
(1965) 04 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1983 of 1962

Ram Bhagat

APPELLANT

Vs

The Gram Panchayat and Another

RESPONDENT

Date of Decision : 29-04-1965

Acts Referred:

Punjab Gram Panchayat Act, 1952 — Section 109, 109(1), 21, 23, 97

Citation : (1965) 2 ILR (P&H) 747

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Advocate : Chand Goyal, for the Appellant; M.K. Mahajan, for the Respondent

Final Decision : Allowed

Judgement

Shamsheer Bahadur, J.—Ram Bhagat of village Haibatpur has moved this Court in the exercise of its writ jurisdiction to question the validity of the order passed by the Sub-Divisional Magistrate, Jind, dismissing his application u/s 97 of the Gram Panchayat Act.

2. The Petitioner, a landowner of village Haibatpur was allotted some land and according to him, he had cut a shisham tree which was standing on this land after permission had been obtained from the Forest Department. The Gram Panchayat Haibatpur asked the Petitioner to restore the timber of the shisham tree and his refusal to comply with this demand resulted in imposition by it of fine which was challenged before the Sub-Divisional Magistrate, Jind. The application before the Sub-Divisional Magistrate, Jind, having been dismissed the Petitioner seeks redress from this Court.

3. In the written statement filed on behalf of the Panchayat, it is asserted that the shisham tree which the Petitioner had cut was on the land of the Shamlat Deh vesting in the Panchayat. If that were the only issue for consideration, there would be no force in this writ petition because a dispute on this question of fact would be outside the purview of the writ jurisdiction of this Court. The

proceedings of the Gram Panchayat, however, show that the action taken by it from its very inception is contrary to the provisions of the Act, and cannot, therefore, be sustained.

4. On 23rd of March, 1962, a notice was given by the Gram Panchayat Haibatpur to the Petitioner u/s 21 of the Punjab Gram Panchayat Act, the allegation being that he had cut shisham tree from the land of the Panchayat and was given a week's time to raise objections. Now, u/s 21, a Panchayat is empowered to make an order for the removal of a nuisance or an encroachment on a public street, place or drain. It is manifest that the removal of a shisham tree, even from the land of the Gram Panchayat, does not constitute an encroachment or a nuisance and the notice per se u/s 21 is illegal. The Petitioner sent a reply in response to this notice on 31st of March, 1962, stating thus:

I have not cut any shisham tree from the land of the Panchayat, on the other hand I have cut it from my agricultural land of which the Petitioner is the owner. The Panchayat has no right over this. And permission has been obtained from the Forest Department regarding the sheesham tree in favour of the Petitioner.

5. Annexure "C is a copy of the letter of the Divisional Forest Officer, Karnal Forest Division, authorising the Petitioner "to cut and remove the trees for his own use". The tree, according to this order, "is hereby written off from the enumeration list of Jind Range". The Gram Panchayat, thereafter, issued a notice (Annexure D), this time under Sections 21 and 109 of the Gram Panchayat Act "to hand over the sheesham tree to the Sarpanch within a week". A threat was also made in this notice that if the Petitioner failed to comply with the requirements of the notice a fine of Rs. 15 for the first day and rupee one per day on each subsequent day would be imposed on him. This notice of 13th of June, 1962, was replied to by the Petitioner on 21st of June, 1962. It was reiterated that "the Petitioner has not cut any standing sheesham tree of the Gram Panchayat Haibatpur nor has he taken it away. Therefore, it is submitted that the Gram Panchayat Haibatpur will be responsible for all costs and damages if it resorts to any proceedings". On the same day resolution No. 27 was passed by the Gram Panchayat Haibatpur. This is Annexure "F". The operative portion of this resolution is thus worded:

Ram Bhagat appeared this day, i.e., on 21st June, 1962. But he has refused to hand over the sheesham tree. Therefore, he is fined Rs. 24 for non-compliance of the order of the Court and in default it is proper to impose a fine of Rupee one per day till realisation. This action has been taken unanimously and u/s 23 of the Gram Panchayat Act.

6. The Petitioner then moved the Sub-Divisional Magistrate u/s 97 of the Act and his application having been dismissed, he has now approached this Court in writ proceedings.

7. Under Sub-section (1) of Section 109 of the Gram Panchayat Act, "whoever removes, displaces or makes an alteration in or otherwise interferes with any

payment gutter or other material...or other such property of the Gram Panchayat or interferes with any right, title or interest whatever, in the land vesting in the Panchayat without the written sanction of the Gram Panchayat or other lawful authority shall be punishable with fine which may extend to twenty-five rupees. Section 97 vests the power in the Deputy Commissioner of the Sub-Divisional Magistrate to suspend the execution of any resolution or order of the Gram Panchayat. Section 23 imposes a penalty for disobeying an order of the Gram Panchayat and makes such a person liable to penalty which may extend to twenty-five rupees. I mention Section 23 as in some of the orders it is mentioned that action is being taken for disobedience of the earlier direction given u/s 21.

8. It seems clear from the annexure which have been filed in this case that the Petitioner had challenged the right of the Panchayat in the land from which the sheesham tree was cut. According to the Petitioner, the land had been allotted to him. It is true that the Gram Panchayat had asserted that the sheesham tree was standing on the land of the Gram Panchayat. The right title and interest of the Gram Panchayat was, therefore, challenged and it cannot be said that the property of the Panchayat had been interfered with to justify action u/s 109 of the Act. The permission accorded by the Forest Department to the Petitioner supports to some extent the case which the Petitioner had been asserting throughout. It would be strange if Section 109 were to be construed to mean that a Panchayat would be entitled to recover fine under it in respect of property which is not admitted to be that of Panchayat by the defaulter. Moreover, the Panchayat cannot be allowed to be a judge in its own cause by deciding that the property which the Petitioner claims to be his is in fact that of the Panchayat. If the position maintained by the Panchayat is sustained it would mean that no one can ever oppose with impunity an assertion of title in any property made by the Panchayat as against the rest of the world. It is also an illegality in the order embodied in the resolution that the Petitioner has been asked to pay a recurring fine. As I am of the view that the entire proceedings of the Panchayat are void and illegal, being of a coercive nature and being in respect of property whose ownership by the Panchayat is disputed, I quash the order of the Sub-Divisional Magistrate passed u/s 97 and direct that the parties should have the matter of the ownership of the land on which the sheesham tree was standing decided by a Court of competent jurisdiction. The Petitioner cannot be made to part with the timber which he had cut by an arbitrary fiat of the Panchayat when there is a dispute about the ownership of the land on which it stood.

9. This petition will, therefore, be allowed and in the circumstances of the case, the Petitioner will also get the costs of this petition.