

(2020) 02 RAJ CK 0668

Rajasthan High Court, Jaipur Bench

Case No: Civil Writ Petition No. 23101 Of 2018

Ram Kumar

APPELLANT

Vs

State Of Rajasthan
And Ors

RESPONDENT

Date of Decision: Feb. 27, 2020

Acts Referred:

- Constitution Of India, 1950 - Article 226, 226(3)

Hon'ble Judges: Ashok Kumar Gaur, J

Bench: Single Bench

Advocate: Rajesh Kumar Bhardwaj, Prateek Singh, Sheetal Mirdha, Lokendra Singh
Shekhawat

Judgement

The instant writ petition has been filed by the petitioner challenging the order dated 08.01.2018 whereby Panchayat Headquarter from Pehalwan Ka

Bera has been changed to 6 B.L.D. (Rasulsar Daber) in District Bikaner.

The matter comes up on the application filed by one applicant--Prabhu Singh, Sarpanch of Village Panchayat Pehalwan Ka Bera, Tehsil Pugal,

District Bikaner for impleadment as a party respondent to the present petition.

The another application has been filed by applicant-- Prabhu Singh for vacation of ex-parte interim order dated 9.10.2018 passed by this Court.

Learned counsel Mr.Rajesh Kumar Bhardwaj, submitted that both the applications, filed by the applicant, are required to be dismissed by this Court.

Learned counsel submitted that the applicant was earlier Sarpanch of Gram Panchayat Pehalwan Ka Bera, Tehsil Pugal and he has filed the

application for impleadment in his personal capacity.

Learned counsel submitted that the term of the applicant as Sarpanch has already come to an end and as such, the applicant is neither necessary nor a proper party in the present writ petition.

Learned counsel further submitted that the application for vacation of ex-parte interim order dated 09.10.2018 can only be filed by a party to the writ petition and if applicant is not a party to the writ petition, the application filed under Article 226(3) is not maintainable.

Learned counsel further submitted that this Court after considering the prima facie case in favour of the petitioner, has passed the order dated 09.10.2018.

Learned counsel further submitted that reply on behalf of the State has not been filed so far and it is for the State to defend the order which has been passed on 08.01.2018.

Learned counsel appearing for the applicant Mr.Lokendra Singh Shekhawat has produced one order dated 05.03.2018 passed by Principal Seat at

Jodhpur in S.B. Civil Writ Petition No.2127/2016 where two petitioners i.e. Om Prakash Jangu S/o Shri Raji Ram and Rajendra Prasad Jangu S/o Shri

Deda Ram, filed the writ petition challenging the same impugned action and order passed by the State.

Learned counsel submitted that the petitioner No.2-- Rajendra Prasad Jangu is son of Deda Ram and present petitioner, in this case, is his real brother.

Learned counsel submitted that once the petition has been withdrawn at Principal Seat at Jodhpur, filing of writ petition by the present petitioner is a sheer misuse of jurisdiction of this Court under Article 226 of the Constitution of India.

Learned counsel further submitted that the impugned order dated 08.01.2018 has been passed by the respondents and Panchayat Headquarter has

been changed from Pehalwan Ka Bera to 6 B.L.D. (Rasulsar Daber) in District Bikaner and if at all there was any grievance with respect to order

dated 08.01.2018, the petitioner could have availed the remedy by filing of a writ petition at Principal Seat at Jodhpur.

Learned counsel submitted that no part of cause of action has arisen in Jaipur jurisdiction and as such the present writ petition may not be entertained

and the same is required to be dismissed.

Per contra, learned counsel for the petitioner submitted that as far as filing of S.B. Civil Writ Petition No.2127/2016 (Om Prakash Jangu & Anr. vs.

The State of Rajasthan & Ors) is concerned, the order does not reflect as whether, the same impugned order dated 08.01.2018 was under challenge

or not.

Learned counsel further submitted that the petition filed, at Principal Seat at Jodhpur, was by two persons namely Om Prakash Jangu and Rajendra

Prasad Jangu and if liberty was granted by the Court to withdraw the writ petition, the principle of res-judicata was not applicable. The petitioner

cannot be estopped to challenge the action of the respondents.

Learned counsel further argued that the petitioner has rightly approached this Court, as the impugned order dated 08.01.2018 has been issued by the

Deputy Secretary (Legal) of Panchayati Raj Department by way of gazette notification issued from Jaipur.

Learned counsel submitted that the initial order was passed on 26.07.2016 whereby some recommendation was made and finally without considering

the objection and for change of headquarter, the impugned order dated 08.01.2018 was passed from Jaipur.

Learned counsel submitted that since the impugned order and action have been taken from Jaipur, this Court is not denuded to exercise its jurisdiction.

Learned counsel places reliance on the judgment reported in [(1985) AIR 2148] titled as U.P. Rashtriya Chini Milladhikari Parishad, Lucknow vs. The

State of U.P. & Ors., [(1976) AIR Page 331] titled as Nasiruddin vs. State Transport Appellate Tribunal and Appeal (Crl. No.16698/1996) (Rajasthan

High Court Advocates Association vs. Union of India & Ors) decided by the Supreme Court vide judgment dated 15.12.2000.

I have heard the learned counsel for the parties and perused the material available on record.

This Court finds that the present writ petition has been filed by the petitioner by showing him resident of Pehalwan Ka Bera, Tehsil Pugal, District

Bikaner and he has also shown himself to be presently residing at Near Shiv Mandir, Parivahan, Nagar, Khatipura, Jaipur. This Court finds that the

petitioner, who himself claims to be resident and affected by change of headquarter of Gram Panchayat Pehalwan Ka Bera, District Bikaner, has filed

the writ petition at Jaipur Bench.

This Court further finds that only in order to create jurisdiction of this Court, the petitioner himself has shown to be residing at Near Shiv Mandir,

Parivahan, Nagar, Khatipura, Jaipur.

This Court further finds that the order dated 08.01.2018 has been issued by the Government and Gazette Notification has been published by changing

the headquarter from Gram Panchayat Pehalwan Ka Bera, District Bikaner to 6 B.L.D. (Rasulsar Daber) in District Bikaner.

The issuance of Gazette Notification from Jaipur cannot be treated even part of cause of action and writ petition cannot be entertained in respect of a

dispute which relates to change of headquarter in District Bikaner. The seat/office of any authority which issues the order, cannot be part of cause of action.

This Court further finds that the writ petition was filed, at Principal Seat of this Court at Jodhpur i.e. SBCWP No.2127/2016, by two persons as named

above and finally these two persons withdrew the petition to file a fresh writ petition, in case need was to arise.

The dismissal of writ petition at Principal Seat at Jodhpur with liberty and further filing of writ petition at Jaipur Bench by the petitioner is again a

sheer misuse of jurisdiction conferred under Article 226 of the Constitution of India.

The submission of learned counsel for the petitioner that applicant is not a necessary party and further he has no right to file an application under

Article 226(3) of the Constitution of India, this Court finds that if the petitioner has filed a writ petition at Jaipur Bench and has in-fact misused the

jurisdiction conferred under Article 226 of the Constitution of India, the Court cannot become oblivious of the facts which are brought on record even

by the applicant who is yet to be impleaded as a party.

This Court finds that the present writ petition is not to be entertained by this Court, hence it is dismissed not only for lack of jurisdiction but also on the

ground that the petitioner has filed this petition without disclosing complete facts in the writ petition with respect to litigation which was initiated at

Principal Seat of this Court at Jodhpur.