

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 1358 of 2014-F

Judgment reserved on : 21.8.2014

Date of Decision : September 26, 2014

Veena Banyal

... Petitioner

Versus

State of Himachal Pradesh & others

... Respondents

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

The Hon'ble Mr. Justice P. S. Rana, Judge.

Whether approved for reporting? No.

For the petitioner : Ms. Archana Dutt, Advocate, for the petitioner.

For the respondent : Mr. Anup Rattan, Addl. Advocate General with Mr. Vikram Thakur and Mr. Puneet Rajta, Dy. A.Gs for respondents No. 1&2.

Mr. Arvind Sharma, Advocate, for respondent No. 3.

Mr. Bhuvnesh Sharma and Mr. Ramakant Sharma, Advocates, for respondent No. 4.

Sanjay Karol, J.

The moot point arising for consideration in the present petition is as to whether election of private respondent Smt. Promila Devi as Pradhan of Gram Panchayat Paniyali, Tehsil Nadaun, Distt. Hamirpur can be set aside on

Whether reporters of Local Papers may be allowed to see the judgment?

account of disqualification suffered under the provisions of Section 122 (1)(c) of the Himachal Pradesh Panchayati Raj Act, 1994 (hereinafter referred to as the Act). Her husband had sought regularization of his unauthorized possession over public/government land regularized.

2. In the present petition filed under Article 226 of Constitution of India, petitioner Smt. Veena Banyal has assailed the order dated 22.5.2013 (Annexure P-2), passed by the Deputy Commissioner, Hamirpur, H.P., in Case No. 14/2011, titled as Smt. Promila Devi vs. Smt. Veena Devi & another, reversing the order dated 29.11.2011 (Annexure P-1), passed by Authorized Officer-cum-Sub Divisional Officer (Civil), Nadaun, Distt. Hamirpur, H.P., in Election Petition No. 1 of 2011, titled as Smt. Veena Banyal vs. Smt. Promila Devi & another, setting aside the election of private respondent Smt. Promila Devi as Pradhan of Gram Panchayat Paniyali, Tehsil Nadaun, Distt. Hamirpur.

3. Smt. Promila Devi contested and was elected as Pradhan of Gram Panchayat Paniyali, Tehsil Nadaun, Distt. Hamirpur. Petitioner Smt. Veena Baniyal challenged the same by filing an election petition under the provisions of Sections 162, 163, 175-A and 122(1)(c) of the Act. In the said petition the Authorized Officer-cum-Sub Divisional Officer (Civil), Nadaun, Distt. Hamirpur, framed the following issues:

- “1. Whether the respondent No. 1 is disqualified to be appointed as Pradhan as alleged? OPP
2. Whether the petitioner is to be appointed as Pradhan if Issue No. 1 is decided in affirmative? OPP
3. Whether the petition is not maintainable as alleged? OPR
4. Whether the petition is bad for non-joinder of State of H.P.? OPR
5. Relief.”

4. Finding that Sh. Sunil Kumar, husband of Smt. Promila Devi had filed his affidavit (Ext. PW-6/A) seeking regularization of his unauthorized possession/encroachment over khasra No. 834, owned by the State of Himachal Pradesh, election was set aside. The elected candidate entailed disqualification under the Act.

5. The Deputy Commissioner being the Appellate Authority, quashed and reversed such findings and set aside the order, holding that since no order of ejectment was ever passed against Sh. Sunil Kumar and until he was so declared as an encroacher, his wife could not have entailed statutory disqualification.

6. Before us, it is not disputed that Sh. Sunil Kumar had initiated proceedings as also filed his affidavit (Ext. PW-6/A) seeking regularization of his unauthorized possession over khasra No. 834 measuring 00-01-57 Hect. situate in Mohal Paniyali, mauza Galore, Tehsil Nadaun, Distt. Hamirpur.

He encroached upon government land. It also cannot be disputed that such unauthorized possession over the encroached land was ever authorized by the Government. It would be pertinent to point out that application for regularization of unauthorized possession was filed in terms of regularization policy of 2002 framed by the State of Himachal Pradesh.

7. Undisputed facts have to be appreciated in the backdrop of relevant statutory provision, which is reproduced herein under:

“122. Disqualifications.-(1) A person shall be disqualified for being chosen, as and for being, an office bearer, of a Panchayat-

(a) & (b) XXXXX

(c) if he or any of his family member(s) has encroached upon any land belonging to, or taken on lease or requisitioned by or on behalf of, the State Government, a Municipality, a Panchayat or a Co-operative Society unless a period of six years has elapsed since the date on which he or any of his family member, as the case may be, is ejected there from or ceases to be the encroacher;”

(Emphasis supplied)

8. Language of the Statute is unambiguously clear. If a candidate or his family member, has encroached upon any public land, he/she is disqualified from being chosen, as an office bearer of a Panchayat, for a period of six years, from the date of cessation of such encroachment.

9. Undisputedly, application for regularization of encroachment of Government land was filed in the year 2002 and elections were held in the year 2010.

10. According to learned counsel for private respondent, period of six years has to be counted from the date of submission of application for regularization of encroachment, hence, bar of disqualification would become inoperative. The submission only merits rejection. Period of six years, making the bar of disqualification to become inoperative would commence from the date of cessation of encroachment from public land. Language of the statute is unambiguously clear. Any other interpretation would lead to absurdity, rendering the statute to be redundant and infructuous, also defeating its object, purpose and intent of preventing persons with dishonest intent, holding public offices.

11. Provisions entailing disqualification are abundantly clear. Section 122 of the Act visualises two situations. One, where a person is ejected by a process of law, and second, where he voluntarily removes encroachment, which can be by handing over possession of the land or abandoning the same. There can be both voluntary and involuntary acts, whereby an encroacher on public land can be evicted. It is contended that on the spot there is road and the land is lying vacant without possession of any person. Why is it that private respondent did not place on record the outcome of her husband's application for regularization? When did her husband actually surrender possession or voluntarily vacate the encroached land? These are questions, which she left unanswered. The

moot point is as to when her husband surrendered possession of the encroached land. Is it that after winning her husband abandoned the land, only to hold public office? Relevancy of the date thus acquires significance for determining the statutory period of six years.

12. We find that in similar circumstances, a Coordinate Bench of this Court in *Kartar Chand versus State of H.P. and others*, Latest HLJ 2009 (HP) 1187, while dealing with Section 122 of the Act, has held that a person, who himself applies for regularization of Government land encroached by him, automatically entails disqualification under the provisions of the Act.

13. In the instant case, husband of private respondent himself had applied for regularization of encroachment of Government land and as such there was neither any requirement nor any necessity of passing any order by the authorities, holding her to be an encroacher.

14. We find that the lower Appellate Authority misconstrued and misinterpreted the provisions of the Act by adopting a narrow/pedantic approach and thus committed grave illegality and irregularity in rendering his order to be perverse.

Hence, for all the aforesaid reasons, petition is allowed and impugned order dated 22.5.2013 (Annexure P-2), passed by the Deputy Commissioner, Hamirpur is quashed and set aside and earlier order dated 29.11.2011 (Annexure P-

1) passed by Authorized Officer-cum-Sub Divisional Officer (Civil), Nadaun, Distt. Hamirpur H.P. is affirmed. Pending application(s), if any, also stand disposed of accordingly.

**(Sanjay Karol),
Judge.**

September 26, 2014 (PK)

**(P. S. Rana),
Judge.**