

Before Augustine George Masih & Ashok Kumar Verma, JJ.

HARINDER SINGH—Petitioner

versus

**FINANCE COMMISSIONER, RURAL DEVELOPMENT AND
PANCHAYAT DEPARTMENT, GOVT. OF PUNJAB AND
OTHERS—Respondents**

LPA No.590 of 2021 (O&M)

July 19, 2021

Constitution of India, 1950—Arts. 226 and 227—Punjab Panchayati Raj Act, 1994—Ss.20 and 20(6)—Suspension of Sarpanch—Validity of demarcation report of Panchayat land—It is the Director who forms opinion on the validity of demarcation report, which is the linchpin in conducting proceedings for removal of the Sarpanch—Writ Court cannot decide the correctness of the report when proceedings are sub-judice before the Director—Appeal dismissed.

Held that, Sarpanch, who is the custodian of property of Panchayat is not expected to usurp the Panchayat land. Moreover, the matter is *sub judice* before the Director. The Director has power either to accept or to reject the said demarcation report. In view of Section 20 of the Punjab Panchayati Raj Act 1994 (for short “the Act of 1994), the Director is required to form an opinion regarding the removal of the Sarpanch or Panch. At the time of consideration, the Director is supposed to adjudicate upon the validity of the demarcation report which is the linchpin for conducting proceedings for suspension /removal of the appellant from the post of Sarpanch. Furthermore, the appellant has also remedy of appeal before the State Government, as provided under Section 20 (6) of the Act of 1994 against the order which may be passed by the Director. The appellant has already been issued show cause notice dated 02.07.2021. He has already been granted opportunity by the learned Single Judge to file objections to the said show cause notice.

(Para 6)

Further held that, in this view of the matter, we are of the considered opinion that the learned Single Judge has rightly observed that the writ court is not expected to adjudicate upon the correctness of the demarcation report particularly at this stage when the matter is

pending before the Director. It is settled proposition of law that the writ court has plenary power to issue writs under Article 226 of the Constitution of India and such plenary power can only be invoked in extraordinary situation where no other alternate remedy is available.

(Para 7)

Sunil Chadha, Senior Advocate
with Akshay Chadha, Advocate
for the appellant.

ASHOK KUMAR VERMA, J.

(1) This intra court appeal has been preferred by the appellant-petitioner challenging the order dated 05.07.2021 passed by the learned Single Judge of this Court wherein the writ petition preferred under Articles 226/227 of the Constitution of India filed by the appellant-petitioner challenging his suspension as Sarpanch and correctness of the demarcation report dated 01.03.2021, has been disposed of.

(2) Briefly culled out the facts of the case are that the appellant was elected as Sarpanch of the Gram Panchayat of Village- Issewal in District Ludhiana. A complaint with regard to encroachment of Shamlat land of the aforesaid Gram Panchayat was filed against the appellant. On that basis, demarcation was carried out on 06.12.2019 (Annexure P-4) under the orders of the Naib Tehsildar of the concerned district wherein the appellant was found to be an encroacher of Shamlat land. Ultimately, the appellant was suspended from the post of Sarpanch vide order dated 10.02.2020 (Annexure P-11) passed by the Director-respondent No. 2. The appellant filed appeal against his suspension which was also dismissed vide order dated 23.11.2020 (Annexure P-17) passed by respondent No. 1-Financial Commissioner. Consequently, the appellant approached the writ court by filing as many as five writ petitions including the writ petition, which order is impugned in the present LPA. It may be noticed that a fresh demarcation was ordered by the writ court vide its order dated 22.02.2021 (Annexure P-18) passed in one of the writ petitions i.e. CWP No. 1724 of 2021 filed by the appellant. In view of the directions of the writ court, a fresh demarcation was carried out and a demarcation report dated 01.03.2021 was made vide Annexure P-21.

(3) Vide the impugned order, the learned Single Judge disposed of the writ petition filed by the appellant by granting him an

opportunity to file reply to the show cause notice dated 02.07.2021 within the time stipulated. It was further directed that if no reply is filed, the Director shall be at liberty to proceed in accordance with law and the Director was ordered to pass the order within 15 days from the date when the appellant files his reply to the notice or in case the appellant fails to file the reply within 15 days from the last day fixed for filing reply. The appellant has filed the present LPA challenging the aforesaid order dated 05.07.2021 passed by the learned Single Judge of this Court.

(4) Learned senior counsel appearing for the appellant vehemently contends that the learned Single Judge has grossly erred in disposing of the writ petition filed by the appellant. Both the demarcation reports are just an eye wash and are indetical to each other and the same cannot be relied upon. The appellant has not encroached upon any piece of shamlat land and consequently the suspension of the appellant from the post of Sarpanch is illegal.

(5) We have given our thoughtful considerations to the submissions of the learned senior counsel for the appellant and have gone through the paper-book. We find no substance in the submissions of the learned senior counsel.

(6) It is an admitted fact that the demarcation was donetwice to find out the factum and correctness regarding encroachment of Shamlat land by the appellant. Both the demarcation reports show that the appellant is in illegal possession of shamlat land. Both the demarcations were carried out at different points of time. Hence there is no reason to discard the demarcation reports. The second demarcation was done on the direction of the writ court and was conducted in the presence of the appellant with the help of advanced technology i.e. D.G.P.S. and the said report (Annexure P-21) shows that the appellant had submitted the objections, which were appended alongwith the demarcation report dated 1.3.2021. A Sarpanch, who is the custodian of property of Panchayat is not expected to usurp the Panchayat land. Moreover, the matter is *sub judice* before the Director. The Director has power either to accept or to reject the said demarcation report. In view of Section 20 of the Punjab Panchayati Raj Act 1994 (for short "the Act of 1994), the Director is required to form an opinion regarding the removal of the Sarpanch or Panch. At the time of consideration, the Director is supposed to adjudicate upon the validity of the demarcation report which is the linchpin for conducting proceedings for suspension/removal of the appellant from

the post of Sarpanch. Furthermore, the appellant has also remedy of appeal before the State Government, as provided under Section 20 (6) of the Act of 1994 against the order which may be passed by the Director. The appellant has already been issued show cause notice dated 02.07.2021. He has already been granted opportunity by the learned Single Judge to file objections to the said show cause notice.

(7) In this view of the matter, we are of the considered opinion that the learned Single Judge has rightly observed that the writ court is not expected to adjudicate upon the correctness of the demarcation report particularly at this stage when the matter is pending before the Director. It is settled proposition of law that the writ court has plenary power to issue writs under Article 226 of the Constitution of India and such plenary power can only be invoked in extraordinary situation where no other alternate remedy is available. In the present case, the writ court has rightly refrained itself from expressing any opinion on the merits/demerits of the demarcation reports and has rightly left the appellant to avail the remedy before the Director and also remedy of appeal before the State Government.

(8) In view of the above, the present appeal being devoid of merit, stands dismissed.

Payel Mehta