

(2010) 09 P&H CK 0097
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 19447 of 2008

Janak Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-09-2010

Acts Referred:

Panchayati Raj Act, 1994 — Section 216, 216(2)

Citation : (2011) 161 PLR 180 : (2011) 1 RCR(Civil) 906

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—This judgment shall dispose of titled Janak Singh v. State of Punjab and Ors. civil writ petition No. 19447 of 2008

and titled Ranjit Singh v. State of Punjab and Ors. civil writ petition No. 14845 of 2009, as common questions of law and facts are involved. For

brevity sake, facts are being taken from civil writ petition No. 19447 of 2008.

2. The Petitioner, by invoking the writ jurisdiction of this Court, has challenged the order Annexure P-2, which reads as under:

Sub: Regarding recovery of the loss caused to the Gram Panchayat.

On the subject noticed above, you are asked vide this office letter No. 2264, dated 28.10.1998 to make the good the loss of Rs. 1,19,000/- by

depositing the same in the funds of the Gram Panchayat for causing loss to the panchayat funds, however, you have neither deposited the aforesaid

amount not submitted your reply till date. Meaning thereby that you have nothing to say in this regard and accept your lapse.

Therefore, I Jaspal Singh, B.D.P.O., while exercising the powers u/s 216(2) of the

Panchayati Raj Act, 1994, grant you 30 days time to deposit

the aforesaid amount of Rs. 1,19,000/- in the funds of the gram panchayat within 30 days from the date of receipt of this letter and inform this

office failing which this amount shall be recovered from you under the provisions of the Panchayati Raj Act, 1994.

3. The facts, which are admitted, are that vide mutation No. 1394 dated 1.2.1995 the land in dispute situated in the revenue estate of village

Balamgarh, Block and District Ropar, was recorded as shamilat deh, hasab risab zail in the name of pattidars in the revenue record. As per

jamabandi for the year 1998-99, the pattidars were shown as makbuja malkan in the column of ownership. The major chunk of land was barren

and gair mumkin, except the bushes and the wild grass, there was no productivity in the land.

4. That the Petitioner contested the election of Gram Panchayat.

5. The case of the Petitioner was, that due to party faction, he was made scapegoat so as to debar him from contesting the election. In order to

achieve this object, Respondent No. 4 issued notice dated 1.2.1999 alleging therein that the Petitioner has caused a loss of "1,19,000/- (Rupees

one lac and nineteen thousand only) in respect of the crop year 1998-99 without there being any rhyme and reason. On 29.3.2004, the land in

dispute was mutated in favour of the gram panchayat/Respondent No. 5. After the land was mutated in favour of the Gram Panchayat, on

5.2.2005 the said land was auctioned for a sum of "16,000/- (Rupees sixteen thousand only).

6. The Petitioner submitted reply to the notice referred to above, but no action was taken thereon. The Petitioner preferred an appeal before

Respondent No. 3, though not competent for want of order. The appeal was rejected on 30.11.2004. After the decision of the appeal, another

letter (Annexure P-5) was issued to the Petitioner u/s 216(2) of the Punjab Panchayati Raj Act, 1994 for causing loss of "1,19,000/- (Rupees one

lac and nineteen thousand only) to the Gram Panchayat Respondent No. 5. The Petitioner was directed to deposit this amount. The revision

petition filed by the Petitioner was also dismissed.

7. The writ petition was contested on the ground, that the order passed by the authorities was in consonance with law and that the valid reasons

were given for rejection of appeal and revision, therefore, the Petitioner has no enforceable right to approach this Court in exercise of writ jurisdiction.

8. Learned Counsel for the Respondents also contended that the appeal was rightly dismissed being time barred, as the appeal was not filed within the period stipulated for filing the appeal under the statute.

9. Learned senior counsel for the Petitioner challenged the impugned order by contending it to be void ab initio and without jurisdiction, for the reason, that in absence of an order of recovery under the Punjab Panchayati Raj Act, there was no occasion for Respondent No. 4 to issue notice for recovery, as the pre-requisite to issuance of notice was an enforceable order.

10. It was also the contention of the learned senior counsel for the Petitioner, that before passing an effective order the authorities were bound to follow the procedure laid down u/s 216 of the Punjab Panchayati Raj Act. The Petitioner, therefore, was denied his right to contest the allegations, that he had caused the loss.

11. On consideration, I find force in the contentions raised by the learned senior counsel for the Petitioner. In spite of the written statement having been filed, the Respondents have failed to produce any order passed by the competent authority by following due process of law; which could entitle Respondent No. 4 to issue notice (Annexure P-2), referred to above.:

12. The order passed by the Block Development and Panchayat Officer, Rupnagar, dismissing the appeal is also perverse, on the face of it, as the appeal filed by the Petitioner was dismissed being time barred, without considering the fact that there was no order passed by the competent authority and the notice issued in absence of an order of recovery was, in fact, nothing but misuse of powers vested with the authorities under the Act.

13. Similarly, the Secretary to the Government of Punjab, Department of Rural Development and Panchayats, committed an error in dismissing the revision petition by holding that the appellate authority was right in dismissing the appeal as time barred.

14. The impugned orders, therefore, show total non-application of mind, as the limitation was to commence from the date of passing of order

under the Act. Once it was not disputed that there was no order of recovery passed under the Act, the notice of recovery was void ab initio,

having no force of law. The appeal, therefore, could not be said to be time barred.

15. Consequently, this writ is allowed, the impugned orders passed by the appellate authority, the revisional authority as also notice Annexure P-2

are ordered to be quashed.

16. However, it is made clear that Respondents shall be at liberty to take appropriate action in accordance with law, if so advised, to recover the

loss, if any, suffered by the Gram Panchayat.

No costs.