

Hardev Singh and Others Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 27, 2013

Acts Referred: Punjab Panchayati Raj Act, 1994 "Section 3, 3(1)

Citation: (2013) 171 PLR 577 : (2013) 3 RCR(Civil) 909

Hon'ble Judges: Rameshwar Singh Malik, J

Bench: Single Bench

Advocate: M.K. Singla in CWP No. 3704 of 2013, Mr. N.K. Manchanda in CWP No.5064 of 2013, Mr. R.K. Garg in CWP Nos. 5065, 5165, 5307, 5767, 5769 and 7494 of 2013, Ms. Seema and Mr. C.M. Munjal, in CWP No. 424 of 2013, for the Appellant; Pankaj Mulwani, DAG, Punjab, Mr. Kunal Mulwani for Respondent No. 5 in CWP No. 5065, 5165 and 5767 of 2013 and Ms. Nirmalpreet Walia for Respondent No. 5 in CWP No. 5307 of 2013, for the Respondent

Final Decision: Allowed

Judgement

Rameshwar Singh Malik, J.

Whether the impugned notifications, whereby new Gram Sabha(s) have been carved out from the existing

Gram Sabha areas, are contrary to the true spirit of Section 3 of the Punjab Panchayati Raj Act, 1994, is the important question of law, which falls

for consideration of this Court, in this batch of nine writ petitions. This order proposes to decide these nine writ petitions together and particulars

whereof are as follows: CWP No. 3704 of 2013 (Hardev Singh and others v. State of Punjab and others), CWP No. 7494 of 2013 (Rajwinder

Singh @ Raju v. State of Punjab and others), CWP No. 5165 of 2013 (Surjit Singh v. State of Punjab and others), CWP No. 5307 of 2013

(Jasbir Singh and another v. State of Punjab and others) CWP No. 5767 of 2013 (Lakhwinder Singh v. State of Punjab and others), CWP No.

5769 of 2013 (Daljit Singh Padda v. State of Punjab and others), CWP No. 424 of 2013 Gram Panchayat Chak Nidhana v. State of Punjab and

others), CWP No. 5064 of 2013 (Gram Panchayat Ahmad Dhandi v. State of Punjab and others and CWP No. 5065 of 2013 (Gurnam Singh v.

The Secretary to Government, Department of Rural Development and Panchayat, Punjab and others).

2. Since the issue involved in all these writ petitions is the same, that is carving out of new Gram Sabha from the existing Gram Sabha, in alleged

violation of Section 3 of the Punjab Panchayati Raj Act, 1994 ("the Act of 1994" for short), these writ petitions are being decided by this common

order. However, for the facility of reference, facts are being culled out from CWP No. 3704 of 2013.

3. The facts of the case are hardly in dispute. The primary grievance of the petitioners in all these writ petitions is that the new Gram Sabha has

been illegally carved out in violation of Section 3 of the Act of 1994.

4. Learned counsel for the petitioners submits that provisions of Section 3(1) of the Act of 1994 have been glaringly violated by the respondent

authorities, while carving out new Gram Sabha area from the existing Gram Sabha. There was no separate distinct abadi, as required u/s 3(1) of

the Act of 1994 for carving out new Gram Sabha area. The existing Gram Sabha area and the illegally separated Gram Sabha area were

contiguous with each other in such a manner that both are separated from each other only by a street. Under no circumstances, such abadi can be

said to be distinct from the existing Gram Sabha area. Since the provisions of Section 3(1) of the Act of 1994 have been violated while issuing

impugned notifications, they were not sustainable in law. To buttress his arguments, learned counsel for the petitioners placed reliance on a Division

Bench judgment of this Court in Gram Panchayat Panj Garaian v. State of Punjab and others, 2008 (4) RCR (Civil) 719. Finally, he prays for

setting aside the impugned notification by allowing the present writ petition.

5. Per contra, learned counsel for the State submits that the impugned notification does not violate the provisions of Section 3(1) of the Act of

1994. The action of exclusion from or inclusion in the Gram Sabha area by the respondent-State was an action of legislative character. He placed

reliance on a judgment of the Hon'ble Supreme Court in State of Punjab Vs. Tehal Singh and Others, and prays for dismissal of these writ

petitions.

