP*** versus ***Singhara Singh and others***[3] the Supreme Court quoted with approval the principle applied in ***Taylor*** versus ***Taylor***[4] namely that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. It was held that the said rule was well recognized and was founded on a sound principle. Its result is that if a statute had conferred a power to do an act and had laid down the method in which that power had to be exercised, it necessarily prohibits the doing of the act in any other manner than that which had been prescribed. The principle behind the rule is that if this were no so, the statutory provision might as well not have been enacted.

(10) Therefore, the petitioners are liable to proceed in accordance with the statutory provisions and the law as referred to above and not rush to this Court by way of a petition to seek investigation in a case where a cognizable offence, if any, is said to have been committed.

(11) In the circumstances, the petitioners may, if so advised, avail their alternative remedies that are available with them. However, no case is made out before this Court at this stage to order any inquiry.

(12) The writ petition is accordingly dismissed.

Tribhuvan Dahiya

[3] AIR 1964 SC 358
[4] (1875) 1 Ch D 426 (431)