



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

CWP No. 2590 of 2009  
Date of Decision: 12.8.2016

**Dev Raj and Anr.**

**.....Petitioners.**

**Versus**

**State of H.P. and Ors.**

**...Respondents**

Coram

**Hon'ble Mr. Justice Sandeep Sharma, Judge.**

**Whether approved for reporting? Yes.**

**For the petitioners:** Mr. B.C. Negi, Senior Advocate with Mr. Narender Kumar, Advocate.

**For the respondents:** Mr. Rupinder Singh Thakur, Additional Advocate General, with Mr. Rajat Chauhan, Law Officer, for respondents No. 1 to 3.

M/s Neel Kamal Sood, Mr. Narender Thakur, and Mr. Vasu Sood, Advocates, for respondent No.6.

**Sandeep Sharma, J. (Oral)**

By way of present writ petition filed under Article 226 of the Constitution of India, the petitioners have prayed for following reliefs:-

- i) Issue a writ of mandamus directing the Respondent authorities to complete the construction of the Panchayat Ghar at Village Masreena.**
- ii) Issue a writ of certiorari to quash Annexure P-13 passed by the Secretary Panchayati Raj, Himachal Pradesh.**
- iii) Issue a writ of Certiorari to call for the records pertaining to the case at hand.**
- iv) Direct the Respondent authorities to pay the cost of the petition.**

Whether reporters of the Local papers are allowed to see the judgment? Yes.

**v) Such other order, which this Hon'ble Court deems fit and proper, may also be passed in favour of the petitioners, in the interest of justice and fair play.**

2. Briefly stated facts as emerged from the record are that State of Himachal Pradesh, vide notification dated 20.8.2005 issued under Section 3 of the Himachal Pradesh Panchayati Raj Act, 1994 (in short " the Act of 1994"), declared villages as mentioned in column No.6 of the list attached with the notification as new panchayats and in that process, new gram Panchayat namely Bandal (Kafila) was created. It may be noticed that present petition is only concerned with the newly created Gram Panchayat Bandal (Kafila). Aforesaid newly created Gram Panchayat was created by de-linking two villages namely Bandal and Chanjah from Gram Panchayat Majholi. On 8.11.2006, Gram Sabha meeting was convened to discuss the exact place for construction of head quarter of the Gram Panchayat Bandal (Kafila) and a resolution was passed, wherein land bearing khasra No. 414 measuring 4 biswas was donated/gifted by one Sh. Daulat Ram vide gift deed No. 63/07 in favour of Gram Panchayat Bandal (Kafila) for construction of the headquarter. As per aforesaid decision, the new Gram Panchayat Ghar was to be constructed at place called Masreena, which is alleged to be part of Kafila and is a sub village of revenue village Bandal. As per petitioners, Masreena being central place was selected for construction of Panchayat Ghar. Beside that

this place was also feasible as well as accessible for each and everyone. Finally on 20.8.2005, new gram Panchayat namely Bandal (Kafila) was created with its headquarter situated at place called Masreena and construction of new Panchayat Ghar Masreena commenced but ultimately, same was stopped by the District Panchayat Officer on account of some complaint made to the concerned Minister. As per complainant, construction of Panchayat Ghar was not being raised at designated/decided site. Thereafter, representations of up Pardhan and office bearers of Gram Panchayat were received and the matter was forwarded to the Sub-Divisional Officer (Civil) Chopal with direction that said matter may be settled in the Gram Sabha meeting by appointing an observer. Accordingly, on 12.5.2007, in Gram Sabha meeting, Deputy Commissioner directed the Block Development Officer, Chopal, to include the matter regarding the dispute of headquarter and construction of Panchayat Ghar in the meeting of the Gram Sabha to be held in the month of July, 2007, wherein vide resolution No.1, Gram Panchayat approved the decision taken in respect of construction of Panchayat Ghar in its earlier meetings held on 1.4.2007 and 12.5.2007. At the cost of repetition, it may be again noticed here that in previous meetings, it was resolved that Panchayat Ghar would be constructed at place Masreena, which falls under the hamlet Kafilah of Revenue Village Bandal. Pursuant to

aforesaid resolution, Block Development Officer, Development Block, Chopal, vide letter dated 9.7.2007 submitted its report intimating therein that in the meeting of Gram Sabha held on 1.7.2007, quorum was complete as per requirement of Section 5 of the Act of 1994, and Gram Sabha vide resolution No.1 dated 1.7.2007 confirmed the decision of the Gram Sabha taken in its meeting held on 12.5.2007 regarding place of construction of Panchayat Ghar at Masreena. However, subsequent to aforesaid decision taken by Gram Sabha, respondent No.6 filed civil writ petition bearing No. 1258 of 2007 before the High Court of Himachal Pradesh praying for following reliefs:-

