
(2013) 09 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 5301 of 2013 (O&M)

Surender Kumar

APPELLANT

Vs

Gram Panchayat, Bariawas and Others

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 173 PLR 687

Hon'ble Judges : Paramjit Singh Patwalia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Paramjeet Singh, J.—The question for determination in this revision petition is whether it is a condition precedent to serve a notice u/s 205 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as the "1994 Act") before instituting a suit against a Gram Panchayat. The petitioner-plaintiff brought a suit against the Gram Panchayat, Bariawas through its Sarpanch and other officials for declaration and permanent injunction with the averments that he is owner in possession of the suit property as legal heir of Ramji Lal and the same is his ancestral property and is owned and possessed by him and his ancestors since the time of consolidation and there is a residential house, boundary wall and darwaja in the same. The same has never been used for any public purpose and the level of the land was uneven and was made even by the ancestors of the petitioner-plaintiff in the year 1970. It is further averred that the houses of respondent Nos. 4 and 5 - defendant Nos. 3 and 4 are just opposite to the suit property and they have encroached upon the common passage. Respondent No. 5-defendant No. 2 is Sarpanch of the Gram Panchayat, whereas respondent No. 4-defendant No. 1 is political person. During the pendency of the suit, arguments on the point of maintainability of the suit were heard. It was observed that suit is not maintainable against the government officials i.e. defendant Nos. 4 and 5 for want of service of notice u/s 80 of the CPC (hereinafter referred to as the "Code") and suit qua Gram Panchayat is not maintainable for non serving of

notice u/s 205 of the 1994 Act. The trial Court vide order dated 26.08.2011 dismissed the suit qua respondent Nos. 1 to 3 - defendant Nos. 3, 4 and 6 for want of service of notice u/s 205 of the 1994 Act. Appeal preferred on behalf of the petitioner-plaintiff was also dismissed by the learned Additional District Judge, Rewari vide order dated 17.08.2013. Hence, this revision petition for quashing of order dated 26.08.2011 passed by learned Civil Judge (Junior Division) Rewari and order dated 17.08.2013 passed by learned Additional District Judge, Rewari.

2. I have heard learned counsel for the parties and perused the record.

3. Section 204 of the 1994 Act provides bar of action which reads as under:-

204. Bar of action.- (1) No suit or other legal proceedings in a civil or criminal Court shall lie against any Panch, Sarpanch, Member, Chairman, Vice-Chairman, President and Vice-President, as the case may be in respect of any act done in good faith under this Act.

(2) No civil suit or proceedings shall lie against any Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be, in respect of any act done in the discharge of any of its functions and duties imposed under this Act.

4. Section 205 of the 1994 Act starts with marginal heading "Suits against Gram Panchayat, Panchayat Samiti or Zila Parishad or any of its officers", which reads as under:-

205. Suits against Gram Panchayat, Panchayat Samiti or Zila Parishad or any of its officers,- No suit or legal proceedings shall be instituted against any officer or official of a Gram Panchayat, Panchayat Samiti or Zila Parishad or any of their officers or officials or any person acting under their direction for anything done under this Act, until the expiration of two months next after a notice in writing stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of any aforesaid body delivered or left at its office and in the case of any individual as aforesaid delivered to him at his office or usual place of abode; and the plaint shall contain a statement that such notice has been so delivered.

5. Learned counsel for the petitioner vehemently contended that the aforesaid provisions have been considered by this Court in the earlier judgments under the Punjab Gram. Panchayat Act, 1952 (hereinafter referred to as the "1952 Act"). Section 204 of 1994 Act is pari materia to Section 104 of 1952 Act and Section 205 is pari materia to Section 108 of 1952 Act. The provisions of Sections 104 and 108 of 1952 Act read as under:-

104. Bar to actions.- (1) No suit or other legal proceedings in a civil or criminal court shall lie against any Panch and any officer or servant of the Panchayat in Punjab in respect of any act done in good faith under this Act.

(2) No civil or revenue suit or proceedings shall lie against any Gram Panchayat

in respect of any act done in the discharge of any of its duties imposed under this Act.

108. Suits against Panchayat or its officers.- (1) No suit or legal proceeding shall be instituted against any officer or servant of a Gram Panchayat or Adalti Panchayat or any person acting under their direction for anything done in good faith under this Act, until the expiration of two months next after a notice in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of any aforesaid body delivered or left at its office and, in the case of any individual as aforesaid delivered to him, at its office or usual place of abode; and the plaint shall contain a statement that such notice has been so delivered.

(2) Limitation of such suits.- Every such suit shall be dismissed unless it is instituted within six months from the date of the accrual of the alleged cause of action.

