

(2013) 10 P&H CK 0345

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP. No. 4501 of 2012

Krishan Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Oct. 8, 2013

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Advocate: Gurminder Singh, for the Appellant; Saurabh Mohunta, DAG, Haryana, Mr. Arvind Singh, Advocate for Respondent No. 2, Mr. Sanjay Mittal, Advocate for Respondent Nos. 8, 14, 18, 26 and 29 and Mr. S.K. Yadav, Advocate for Respondent No. 31, for the Respondent

Final Decision: Allowed

Judgement

Rakesh Kumar Jain, J.

The petitioner has challenged order dated 7.2.2012 passed by respondent No. 4, dismissing his objections and the order dated 23.2.2012 passed by respondent No. 5 whereby the appeal filed by petitioner has been dismissed.

As per the case set up by the petitioner, in the year 2007, the State Election Commission, Haryana published Municipalities Electoral Roll and out of various names, 18 persons were shown in Ward No. 2, detailed as under:-

2. Thereafter, in the Electoral Roll published in the year 2011 for the Legislative Assembly Elections, the aforesaid 18 persons were again shown in Ward No. 2 and besides them 7 new names were also included in Ward No. 2. The list of 25 persons mentioned in the Legislative Assembly Elections Rolls in the year 2011, is reproduced as under:-

3. According to the petitioner, the State Election Commission, Haryana further published Electoral Roll in the year 2012 for the Municipality Elections for Ateli, District Mahendergarh and aforesaid 25 persons, residents of Ward No. 2, have been shown in the Electoral Voter List of Ward No. 3 at Sr. No. 75 to 100 except Sr.

No. 99.

4. One Anil Kumar applied under the Right to Information Act, 2005 on 17.1.2012 and obtained certified copies of the ration cards of the aforesaid persons in which they have been shown to be the actual residents of Ward No. 2. The petitioner also informed the President of Municipal Committee Ateli Mandi vide letter dated 21.2.2012 that the aforesaid 25 persons are permanent residents of Ward No. 2. It is also pertinent to mention that on 27.1.2012, 25 complaints in prescribed Form-B were lodged before the Revising Authority appointed under Rule 8 of the Haryana Municipal Election Rules, 1978 [for short "the Rules"] for wrong inclusion of the names of the said 25 persons in Ward No. 3 in the Electoral Roll published in the year 2012 but the Revising Authority dismissed the objections vide impugned order dated 7.2.2012. The petitioner challenged his order by way of Statutory Appeal before the Deputy Commissioner, who also vide his order dated 23.2.2012 dismissed the appeal. However, it is alleged that before passing the order, the Deputy Commissioner had directed the Revenue Officer/Sub Divisional Magistrate to give report as to whether the aforesaid 25 persons are residents of Ward No. 2 or 3 regarding which the Sub Divisional Magistrate had given his report on 22.2.2012 alleging that the aforesaid 25 persons are residents of Ward No. 2.

5. Learned counsel for the petitioner has submitted that Rule 4 of the Rules provides that Deputy Commissioner shall under the superintendence, direction and control of the State Election Commissioner, Haryana prepare roll for each constituency of the Committee in accordance with the Rules. Rule 7 of the Rules further provides for preliminary objections on rolls and Rule 8 of the Rules provides for appointment of any Gazetted officer as Revising authority to whom the objections could be filed. It is submitted that the objections were filed in prescribed Form-B after taking necessary information under the RTI Act, 2005 to prove that 25 persons mentioned in the voter list of Ward No. 3 are actually residents of Ward No. 2 and their votes have been wrongly made in Ward No. 3. However, it is submitted that while dismissing the objections, the Revising Authority has relied upon statement of some Sanjay S/o. Man Singh and Arvind S/o. Babul to hold that the said applicants/objectors were residents of Ward No. 3 and not Ward No. 2. It is further submitted that even the Appellate Authority has committed a patent error in dismissing the appeal despite the fact that it has been observed that "regarding this I have also directed the Revenue Officer to inquire the matter materially and called the report, in the report revenue officer stated that voter is resident of Ward No. 2". But while relying upon the statement of a third person, the appeal was dismissed.

6. In reply, the learned State counsel has submitted that in view of Rule 6 of the Rules, a person is entitled to be registered in the roll for a Constituency/ward if the said person is ordinary resident of that Constituency/ward. It is the choice of a person where he wants to reside. The person, who is ordinarily a resident of particular Constituency/ward, may shift his residence to any other

ward/Constituency. It is further alleged that in the present case the alleged 25 persons have been residents of Ward No. 3 of the Municipal Committee, Ateli Mandi (Mahendragarh).

7. I have heard learned counsel for the parties and after perusal of the record, I am of the considered opinion that the writ petition deserves to be allowed solely on the ground that the Deputy Commissioner himself ordered an enquiry to find out the original residence of 25 persons for whom the objections have been filed that they are the voters of Ward No. 2 and not of Ward No. 3 and in that enquiry report it has been observed by the Revenue Officer that the persons mentioned in Ward No. 3, with whom we are concerned, are residents of Ward No. 2. While filing the objections on Form-B, the objectors had also referred to the voter list of 2007 and 2011 and also made a reference to the ration cards which are always made part of the record. Thus, in view of the aforesaid discussion, the present writ petition is hereby allowed and the impugned orders are set aside.