6. Having heard the learned counsel for the parties at consideration length, after careful perusal of the record of the case and giving thoughtful

consideration to the rival contentions raised, this Court is of the considered opinion that these writ petitions deserve to be allowed directing the

State Government to reconsider the issue of carving out new Gram Sabha area(s) from the existing ones before holding the Gram Panchayat

elections. To say so, reasons are more than one, which are being recorded hereinafter.

7. Since the issue involved herein revolves around Section 3 of the Act of 1994, it would be appropriate to reproduce the relevant part thereof and

the same reads as under:-

Section 3 - Establishment of Gram Sabha areas

(1) The State Government may, by notification, declare any village or group of contiguous villages with a population of not less than two hundred

to constitute a Gram Sabha area;

Provided that a new Gram Sabha area may be constituted for any village or group of contiguous villages in respect of a separate distinct abadi or

group of abadis having a population of not less than two hundred taking into consideration its physical distance from the main village or villages, as

the case may be and other relevant facts:

Provided further that neither the whole nor any part of-

(a) a Notified Area u/s 241 of the Punjab Municipal Act, 1911, or any other Act for the time being in force; or

(b) a Cantonment; or

(c) a Municipality of any class; or

(d) a Municipal Corporation;

shall be included in a Gram Sabha area unless the majority of voters in any Notified Area or Municipality of the Third Class desire the

establishment of a Gram Sabha in which case the assets and liabilities, if any, of the Notified Area Committee or the Municipal Committee, as the

case may be, shall vest in the Gram Panchayat of that Gram Sabha and the Notified Area Committee or the Municipal Committee shall cease to

exist.

(2) That State Government may, by notification, include any area in or exclude any area from the Gram Sabha area.

8. A bare perusal of the above-said provisions of Section 3 would show that the State Government is entitled to declare any village or group of

contiguous villages, with a population of not less than 200 to constitute a Gram Sabha area. However, proviso to Section 3(1) requires for the

purpose of carving out new Gram Sabha area, a physical distance between the main village and the proposed Gram Sabha, as one of the relevant

factors to be taken into consideration. This material aspect of the matter has not been given due consideration by the respondent authorities, while

issuing impugned notification, which has been found to be running contrary to the true spirit of Section 3 of the Act of 1994.

9. So far as the judgment in Tehal Singh's case (supra) is concerned, the primary issue before the Hon'ble Supreme Court was that compliance of

the principle of natural justice was not required at the hands of the State Government, while including in or excluding from Gram Sabha area

because the action was of legislative character. This issue is not involved in the instant batch of writ petitions.

10. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any

codified or judge made law thereto. Further, sometimes difference of even one circumstance or additional fact can make the world of difference, as

held by the Hon'ble Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others,

11. In view of the observations made here-in-above, factual position obtaining in each case, is being discussed hereunder:-

CWP No. 3704 of 2013

It is stated that Gram Sabha has not passed any resolution. Directions issued by this Court vide order dated 10.1.2013 passed in CWP No. 369

of 2013 have not been considered and appreciated in the right perspective.

Perusal of the site plan (Annexure P-9) would show that proposed Model Town Mehlan is divided just by a street which is 11 feet wide. On two

sides of the proposed Gram Sabha area, is the area of existing Gram Sabha Mehlan. Similarly, the proposed Gram Sabha area is on both sides of

the road. The proposed Gram Sabha area is surrounded on three sides by the existing Gram Sabha area. Thus, it is clear that only the street is

dividing the boundaries of the proposed Gram Sabha areas sought to be carved out from the existing Gram Sabha area.