- (A) **Annexure P-1 dated 20.8.2005 to the extent showing Kafrah as Headquarter of Panchayat instead of Bandal be quashed and set-aside and further direction be issued to respondents No. 1 to 3 to re-notify the Gram Panchayat by name as Bandal-Chanjah instead of Bandal Kafrah and its headquarter be shown at village Bandal instead of village Kafrah.**
- (B) **Directing the respondents to construct Panchayat Ghar at Village Bandal as Village Bandal is Revenue Village.**
- (C) **That respondent be further directed to construct the Panchayat Ghar at identified place by District Panchayat Officer.**

3.

This Court taking cognizance of averments contained in the aforesaid writ petition passed interim order dated 23.8.2007 directing the parties to maintain the status-quo. However, fact remains that subsequently on 4.7.2008, the petition was withdrawn in view of the submissions made by the respondent No.6 (petitioner in CWP No. 1258 of 2007) by stating that he would be approaching the authorities for

redressal of his grievance. Accordingly, matter was dismissed as withdrawn and stay order was vacated. On 30.8.2008, Deputy Commissioner Shimla issued order wherein S.D.O. (Civil) Chopal was directed to get the construction work of headquarter of Masreena completed at the earliest. On 23.10.2008, aforesaid S.D.O. further issued office order to B.D.O. Chopal to get the construction work done immediately and till date a sum of Rs. 1,70,000/- has been spent on the same. But respondents being aggrieved with the resolution and subsequent decision dated 30.8.2008 by Deputy Commissioner, Shimla, preferred representation to the Secretary Panchayati Raj, Shimla, HP, opposing construction of new Panchayat Ghar at Masreena. Record reveals that Secretary, on the basis of averments contained in the representation, ordered status-quo vide order dated 30.1.2009 (P-12) and subsequently, vide order dated 10.7.2009 allowed the representation preferred by present respondent by ordering that Pradhan Gram Panchayat, Bandal would convene an extra ordinary general meeting of the Gram Sabha within a period of 30 days from issue of this order for deciding the exact headquarter of the Sabha Area. In this regard, Secretary also directed the District Panchayat Officer, Shimla, or his representative to remain present in that meeting and further observed that if the Gram Sabha decides to fix the headquarter at Sub-village, Masreena or any other location within the

boundary of revenue village, Bandal, then Gram Panchayat could immediately take up construction of Panchayat Ghar at the location. However, if Gram Sabha proposed to fix some other location outside the boundary of revenue village, Bandal, as headquarter, then the recommendations of the Gram Sabha may be sent to the State Government to decide the headquarter in terms of section 3 (Clause 2) of the Act of 1994. Present petitioner being aggrieved with the passing of aforesaid order passed by the learned Secretary Panchayati Raj, approached this Court by way of present writ petition.

4. Mr. B.C. Negi, Senior Advocate, duly assisted by Mr. Narender Kumar, Advocate, appearing on behalf of the petitioners vehemently argued that impugned order passed by the Secretary Panchayati Raj, is not sustainable in view of the fact that the concerned authority failed to take into account the fact that place for setting up new Panchayat Ghar in question had been previously approved by the Gram Sabha in its meeting and as such, concerned authority had no authority, whatsoever, to change the decision of the Gram Sabha, which was taken unanimously in its meeting. Mr. Negi strenuously argued that once decision taken by the Gram Sabha to set up Panchayat Ghar at Masreena being a central place was accepted by the State Government, Secretary Panchayati Raj, had no occasion, whatsoever, to intervene in the matter and order for fresh meeting of

Gram Sabha. He also contended that he learned Secretary, while passing the impugned order failed to take note of the fact that decision to set-up headquarter was taken on 12.5.2007 in the presence of Panchayat Inspector of Development Block Chopal and thereafter issue at hand was discussed in the meeting held in 1.7.2007, wherein vide resolution, Gram Sabha approved the earlier decision taken by it for construction of Panchayat Ghar. In the present case, representation was filed before the Secretary, Panchayati Raj in December, 2008 i.e. approximately after two years of the aforesaid decision taken by the gram Panchayat and as such, Secretary, Panchayati Raj, Shimla has fallen in grave error while accepting the representation of the respondent for some extraneous reasons. Mr. Negi also invited attention of this Court to Annexures P-12 and P14 i.e. orders passed by the Secretary Panchayati Raj on the representations filed by the respondents, to demonstrate that it is not understood under what provisions Secretary Panchayati Raj, Himachal Pradesh could entertain representation, if any, of the respondent, and as such, he had no authority whatsoever, to set-aside the order of Gram Sabha taken on 12.5.2007, wherein it was unanimously decided that headquarter of newly created Gram Panchayat would be at Masreea. He also stated that learned Secretary failed to appreciate that one Shri Daulat Ram had already donated/gifted his land for construction of headquarter at

