

(Alok Singh, J.)

*Before Alok Singh, J.*

**KAKI DEVI SARPANCH,—Petitioner**

*versus*

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

**CWP No. 12643 of 2009**

12th July, 2010

***Constitution of India, 1950—Art.226—Punjab Panchayati Raj Act, 1994—Ss. 20 & 208—Encroachment of public land—Suspension of Sarpanch for failing to take action against encroachers—Petitioner never found in illegal possession of any panchayat or public land—Petitioner cannot be placed under suspension by invoking Sub-section (4) of S.20 of the Act—Petition allowed.***

*Held*, that from the perusal of section 20 of the Punjab Panchayati Raj Act, 1994, this Court finds that Sarpanch can be removed under Section 20(1) (a) on any of the grounds mentioned under Section 208 of the Act and on other grounds mentioned under sub-section (1)(b)(c)(d)(e)(f). Further from the perusal of sub-section (4) of Section 20, this Court finds that Sarpanch may be placed under suspension for the reasons, for which he can be removed in the opinion of this Court, if there is no ground for removal then of course there can be no order of suspension. From the perusal of Section 208 (1)(k), this Court finds that if a person is found in an unauthorized occupation of property belonging to any local authority then that person shall be declared disqualified for being chosen as a member of the Panchayat.

(Para 7)

*Further held*, that the petitioner was never found in illegal possession of any public land. That being so, provision of Section 208 (1)(k) of the Act is not attracted. Hence, there is no ground for removal against the petitioner under Section 20(1)(a) of the Act. Consequently, petitioner cannot be placed under suspension by invoking Sub-section (4) of Section 20 of the Act.

(Para 10)

Raj Kumar Garg, Advocate, *for the petitioner.*

Satish Bhanot, Addl. A.G., Punjab.

None for the caveator.

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

(1) Petitioner has approached this Court by way of filing a present writ petition under Article 226 of the Constitution of India impugning order dated 17th February, 2009 passed by the Director Rural Development and Panchayat, Punjab—respondent No. 2 as well as order dated 3rd August, 2009 passed by the Secretary, Rural Development and Panchayat Department, Punjab—respondent No. 1, thereby placing the petitioner under suspension.

(2) Brief facts of the present case are that petitioner was duly elected as Sarpanch of Gram Panchayat, Nalas Kalan, Block Rajpura, District Patiala. Block Development and Panchayat Officer, Rajpura,—*vide* letter No. 547, dated 23rd January, 2009 informed that Sultana Gir, Ram Chander Gir and Sahib Dayal Gir sons of Jecta Gir had encroached upon the public land and petitioner being Sarpanch not taking any action against the encroachers. On the basis of report dated 23rd January, 2009, impugned order Annexure P-3 dated 17th February, 2009 was passed invoking Section 20(4) of the Punjab Panchayati Raj Act, 1994 (for brevity 'the Act') placing the petitioner under suspension.

(3) Feeling aggrieved from the order dated 17th February, 2009, placing the petitioner under suspension, she approached the State Government and her appeal again dismissed. *vide* impugned order dated 3rd August, 2009 (Annexure P-5).

(4) Learned counsel for the petitioner argued that petitioner was never found in illegal possession of any panchayat or public land. He further contended that action under Section 7 of the Public Village Common Lands Act was taken against the encroachers by the petitioner and eviction order had already been passed against the encroachers. His further argument is that under Section 208 of the Act petitioner can be declared disqualified only when petitioner herself/himself is found in an unauthorized occupation of public/panchayat land. He further states that merely because Sarpanch failed to take any action against the encroachers is no ground to disqualify her under Section 208 of the Act.

(5) Mr. Satish Bhanot, Addl. A.G., Punjab appearing for the State argued that if it is proved on the record that petitioner was having collusion with the encroachers then of course petitioner can be placed under suspension during the pendency of the inquiry and if in the final inquiry, petitioner is found to be not guilty then suspension order will automatically go.

(6) Sections 20 and 208 of the Act are being reproduced here under :—

**"20. Suspension and removal of Panch and Sarpanch**

(1) *The Director may, after such enquiry as he may deem fit, remove any Sarpanch or Panch :—*

- (a) *on any of the grounds mentioned in section 208.*
- (b) *who refuses to act or becomes incapable of acting ;*
- (c) *who, being a Sarpanch, without reasonable cause, fails to hold meetings of the Gram Panchayat as required under sub-section (1) of section 16 for a period of two consecutive months.*
- (d) *who, without reasonable cause, absents himself for more than two consecutive months from the meetings of the Gram Panchayat.*
- (e) *who during his present term of office or that immediately preceding it, has, in the opinion of the Director, been guilty of misconduct in the discharge of his duties ; or*
- (f) *whose continuance in office is undesirable in the interests of the public :*

*Provided that before the Director orders the removal of any Sarpanch or Panch under this sub-section, the reasons for the proposed removal shall be communicated to him and he shall be given an opportunity of tendering an explanation in writing.*

*Explanation :—The expression "misconduct" in clause (e) includes the failure of the Sarpanch or Panch without sufficient cause :—*

- (i) *to submit the judicial file of a case within two weeks of the receipt of order of any Court to do so.,*

