

Before Jaswant Singh & Sant Parkash, J.

BASANT KUMAR GOYAL AND ANOTHER—Appellants

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No.9156 of 2021

April 28, 2021

Writ petition for declaring result of Election as null and void alleging encroachment upon government land— Only election petition maintainable and not a writ petition Constitution of India, 1950, Article 226 Punjab State Election Commission Act, 1994, Sections 74 and 89(1)(c)- Maintainability of writ petition in election matter Writ petition for declaring result of respondents for Election of Municipal Council null and void alleging that they have encroached upon government land Held that controversy involved can only be gone into after evidence is led and not while adjudicating a writ petition— Thus only election petition would be maintainable and not a writ petition As election petition has already been filed, writ petition dismissed being not maintainable.

Held that When a specific query was put to learned counsel for the petitioners, he fairly conceded that an election petition challenging the election of respondent Nos.7 and 8, taking all the identical and similar pleas as taken in the present writ petition, has already been filed and is pending before the Competent Authority. In such a scenario, the said writ petition can be said to be not maintainable as the specific remedy available under law has already been availed.

(Para 8)

Held that learned counsel for the petitioners is trying to justify the claimed relief on the basis of order dated 12.03.2021 passed by this Court in CWP No.5876 of 2021. This submission of learned counsel for the petitioners is totally misplaced because in the said case, there was an inquiry report of General Election Observer regarding the malpractices and as such, the petitioners cannot be allowed to take the advantage of that order.

(Para 9)

Held that in this view of the matter, the present writ petition is not maintainable and is dismissed as such.

(Para 10)

Rajesh Gupta, Advocate,
for the petitioners.

SANT PARKASH, J.

(1) By way of filing the present writ petition, petitioner, inter alia, prays for issuance of a writ in the nature of mandamus, directing respondent No.3-Secretary, State Election Commission, Chandigarh to declare the result of respondents No.7 and 8 for election of Municipal Council, Lehra Gaga, District Sangrur as *null and void*, as they have encroached upon the government land. Further, prayer has been made not to hold election for electing President of Municipal Council, Lehra Gaga, District Sangrur.

(2) The facts of the case are that petitioner No.1 and petitioner No.2 contested the election from Ward Nos.3 and 5 of Municipal Council, Lehra Gaga, District Sangrur, respectively and respondents No.7 and 8 were their rival candidates. The petitioners filed objections before the Returning Officer-respondent No.6 against the nomination papers of respondents No.7 and 8 on the ground that they were in unauthorized possession of the government land. However, respondent No.6 failed to act upon the complaints/objections made by the petitioners against respondents No.7 and 8 and subsequently, they were able to contest the election and ultimately elected from their respective wards. It is alleged in the petition that respondent No.6 blatantly misused her powers as Returning Officer in the elections.

(3) Learned counsel for the petitioners submits that while allowing respondents No.7 to 8 to contest the election, respondent No.6 out-rightly ignored the fact that encroaching upon Municipal land is a criminal offence also. He further submits that a person who has encroached upon Municipal land can never be allowed to represent the residents of that area in the capacity of councilor. To support his claim, he refers to an interim order dated 12.03.2021 passed by this Court in CWP No.5876 of 2021.

(4) This Court has heard the learned counsel for the petitioners and perused the case file.

(5) Admittedly, to give effect to the mandate of the provisions of the Constitution regarding bar to interference by Courts in electoral matters, the Punjab State also promulgated the Punjab State Election Commission Act, 1994, which governs not only Municipality

elections but also Panchayati elections in the State of Punjab. In this Act, there is a bar under Section 74 on challenging the elections by any other mode than filing an election petition. For ready reference Section 74 is reproduced as under:-

“74. Election petitions. - No election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.”

Further, under Section 89(1)(c) of the Act, 1994, enumerates the grounds for declaring an election to be void. In this section, one of the grounds for declaring election to be void is improper rejection of nomination paper. The said provision is reproduced as under:-

89. Grounds for declaring election to be void: (1) Subject to the provisions of sub-section (2), if the Election Tribunal is of the opinion:

(c) that any nomination has been improperly rejected

(6) In view of the above-said provisions contained in the Constitution as well as statutory provisions that there is a complete bar on the jurisdiction of any court to entertain any challenge to an election process, which includes improper rejection of nomination. However, the Hon'ble Supreme Court in *Election Commission of India through Secretary versus Ashok Kumar and others*¹ summed up following terms in para 32 of the judgment:-

“32. For convenience sake, we would now generally sum up our conclusions and partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:-

(1) If an election, (the term 'election' being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in election.

¹ 2000 (8) SCC 216

(2) Any decision sought and rendered will not amount to “calling in question an election” if it subserves the *progress of the election and facilitates the completion of the election*. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or ordered issued by Election Commission are open to judicial review on the well settled parameters which enable judicial review of decisions of statutory bodies such as on a case of malafide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievably by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

(5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see it as there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext or achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.”

(7) Keeping in view the facts of the case; considering the above- said provisions as well as the observations of the Hon'ble Supreme Court in *Ashok Kumar's case (supra)*, this Court is of the considered view that the controversy involved in the present case can

only be gone into after evidence is led and not while adjudicating a writ petition. Thus, only an election petition would be maintainable and not a writ petition.

(8) When a specific query was put to learned counsel for the petitioners, he fairly conceded that an election petition challenging the election of respondent Nos.7 and 8, taking all the identical and similar pleas as taken in the present writ petition, has already been filed and is pending before the Competent Authority. In such a scenario, the said writ petition can be said to be not maintainable as the specific remedy available under law has already been availed.

(9) However, learned counsel for the petitioners is trying to justify the claimed relief on the basis of order dated 12.03.2021 passed by this Court in CWP No.5876 of 2021. This submission of learned counsel for the petitioners is totally misplaced because in the said case, there was an inquiry report of General Election Observer regarding the malpractices and as such, the petitioners cannot be allowed to take the advantage of that order.

(10) In this view of the matter, the present writ petition is not maintainable and is dismissed as such.

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