In view of the above, this Court feels no hesitation to conclude that the respondent-State authorities have failed to consider the relevant factors,

while passing the impugned notification carving out two new Gram Sabha areas as Model Town Mehlan and Model Town Mehlan-2 from the

existing Gram Sabha area of village Mehlan. Thus, it has been found to be a fit case where the direction is required to be issued to the respondent-

State, to reconsider the matter for carving out the above-said two new Sabha areas from the existing Sabha area. It is so said, because the

impugned notification has been found to be running contrary to the true spirit of Section 3(1) of the Act of 1994.

CWP No. 7494 of 2013

In this case, three new Panchayats namely Nishat Bag Colony, Gram Panchayat Hazuri Bag and Gagandeep Colony are sought to be carved out

from the existing Gram Sabha area. No resolution was passed by the Gram Sabha. It was not at all viable to carve out the new proposed Gram

Sabha areas, which are divided from the existing Gram Sabha area only through the narrow lanes running through the village.

A perusal of the site plan (Annexure P-2) would show that the dividing boundaries between the existing Gram Sabha area and three proposed

Gram Sabha areas are only the narrow lanes running through the village. There is no physical distance, as required u/s 3(1) of the Act of 1994. In

this view of the matter, it is unhesitatingly held that the matter was not properly considered by the respondent authorities, before issuing the

impugned notification, creating three new Sabha areas out of the existing one. Thus, the matter deserve to be reconsidered, at the hands of the

respondent authorities. Given fact situation suggests that carving out of new Sabha areas from the existing one is not going to achieve any object,

rather it will hamper integrated development of the area.

CWP No. 5165 of 2013

It is stated that two new Gram Sabha areas were sought to be carved out in the names of Tuggalwal Khurd and Patti Baba Jiwan Singh, out of the

existing Gram Sabha Tuggalwal in violation of the provisions of Section 3(1) of the Act of 1994. No resolution was passed by the Gram Sabha

Tuggalwal. There was no physical distance between the proposed Gram Sabha area and the existing Gram Sabha area except the narrow lanes

running through the village.

A bare glance at the site plan, Annexure P-2 (colly) will make it clear that the respondent authorities have failed to consider the relevant factors,

including the fact situation obtaining at the site, before issuing the impugned notification. From the perusal of the site plan, this Court is convinced

that the requirements of Section 3(1) of the Act of 1994 are not fulfilled in this case as well and the matter needs reconsideration by the competent

authority.

CWP No. 5307 of 2013

Gram Sabha area of Wadala Banger Khurd has been carved out from Wadala Banger in violation of Section 3(1) of the Act of 1994. It is further

stated that Gram Sabha of Wadala Banger did not pass any resolution, as required. Parameters for carving out the separate Gram Sabha area

were not available. There was no physical distance in the existing and proposed Gram Sabha area except the narrow street and lanes running

through the village.

It has been found that as per site plan (Annexure P-2), there was no physical distance between the proposed and existing Gram Sabha area. It is

neither understandable nor appeals to reason as to what object is sought to be achieved by carving out new Sabha area in violation of the

provisions contained in Section 3(1) of the Act of 1994. Thus, it needs to be reconsidered by the competent authority as the impugned action has

been found to be contrary to the law laid down by this Court.

CWP No. 5767 of 2013

It is the pleaded case of the petitioner, particularly in para 5 of the writ petition that Gram Sabha area of Patti Jainpur was sought to be carved out

from existing Gram Sabha Bhattian in violation of the provisions of Section 3(1) of the Act of 1994. There was no distance between both the

areas. No resolution was passed by the Gram Sabha of Bhattian. The impugned notification was issued only because of irrelevant considerations.

A perusal of site plan (Annexure P-4) would show that only physical distance between the existing Gram Sabha and the proposed Gram Sabha

area was a street running through the village. Bifurcating existing Sabha area into two, will serve no purpose. Rather it shall cause avoidable

hindrance in the integrated development of the Sabha area. Because of this reason, the issue needs to be reconsidered by the competent authority.

CWP No. 5769 of 2013

It is pleaded case of the petitioner that a new Gram Sabha area in the name of Mullianwala Khurd was illegally carved out from the Gram Sabha

Mullianwala. No resolution was passed by the Gram Sabha of Mullianwala. The impugned action had been taken only because of illegal pressure,

put by the few disgruntled villagers.

