

(13) The other issue raised by Mr. Jindal, learned counsel for the petitioners with regard to already constructed and existing shops would also not require any detail consideration on account of the fact that those shops are scattered and cannot be considered as part of the planned development. Any structure on the land, which is not in accordance with the plan prepared by the respondents, would not satisfy the public purpose. Accordingly, we also do not find any merit in the contention.

(14) For the aforementioned reasons, these petitions fail and the same are dismissed. If the award with regard to super structure has not been announced then the same shall now be done within a period of three months from the date of receipt of a certified copy of this order.

(15) A photocopy of this order be placed on the files of connected cases.

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***M. Jain***

***Before Alok Singh, J.***

**BALWINDER KAUR, SARPANCH,—*Petitioners***

***versus***

**STATE OF PUNJAB AND OTHERS,—*Respondents***

**CWP No. 13675 of 2011**

14th September, 2011

***Constitution of India - Art.226/227 - Punjab Panchayati Raj Act - S. 19 - General Clauses Act - Ss. 6 (c) & (d) - Challenge is to the Notice convening meeting to discuss 'No confidence Motion' and meeting and letter recommending acceptance of 'No confidence Motion' as also election of Respondent # 6 as the Sarpanch in place of the Petitioner.***

***Held,*** That in view of the judgment passed in Mohinder Khan v/s Director Rural Development & Panchayats, Punjab & Ors., CWP # 17943 (D/- 15.11.2010) seven days clear notice is required to convene a meeting to discuss "No confidence Motion" in terms of Section

19 of the Act. For purposes of counting seven days, date of notice and date of meeting shall be excluded. Three out of five panches do not constitute 2/3rd majority which is the sine qua non for passing of 'No confidence Motion' in terms of the judgment passed in Mohinder Ram v/ s Hans Raj, LPA # 138/2011 (D/- 29.4.2011)

(Para 4)

*Further held*, Any request or application moved prior to amendment in Section 19 shall be dealt with in accordance with the then prevailing law in view of Section 6 (c) & (d) of the General Clauses Act.

(Para 7)

*Further held*, That 'No confidence Motion' cannot be moved within two years if earlier 'No confidence Motion' is lost. Petition allowed. However Respondents are at liberty to issue fresh notice to convene meeting to discuss 'No confidence Motion'

(Para 9)

P.S. Guliani, Advocate, *for the petitioner.*

Jaswinder Singh, DAG, Punjab.

A.S. Manaise, Advocate, for respondents No.5 to 7.

**ALOK SINGH, J. (ORAL)**

(1) Petitioner has invoked writ jurisdiction of this Court assailing notices dated 17.9.2010, 24.9.2010 and 4.10.2010 to convene meeting to discuss 'No Confidence Motion' on 24.9.2010, 1.10.2010 and 6.10.2010. Petitioner is also assailing meeting dated 6.10.2010 as well as recommendation/letter dated 16.11.2010 (Annexure P-9) whereby respondent No.4 has recommended to respondent No.3 to accept 'No Confidence Motion' dated 24.9.2010 and election dated 30.11.2010 whereby respondent No.6 was elected as new Sarpanch in place of the petitioner.

(2) Brief facts of the present case inter alia are that petitioner was elected Sarpanch of Gram Panchayat Mahadev Kalan, Block Dhariwal, Tehsil and District Gurdaspur, in the year 2008. Respondents No.5 to 7 moved an application to respondent No.4 on 10.9.2010 requesting to convene meeting to discuss 'No Confidence Motion' against the petitioner.

Respondent No.4 issued notice dated 17.9.2010 to convene meeting for 24.9.2010 to discuss 'No Confidence Motion'. On 24.9.2010 petitioner was not present, therefore, meeting was adjourned for 1.10.2010. Again second notice dated 24.9.2010 was issued to convene meeting to discuss 'No Confidence Motion' against the petitioner on 1.10.2010. Again notice dated 4.10.2010 was issued to convene meeting to discuss 'No Confidence Motion' on 6.10.2010. On 6.10.2010, out of five Panches three supported 'No Confidence Motion', therefore, 'No Confidence Motion' failed. On 16.11.2010 respondent No.4 has sent one letter to respondent No.3 saying four Panches have made statement on 24.9.2010 in favour of 'No Confidence Motion', therefore, 'No Confidence Motion' against the Sarpanch stood passed. Thereafter on 30.11.2010 a meeting was called to elect new Sarpanch wherein respondent No.6, Sukhjinder Singh, was declared elected as Sarpanch.

(3) I have heard learned counsel for the parties and have perused the record.