Masreena. While concluding his arguments Mr. Negi, forcefully contended that once decision was taken by the Gram Sabha on 12.5.2007 resolving therein to set-up headquarter at Masreena, which was duly accepted by the State of Himachal Pradesh as clearly emerges from its reply filed in earlier CWP, there was no authority whatsoever, with the Secretary Panchayati Raj to re-look in to the matter that too at the behest of a person, who had earlier approached this Court by way of writ petition and later on withdrawn the same with liberty to approach the appropriate authority for redressal of his grievance. In the aforesaid background, Mr. Negi prayed that the instant petition may be allowed and the impugned order passed by the Secretary, Panchayati Raj, may be quashed and set-aside.

5. On the other hand, Mr. Rupinder Singh Thakur, learned Additional Advocate General, representing respondents No. 1 to 4 supported the order passed by the Secretary Panchayati Raj and stated that no interference, whatsoever, of this Court is warranted in the present facts and circumstances of the case. Mr. Thakur, vehemently argued that bare perusal of the order suggests that no prejudice has been caused to any of the party, rather, Secretary Panchayati Raj, solely with a view to ensure that wish of people of area prevails, ordered to convene the general meeting of gram Sabha. He also contended that it stands duly proved on record that 120 members of

Gram Sabha participated and they all unanimously resolved to construct Panchayat Ghar at Village at Dabha, which falls in Chak Bandal, instead of Masreena. While concluding his arguments, Mr. Thakur, vehemently contended that there is no illegality/infirmity at all in the impugned order because same has been passed to ensure that headquarter of Gram Panchayat is constructed at the place, which is convenient to all the residents of newly created Panchayat. While refuting the submissions having been made on behalf of Mr. Negi, wherein he stated that Secretary had no authority, whatsoever, to set-aside the order of Gram Sabha taken in its meeting held on 12.5.2007, Mr. Thakur, argued that there is no question of setting aside any decision taken by Gram Sabha in its meeting held on 12.5.2007 but order passed by Secretary clearly suggests that there is a dispute among the residents of that area with regard to location of headquarter and as such, Secretary rightly intervened in the matter to ensure that will of the people of the area prevails and headquarter of Panchayat is constructed at the most convenient place. Shri Neel Kamal Sood, counsel representing respondent No.6 while inviting the attention of this Court to the supplementary affidavit filed by respondent No. 6 submitted that since petitioner himself participated in the meeting of Gram Sabha held on 6.2.2011 and agreed for construction of headquarter Panchayat occurred at village Bandal,

present petition deserves to be dismissed. As per him, meeting of Gram Sabha was held on 6.2.2011, wherein respondent No.5 participated as a Pardhan of Gram Panchayat Bandal. He also invited attention of this Court to the Supplementary affidavit filed on behalf of respondent No.6 to demonstrate that meeting was held on 6.2.2011, wherein petitioner himself agreed for the construction of Panchayat Bhawan at village Bandal and he appended his signatures at page No.4 at Sr. No. 59. He also stated that factum qua appending signatures by the petitioner also stands proved on record because there is no rebuttal whatsoever, in the reply filed by the petitioner to the supplementary affidavit filed on behalf of respondent No.6. Mr. Sood, vehemently argued that keeping in view the peculiar facts of the case, especially, divergent stand taken by the petitioner, respondent-State as well as respondent No.6, it would be appropriate in case fresh meeting is ordered to be called in the presence of some officer and then decision is taken with regard to setting up of new Panchayat Ghar.