6. Learned counsel for the petitioner vehemently contended that so far as the Block Development and Panchayat Officer and the State of Haryana i.e. respondent Nos. 2 and 6 - defendant Nos. 4 and 5 are concerned, they are government officials and notice u/s 80 of the Code is mandatory and he is not disputing this proposition. However, he is contesting specifically with regard to the dismissal of suit qua respondent Nos. 1 and 3 - defendant Nos. 3 and 6 i.e. Gram Panchayat and Village Secretary for non compliance of the provisions of the Act contemplating bar of action against the officials and requirement of notice.

7. Section 204(1) of 1994 Act provides "No suit or other legal proceedings in a civil or criminal Court shall lie against any Panch, Sarpanch, Member, Chairman, Vice-Chairman, President and Vice-President, as the case may be in respect of any act done in good faith under this Act" and sub section (2) of Section 204 of 1994 Act provides "No civil suit or proceedings shall lie against any Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be, in respect of any act done in the discharge of any of its functions and duties imposed under this Act."

8. From the reading of the above provisions, it can be made out that under sub Section (2) of Section 204, civil suit is only barred against a panchayat if it relates to an act which is performed in the discharge of its statutory duties. Thus, sub section (2) of Section 204 is not applicable to the facts of the case and no reference to this Section has been made in the orders passed by both the Courts below.

9. Now, the matter to be considered by this Court is as to what is the effect of non-compliance of Section 205 of 1994 Act.

10. The perusal of the Section 205 of 1994 Act reveals that its marginal heading starts with "suits against Gram Panchayat, Panchayat Samiti or Zila Parishad or

any of its officers". The plain reading of this Section makes it clear that there it does not contain any reference of the notice to be delivered before a suit or legal proceedings is instituted against Gram Panchayat. It says "no suit or legal proceedings can be instituted against any officer or official of a Gram Panchayat, Panchayat Samiti or Zila Parishad or any of their officers or officials, or any person acting under their direction for anything done under this Act". I fail to see how marginal heading can provide a key to the construction of the provision itself. The persons against whom a suit cannot be instituted without serving a notice are specified as officers or officials in the provisions. Gram Panchayat is not mentioned in this list. It only refers to the officers and officials and it is manifest that a notice need not be served on Gram Panchayat before the institution of a suit or legal proceedings against it.

11. The contention of the learned State-counsel that the intention of the Legislature was to include Gram Panchayat also as an institution on which a notice has to be served before the filing of the suit or legal proceedings, appears to be misconceived. Rather from the wording of Section 205 of 1994 Act it is clear that "No suit or legal proceedings shall be instituted against any officer or official of Gram Panchayat, Panchayat Samiti or Zila Parishad or any of their officers or officials or any person acting under their direction for anything done under this Act, until the expiration of two months next after a notice in writing stating cause of action....." The Legislative intent can be inferred from the wording of Sections 204 and 205 of 1994 Act. Section 205 of 1994 Act nowhere indicates nor any inference can be drawn that Legislature intended to include Gram Panchayat also as an institution on which notice has to be served before filing a suit or legal proceedings against the Gram Panchayat.

12. Reference can be made to the judgment of this Court in Gram Panchayat Mauza Nanglan Vs. Nagina Singh and Others, . In the said judgment, this Court had construed Sections 104 and 108 of 1952 Act which are *pari materia* to Sections 204 and 205 of Act 1994.

13. Learned State counsel has cited the judgment of this Court in the case of Babu Lal v. Gram Panchayat and others, C.R. No. 1825 of 2009, decided on 01.04.2009. In that case the provisions have not been specifically considered. Only reference has been made to Section 205 of 1994 Act and it has been further held that there is no provision for exemption of notice u/s 205 of 1994 Act. This is not in dispute, but the observations are *per incuriam*.

14. So far as the contention that the suit is barred under the provisions of Punjab Village Common Lands (Regulation) Act is concerned, the same shall be determined by the Court after filing of the written statement and framing of issues. A preliminary issue in this regard can be framed.

15. So far as the contention of the learned State counsel that the Gram Panchayat has power to remove the encroachment is concerned, that power flows from Section 24 of the 1994 Act which is equivalent to Section 21 of 1952

Act. Both provisions are *pari materia*. The issue was considered by this Court in *Gram Sabha Naya Shehar v. Niranjana Singh*, 1976 P.L.J. 652. The mere fact that a notice was issued by the Gram Panchayat u/s 21 of 1952 Act calling upon the petitioner to remove some encroachment would not, *per se*, prove that the land on which the encroachment is said to have been made had vested in the Gram Panchayat or was a public place. The proper forum for adjudication, when the title to such a property is disputed, is the civil court and a suit filed specifically for the purpose can certainly be not barred by invoking the provisions of Section 204(2) of 1994 Act. In view of the above, present revision petition is allowed. Impugned orders passed by both the Courts below are set aside. Suit filed by the petitioner-plaintiff is held to be maintainable against Gram Panchayat.