(4) In view of the judgment passed by this Court in the case of Mohinder Khan Vs. Director, Rural Development and Panchayats, ***Punjab and others, CWP No.17943 of 2010 decided on 15.11.2010***, as per Section 19 of the Punjab Panchayati Raj Act, seven days' clear notice is required to convene meeting to discuss 'No Confidence Motion' and for the purpose of counting clear seven days, date of notice and date of meeting shall be excluded, therefore, first notice dated 17.9.2010 to convene meeting dated 24.9.2010 was short of seven days, therefore, meeting dated 24.9.2010 would not be legal. Moreover, Annexure P-3 would reveal that on 24.9.2010 no meeting was held and it was adjourned for 1.10.2010. Again on 1.10.2010 meeting was adjourned. Perusal of Annexure P-5 would reveal that again meeting was convened for 6.10.2010 vide notice dated 4.10.2010. In the meeting held on 6.10.2010, three Panches out of five supported 'No Confidence Motion', therefore, 'No Confidence Motion' dated 6.10.2010 was not accepted. Moreover, as per Division Bench judgment of this Court in the case of Mohinder Ram Vs. Hans Raj & Ors., LPA No.138 of 2011 decided on ***29.4.2011***, three out of five Panches do not constitute 2/3rd majority which is *sine quo non* for passing the 'No Confidence Motion'.

(5) District Development and Panchayat Officer, respondent No.3, vide Annexure P-8 has written to respondent No.4, Block Development and Panchayat Officer, that on 24.9.2010 majority of 2/3rd Panches had already passed the resolution, therefore, subsequent meetings were not called for. Having received letter dated 3.11.2010 (Annexure P-8) respondent No.4 has issued Annexure P-9 dated 16.11.2010 saying that on 24.9.2010 four Panches have made statement in support of the 'No Confidence Motion', therefore, 'No Confidence Motion' stood passed against the Sarpanch on 24.9.2010.

(6) Record reveals that meeting dated 24.9.2010 was adjourned by respondent No.4 himself vide Annexure P-3, therefore, there seems to be no reason to record statement of four Panches in support of 'No Confidence Motion' on 24.9.2010. Entire story seems to be cooked up. It was not open to respondents No.3 and 4 to say that on 24.9.2010 'No Confidence Motion' stood passed in view of the statements of four Panches recorded by respondent No.4. Action of respondent No.4 is unwarranted; at one place he is adjourning the meeting and yet at another place he is recording the statement. Moreover, even otherwise meeting dated 24.9.2010 would not be valid for want of seven clear days' notice, therefore, even if alleged statements of four Panches were recorded, no valid resolution can be said having been passed.

(7) Mr. Jaswinder Singh, learned Deputy Advocate General Punjab, as well as Mr. A.S Manaise, learned counsel appearing for respondents No.5 to 7 have fairly stated that in view of the judgment of this Court in the case of Mohinder Khan (*supra*), meeting dated 24.9.2010 cannot be said to be valid one for want of seven days' clear notice. Both of them have fairly stated that once meeting dated 24.9.2010 was adjourned by respondent No.4 himself, it was not open to respondent No.4 to record alleged statements of four Panches on 24.9.2010. Learned counsel for the respondents have no objection if petition is allowed with liberty to convene fresh meeting to discuss 'No Confidence Motion'.

(8) Admittedly, request was sent to convene the meeting to discuss 'No Confidence Motion' prior to the amendment in Section 19, therefore, any request or application moved prior to the amendment in Section 19 of the Act shall be dealt with in accordance with the then prevailing law in view of Section 6(c) & (d) of the General Clauses Act.

(9) In the opinion of this Court, 'No Confidence Motion' cannot be moved within next two years if earlier 'No Confidence Motion' is lost. In the present case, 'No Confidence Motion' is hereby held illegal, therefore, fresh legal notice can be issued and proviso has no application in the present case.

(10) In view of the statement made by the learned Deputy Advocate General, Punjab, as well as counsel for respondents No.5 to 7 present petition is allowed. However, respondents shall be at liberty to issue fresh notice to convene meeting to discuss 'No Confidence Motion'.

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*M. Jain*

*Before Jitendra Chauhan, J.*

**SHANTI PARKASH,—Appellants**

*versus*

**OM PARKASH,—Respondents**

**RSA No.2475 of 1984**

27th May, 2011

*Code of Civil Procedure, 1908 - O.20, 41 RI.20, 27 & S. 2(2), 100 - Punjab Land Revenue Act - S. 158 (2) (xvii) - Indian Stamp Act, 1989 - Art.45 Sch.1 - Plaintiff co-sharer in suit property to the extent of half share - sale by other co-sharer - whether plaintiff has right to Pre-empt property not partitioned by metes & bounds - Being co-sharer, plaintiff has right to pre-empt - No proof property falls in urban Area - Punjab pre-emption Act applicable - No interference required - Appeal dismissed.*

*Held,* That till the final partition is carried out by metes and bounds, the property remains a joint property and the plaintiff being a co-sharer had a right to pre-empt the sale-deed.

(Para 20)