A perusal of the site plan (Annexure P-2) would show that there was no physical distance between the existing Sabha area and the proposed

Sabha area. It seems that factual position obtaining at the site has been altogether ignored by the respondent authorities, while issuing the impugned

notification. Only the narrow lanes running through the village divide the proposed Gram Sabha area from the existing Gram Sabha area. This

Court is convinced that the authorities have failed to consider the relevant factors for the purpose of carving out new Gram Sabha area from the

existing Sabha area, while issuing the impugned notification. Thus, the matter needs reconsideration at the hands of respondent authorities.

CWP No. 424 of 2013

It is the Gram Panchayat of village Chak Nidhana, who has approached this Court Another Sabha area has been sought to be carved out by the

name of Dhani Kashmir Singh Wali from the existing Sabha area of Chak Nidhana. It is stated that respondent No. 3 Kashmir Singh was a

Member Panchayat, who was opposing the majority Panches. Since he could not digest sitting in the opposition, he manipulated and got the

impugned notification issued at the hands of respondent authorities carving out new Sabha area, which is known in his name as Dhani Kashmir

Singh Wali. The impugned notification was issued for extraneous considerations.

A bare glance at the site plan (Annexure P-3) will make it clear that the impugned notification has been issued without any application of mind. The

proposed Gram Sabha area is mixed with the existing Gram Sabha in such a manner that the provisions of Section 3(1) of the Act of 1994 have

been glaringly violated. Thus, the matter needs reconsideration by the competent authority.

CWP No. 5064 of 2013

Again, the Gram Panchayat impugns the notification whereby a new Gram Sabha area has been carved out in the name of Kot Ahmad Dhandi

from the existing Gram Sabha area Ahmad Dhandi in violation of Section 3(1) of the Act of 1994. It is further stated that the private respondents,

who were a disgruntled lot and were facing a criminal trial connived with the respondent authorities, thereby acting against the interest of the

residents of the village and managed to get issued the impugned notification in glaring violation of the provisions of law contained in Section 3 of the

Act of 1994.

Perusal of the site plan (Annexure P-8) would show that the proposed Gram Sabha area and the existing area are mixed with each other in such a

manner that they cannot be separated from each other by any stretch of imagination. It seems that the authorities have failed to appreciate the true

factual aspect of matter while issuing the impugned notification. In this view of the matter, this Court is satisfied that the issue needs reconsideration

at the hands of competent authority.

CWP No. 5065 of 2013

In this case, five new Gram Sabha areas namely Saini Mohalla, Bahar Di Mandi, Guru Nanak Nagar, Dera Simbli and Christian Mohalla have

been sought to be carved out from the existing Gram Sabha area Kanuwan in violation of the provisions of Section 3(1) of the Act of 1994. It is

stated that no resolution was passed by the Gram Sabha Kanuwan. The impugned action was the result of malafide intention of only a few

residents of the village. There was no physical distance between the existing Gram Sabha area and the proposed Gram Sabha areas except the

narrow lanes running through the village. The relevant factors were not considered by the authorities, while issuing the impugned notification.

A glance at the site plan (Annexure P-2) will make it clear that the respondent authorities have failed to appreciate the fact situation, obtaining at

the site, before issuing the impugned notification. It is clear that there is no physical distance between the existing Gram Sabha area and the

proposed Gram Sabha areas. Thus, the provisions of Section 3(1) of the Act of 1994 have been violated in this case as well because of which the

matter needs reconsideration at the hands of the competent authority.

12. Now, reverting back to Tehal Singh's case (supra), issue No. 3 before the Hon'ble Supreme Court, which is of some relevance in the present

case, was, ""so far as the third question is concerned, we have been shown the map of villages Gram Sabha Wazidpur and Khanpur and on its

perusal we find that Harijan Colony although not totally, but partially is contiguous to village Khanpur and, therefore, there was substantial

compliance of provision of sub-section (i) of Section 3 of the Act, and, therefore, the view taken by the High Court was erroneous.