6. I have heard the learned counsel for the parties and carefully scrutinized the record.

7. Careful perusal of the pleadings available on record clearly suggests that vide notification dated 20.8.2005, respondent-State created new Gram Panchayat namely Bandal (Kafila) and thereafter on 8.11.2006, a meeting of Gram Sabha was held, wherein it

was unanimously decided to construct headquarter of gram Panchayat at place called Masreena. However, construction of gram Panchayat Ghar at Masreena was stopped by the District Panchayat Officer vide order dated 15.5.2007 on account of some complaint. But fact remains that thereafter on 12.5.2007, Deputy Commissioner referred the matter to Sub-Divisional Officer, Civil Chopal with a direction that the said matter may be settled in the Gram Sabha meeting by appointing an observer and accordingly, meeting of Gram Sabha was held on 12.5.2007 in the presence of Panchayat Inspector but no decision whatsoever, could be taken qua the setting up of headquarter of newly created gram Panchayat. But thereafter with the intervention of Deputy Commissioner Shimla, meeting of gram Sabha was again convened in the month of July, 2007, wherein vide resolution No.1 dated 1<sup>st</sup> July, 2007, decision was taken qua the construction of Panchayat Ghar strictly in terms of earlier meetings held on 1.4.2007 and 12.5.2007. Accordingly, on 9.7.2007, Block Development Officer, Chopal submitted report to Deputy Commissioner intimating therein that quorum was complete as per requirement of Section 5 of the Act of 1994, and Gram Sabha vide resolution No.1 dated 1.7.2007 confirmed the decision of the Gram Sabha taken in its meeting held on 12.5.2007 regarding place of construction of Panchayat Ghar at Masreena.

8. While hearing the arguments having been made on behalf of respective parties, this Court had an occasion to peruse the record, careful perusal of which, disclosed that respondent No. 6 had earlier filed the writ petition (as has been mentioned above), which was withdrawn by the him with liberty to approach the authority for redressal of his grievance. Accordingly, stay order was vacated. It also emerges from the record that after dismissal of the petition supra, preferred by respondent No.6, Deputy Commissioner Shimla ordered for construction of work at Masreena in terms of the resolution passed by Gram Sabha but thereafter, representation was filed by respondent No.6 before Secretary Panchayati Raj, who on 30.1.2009 ordered status quo and finally on dated 1.7.2009, directed/ordered Pradhan Gram Panchayat to convene an extra ordinary general meeting of the Gram Sabha within a period of 30 days from issue of this order for deciding the exact headquarter of the Sabha area. Record further reveals that pursuant to the aforesaid order passed by Secretary Panchayati Raj, meeting of Gram Sabha Bandal, General house Kafila was convened on 7<sup>th</sup> August, 2009, wherein 120 members, out of 193 were present and by majority, it was decided/resolved that construction would be done at 'Dobha' instead of Masreena as decided earlier, However, due to pendency of the instant writ petition decision taken in the meeting, could not be given effect to.

9. Now question, which remains to be decided by this Court is whether order dated 10.7.2009 passed by Secretary Panchayati Raj, can be termed to be legal in the facts and circumstances of the case or not? Bare perusal of order supra suggests that same has been passed solely with a view to resolve the controversy at hand as per the popular wish of the people living in the Gram Sabha area. It also emerges from this order that while issuing notification dated 20.1.2005, the actual location of Panchayat Ghar was not determined and only headquarter as Bandal (Kafila) was mentioned and since there was a dispute with regard to location of the Panchayat Ghar of the Gram Panchayat Kafila, Secretary (Panchayati Raj) ordered for convening of extraordinary general meeting of Gram Sabha within a period of 30 days from the issue of this order.

10. Perusal of order supra clearly shows that it is a very innocuous order, wherein only direction was issued to the Pradhan Gram Panchayat to convene extraordinary general meeting but close scrutiny of impugned order suggests that due opportunity of being heard was afforded by him to all the affected parties including petitioner before passing order under challenge. It also emerges from the record that in newly created Panchayat, Bandal, there are only two revenue villages i.e. Bandal and Chanjah. The sub-village Kafilah as well as Masreena both fall in the revenue village Bandal and Gram Sabha

Bandal is very scattered Panchayat with lot of sub-villages and as such, Panchayat Ghar can be constructed at any place within boundary of revenue village as notified by the State Government. But, Secretary, Panchayati Raj, has rightly recorded that location of Panchayat headquarter should be as per the popular wish of the people of the area and accordingly, he ordered for the extraordinary meeting. Hence, this Court sees no illegality in the order passed by the Secretary, Panchayati Raj. Now adverting to the contention put forth on behalf of Shri Negi, wherein he stated that once Gram Sabha had already resolved in its meeting, that headquarter would be constructed at Masreena, there was no authority whatsoever, with the secretary to undo the earlier resolutions passed by the Gram Sabha. While referring to the affidavit filed by the respondent-State in earlier writ petition, Mr. Negi also stated that decision taken by the Gram Sabha in its meeting held on 12.5.2007 was accepted by the respondent-State and thereafter on 15.6.2007, Deputy Commissioner, Shimla directed the B.D.O. Chopal to include the matter regarding dispute of headquarter and its construction in the meeting to be held on July, 2007. Accordingly, matter was placed before the Gram Sabha and vide resolution dated 1.7.2007, decision taken in previous meetings, was approved and as such, respondents-State at this stage, cannot be allowed to take contrary stand.