- (ii) *to produce the Panchayat records on being required to do so by an officer of the Department of Rural Development and Panchayats not below the rank of Social Education and Panchayat Officer.*
  - (iii) *to carry out the lawful orders of any competent authority or an Officer authorised by the State Government in this behalf ; and*
  - (iv) *to supply a copy of the order of the Gram Panchayat in an administrative or judicial case decided by it, within weeks from the receipt of a valid application therefor.*
- (2) *A person, who has been removed under sub-section (1) may be disqualified for re-election for such period not exceeding five years from the date of his removal as the Director may fix.*
- (3) *The Director may suspend any Sarpanch or Panch where a case against him in respect of any criminal offence is under investigation, enquiry or trial if, in the opinion of the Director, the charge made or proceeding taken against him is likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character.*
- (4) *The Director at any time, and the Deputy Commissioner or the District Development and Panchayat Officer during the course of an enquiry, may suspend a Sarpanch or Panch for any of the reasons for which he can be removed.*
- (5) *A Sarpanch or Panch, suspended under this section shall not take part in any act or proceeding of the Gram Panchayat during the period of suspension and shall hand over the records, money and other property of the Gram Panchayat in his possession or under his control to the Panch as may be elected by the Panches from amongst panches in a meeting called by the Block Development and Panchayat Officer for this purpose.*

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- (6) *Any person aggrieved by an order of removal or suspension passed under this section, may, within a period of thirty days from the date of communication of the order, prefer an appeal to the State Government.*

### **208. Disqualification for Membership.**

- (1) A person shall be disqualified for being chosen as and for being a member of a Panchayat if,—
- (a) he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years ;

- (b) has been found guilty of any corrupt practice in any election of a Gram Panchayat, Panchayat Samiti or Zila Parishad ;
- (c) has been convicted of any offence involving moral turpitude or an offence implying of any defect of a Sarpanch or Panch of Gram Panchayat or member of a Panchayat Samiti or Zila Parishad, unless a period of five years has elapsed since his conviction, or
- (d) has been convicted of an election offence, or
- (e) has been ordered to give security for good behaviour under section 110 of the Code of Criminal Procedure, 1973, or
- (f) has been notified as disqualified for appointment as public servant except on medical grounds ; or
- (g) is a whole-time salaried employee of any local authority, Statutory, Corporation or Board or a Co-operative Society, registered under the Punjab Co-operative Societies Act, 1961, or of the State Government or the Central Government ; or
- (h) is registered as a habitual offenders (Control and Reforms) Act, 1952 or any other law for the time being in force ; or
- (i) has not paid the arrears of tax imposed by a Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be ; or

- (j) is a tenant or lessee or contractor or share-holder in any property of the Gram Panchayat, Panchayat Samiti and Zila Parishad, or
- (k) is in unauthorised occupation of property belonging to any local authority ; or
- (l) being a Sarpanch has cash in hand exceeding the amount, permitted under the rules made under this Act :
- (m) is member of either House of Parliament or of the Legislature of the Punjab State :

Provided that a member of either House of the Parliament or Legislature of Punjab State may be elected as a Sarpanch or member of Gram Panchayat, Panchayat Samiti or Zila Parishad if, along with his nomination paper gives undertaking to the effect that he shall resign the membership of either House of Parliament or of the Legislature of the Punjab State as the case may be, and so resign before taking the oath or making affirmation for taking over the office of Sarpanch of a Gram Panchayat or a member of any Gram Panchayat, the Panchayat Samiti and Zila Parishad ;

- (n) has been convicted of an offence under the protection of the Civil Rights Act, 1955 within a period of five years immediately preceding the last date of the filing of the nomination papers ; or
- (o) being a Sarpanch or Panch does not attach certificate with his nomination papers to the effect that he has handed over to the Block Development and Panchayat Officer complete charge of the record of the Gram Panchayat and of the cash, if any, with him."

(7) From the perusal of Section 20 of the Act, this Court finds that Sarpanch can be removed under section 20(1)(a) on any of the grounds mentioned under Section 208 of the Act and on other grounds mentioned under sub-section (1)(b)(c)(d)(e)(f). Further from the perusal of Sub-

section (4) of Section 20, this Court finds that Sarpanch may be placed under suspension for the reasons, for which he can be removed. In the opinion of this Court, if there is no ground for removal then of course there can be no order of suspension. From the perusal of Section 208(1)(k), this Court finds that if a person is found in an unauthorized occupation of property belonging to any local authority then that person shall be declared disqualified for being chosen as a member of the Panchayat.

(8) On being asked, learned Additional Advocate General is not able to point out any provision under the Act which empowers the State or the Director, Rural Development and Panchayat, Punjab to disqualify a person to be a member on the ground that no action was taken by him against the encroachers for some time.

(9) Mr. G.S. Sidhu, IAS, Director, Rural Development and Panchayats, Punjab, Chandigarh has filed his personal affidavit and in paragraph No. 2 he has stated as under :—

“2. That the petitioner was suspended from the post of Sarpanch,—*vide* order dated 17th February, 2009 (Annexure P-3) as she connived with some residents of the village and by that she facilitated them to encroach the property belonging to Gram Panchayat. These allegations were duly proved by the report submitted by the respondent No. 3. It is however submitted that it was inadvertently mentioned in the suspension order that the petitioner is herself in the illegal possession of Panchayat land.”

(10) Even from the affidavit of Mr. G.S. Sidhu, IAS, I am unable to find out that petitioner was ever found in illegal possession of any public land. That being so, provision of Section 208 (1)(k) of the Act is not attracted. Hence, there is no ground for removal against the petitioner under section 20(1)(a) of the Act. Consequently, petitioner cannot be placed under suspension by invoking Sub-section (4) of Section 20 of the Act.

(11) Hence, petition is allowed. Impugned orders dated 17th February, 2009 and 3rd August, 2009 are hereby quashed.