13. The observation made by the Hon"ble Supreme Court in para 7 of Tehal Singh"s case (supra) would make it clear that the issue before the

Hon"ble Supreme Court was for inclusion of a harijan colony in the Gram Sabha Khanpur. The area sought to be included in the existing Gram

Sabha was partially contiguous to the existing village. That is how, the Hon"ble Supreme Court held that substantial compliance of provision of

Sub-Section (i) of Section 3 of the Act of 1994, had been made.

14. So far as the present batch of writ petitions is concerned, in all the cases, discussed here-in-above, the issue was of carving out new Gram

Sabha area(s) out of the existing Gram Sabha area. After careful perusal of the record of these cases, this Court feels no hesitation to conclude that

the respondent authorities have failed to comply with the provisions of Section 3(1) of the Act of 1994. The respective site plans available in the

each case, discussed here-in-above, have been closely examined, so as to ascertain physical distance between the existing Gram Sabha and the

proposed Gram Sabha areas. After doing this exercise, this Court has come to the conclusion that the provisions of Section 3(1) of the Act of

1994 have not been complied with, because of which all these matters require reconsideration, at the hands of the respondent authorities.

15. Since the only physical distance between the existing Gram Sabha area(s) and the proposed Gram Sabha area(s) is only by way of narrow

streets running through the villages, neither it is understandable nor it appeals to reason as to what object was going to be achieved by the

respondent authorities, while carving out new Gram Sabha area(s) and that too in violation of provisions of Section 3(1) of the Act of 1994.

Further, the development works, which have already been carried out in these villages, in an integrated manner, will lose their utility qua at least

the proposed Gram Sabha area(s). The developmental activities will also be seriously hampered because of the peculiar fact situation and

topography of the villages. Thus, it is unhesitatingly held that the impugned orders seem to have been passed in a haste, without due application of

mind and in violation of the provisions of Section 3(1) of the Act of 1994.

16. The view taken by this Court also finds support from the Division Bench judgment of this Court in Gram Panchayat Panj Garaian"s case

(supra). The relevant observations made by the Division Bench, which can be gainfully followed in the present case, read as under:-

We would like to conclude by observing that we have very carefully considered the directions of the Supreme Court in State of Punjab v. Tehal

Singh (supra) and also certain essential cultural and historic factors, under ""other relevant facts"" mentioned in proviso to Section 3(1) of the Act.

The physical distance between the Gram Sabhas has also been seen for reaching our conclusions in the cases of respective villages.

Furthermore, there must be physical separation before a Gram Sabha is separated. If a Gram Sabha is going to remain physically contiguous to the

original Gram Sabha and joined to its parent then how will its birth as a new Gram Sabha achieve any objective. Many developments in a village

have to be done in an integrated manner. If Gram Sabhas has remain closely attached to each other, division would certainly hamper development.

In a few villages we have also examined historical factors which we feel are important and should not be overlooked or lightly brushed aside. The

State Government shall reconsider the constitution of the new Gram Sabhas before the elections are held, keeping in view our observations in

respect of six villages-Panj Garahian, Siryewala, Mangwal, Sabhra, Miaonwal and Tibber.

17. Respectfully following the observations made by the Division Bench, reproduced above, and coming to the facts of the present case, this Court

is of the considered view that the impugned orders cannot be sustained.

18. No other argument was raised.

19. Considering the peculiar facts and circumstances of these cases, coupled with the reasons aforementioned, this Court is of the considered view

that the impugned orders are illegal and contrary to the provisions of Section 3(1) of the Act of 1994. Thus, the impugned orders cannot be

sustained.

20. Consequently, the impugned notifications qua individual cases, noted hereinbefore, are hereby ordered to be set aside. The respondent

authorities, whosoever the competent authority in each case, are directed to reconsider the matter at an early date so as to ensure that appropriate

order is passed in each case, without any further loss of time and in any case before issuing the election programme, for the coming panchayat

elections in the respondent-State. With the observations made and directions issued here-in-above, all these writ petitions are allowed, however,

no order as to costs.