11. There is no doubt that in earlier meeting held on 12.5.2007, it was decided to construct headquarter of newly carved out Panchayat at Masreena and same was accepted by the Deputy Commissioner but fact remains that subsequent decision taken on 7.8.2009 has also been taken by general house meeting of Gram Sabha, wherein 120 members, out of 193 participated and by majority agreed that Panchayat Ghar would be constructed at Dobha. Hence, it cannot be said that respondent-State has changed its stance, rather, member of the Gram Sabha, who at one point of time agreed for place masreena in its meeting held on 7.8.2009, resolved to have headquarter of Panchayat Ghar at Village Dobha in the subsequent meeting of Gram Sabha. After seeing the divergent stands taken by the parties to lis i.e. petitioner, respondents No. 1 to 4 and 6, this Court is of the view that there is no illegality and infirmity in the order passed by the Secretary Panchayati Raj, wherein he ordered for convening of general house meeting of Gram Sabha. Though, in the present case, as emerge from the record, pursuant to order dated 10.7.2009 passed by the Secretary, meeting was convened and it was unanimously decided to construct headquarter of Panchayat Ghar at Village Dobha but further perusal of the supplementary affidavit filed on behalf of respondent No.6 suggests that on 6.2.2011, there was another meeting of Gram Sabha, wherein petitioner also participated along with other

members and resolved that Panchayat Ghar would be constructed at Village Bandal, meaning thereby, despite there being order dated 10.7.2009 passed by the Secretary, parties have not been able to settle their dispute qua location of Panchayat Ghar of newly created Panchayat. Though, this Court finds force in the contention put forth by Mr. Negi that once decision was taken in meeting on 12.5.2007 to have Panchayat Ghar at Masreena, there was no occasion for authorities to allow/direct Gram Sabha to convene further meeting of the general house to decide headquarter of the newly created Gram Panchayat, but in peculiar facts and circumstances, where despite there being repeated meetings, there appears to be no unanimity between the members of Gram Sabha qua location of Panchayat Ghar of the newly created Panchayat, this Court finds it difficult to accept the contention put forth on behalf of the petitioner. Admittedly, in subsequent meetings held pursuant to the orders passed by the Secretary, majority of members of Gram Sabha decided to construct Panchayat Ghar at Village Dobha but further perusal of the supplementary affidavit filed on behalf of respondent No.6 suggests that on 6.2.2011, there was another meeting, wherein it was resolved that Panchayat Bhawan would be constructed at Bandal for which one Shri Sant Ram donated land vide gift deed on 5.4.2011.

**12.** This Court is pained to see that matter with regard to setting up of head quarter of newly created Gram Panchayat Bandal (Kafila) is hanging fire since August, 2005, i.e. date of notification solely, due to irresponsible and obstinate attitude of members of Gram Sabha, who just for their personal egos and gains are creating hurdles in setting up of headquarter of gram Panchayat and in this process, loss, if any, is being caused to general public of that gram Panchayat.

**13.** Consequently, in view of the peculiar facts and circumstances of the case, this Court deems it fit to direct the Deputy Commissioner, Shimla, to convene general/joint meeting of members of Gram Sabha as well as people of all villages, which fall under the concerned Panchayat, in presence of Sub-Divisional magistrate of the respective area to ascertain their wish qua actual/convenient location of Panchayat Ghar of newly created gram Panchayat. Since all the villagers are required to be intimated with regard to aforesaid meeting, Deputy Commissioner may give wide publicity qua the convening of the aforesaid meeting, so that majority of people from concerned gram Panchayat participate in the meeting to decide the location. Deputy Commissioner may take steps in this regard within a period of one month from passing of this order and conclude entire process within one month thereafter. Immediately after convening of the aforesaid meeting, Deputy Commissioner shall notify the location of

Panchayat Ghar of newly created Panchayat on the basis of wish of people of the area. It is made clear that decision taken in the aforesaid meeting, would be abided by each and every resident of the area including the petitioners and respondents. In view of the aforesaid, this petition is disposed of along with pending application(s), if any.

**August 12, 2016**

*manjit*

**(Sandeep Sharma),  
Judge.**

High Court of

of

(Sandeep Sharma),  
Judge.