

(1963) 02 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 10 of 1962

The State of Punjab and Another

APPELLANT

Vs

Bijay Singh and Others

RESPONDENT

Date of Decision : 12-02-1963

Acts Referred:

Punjab Gram Panchayat Act, 1952 — Section 102, 102(2)

Citation : AIR 1963 P&H 330

Hon'ble Judges : S.S. Dulat, J;S.B. Capoor, J;D.K. Mahajan, J

Bench : Full Bench

Advocate : M.R. Sharma, for the Appellant; Parkash Chand, for the Respondent

Final Decision : Dismissed

Judgement

Capoor, J.—This is an appeal under Clause 10 of the Letters Patent against the judgment of a learned Single Judge of this Court allowing the writ petition under Article 226 of the Constitution of India by Bijay Singh, Sardar Singh, Ram Lal and Ram Kishan (now respondents) and quashing certain orders passed by the Director of Panchayats, Punjab, the latter is one of the appellants and the other appellant being the State of Punjab. Both these were respondents to the writ petition.

2. This writ petition has been referred to a Full Bench by an order of the Division Bench dated the 17th July, 1962, in view of the fact that Civil Writ No. 221 of 1962 Jai Ram Dass v. Director of Panchayats, in which a somewhat similar question had been raised, had been referred to a Full Bench.

3. Bijay Singh was elected as Sarpanch and the other three respondents, that is, Sardar Singh, Ram Lal and Ram Kishan, as the Panches of the Gram Panchayat of Village Dinod, Tehsil Bhiwani, District Hissar. Dy an order of the Director of Panchayats, Punjab thereafter to be reierca to as the Director) under Sub-section (1) of Section 102 of the Punjab Gram Panchayat Act, 1952, (Punjab Act No. IV of 1953) (hereinafter to be referred to as the Act) dated the 3rd March

1950, each of these men was suspended and debarred from taking part in any act or proceedings of the Panchayat during the period of the suspension. Then on the 23rd July, 1962, the Director passed an order (copy Annexure "B"), which was in exercise of the powers conferred upon him under Clause (e) of Sub-section (2) of Section 102 of the Act, and each of these four respondents was removed from the office of Ranches of the Gram Panchayat Dinod. An order under Sub-section (3) of Section 103 of the Act was also passed to the effect that they should be disqualified for re-election to the said Panchayat for a period of three years from the date of their removal. These are the impugned orders in the case and the ground, given in the petition and in these orders for the action taken, was that in a certain declaratory suit, instituted by the proprietors of the village in respect of the village common land, they had, ignoring the interest of the Panchayat, admitted the plaintiff's claim which resulted in the passing of a decree against the Panchayat and thereby the Panchayat had been deprived of the advantage of the common land measuring 2000 bighas. There was an ancillary charge against the Sarpanch that he had wasted the fund of the Gram Panchayat by unnecessarily engaging the services of a lawyer for pursuing the case in Court.

4. In their petition, the petitioners had pointed out that originally the village shamlat consisted of about 3200 bighas, the various proprietors had reclaimed Oanjar land out of the shamlat deh, reduced it into their possession and improved it. It has been in their possession since 1908. In the year 1945, the proprietors had by mutual consent reserved 1000 bighas for common purposes and divided the remaining 2,200 bighas of the shamlat land among themselves and thus these 2,200 bighas ceased to be part of the shamlat deh. In consequence of the passing of the Punjab Village Common Land Regulation Act 1 of 1934, mutation in respect of transfer of the entire area of 3,200 bighas as shamlat deh was entered in the name of the Gram Panchayat on the 8th May, 1954. the proprietors of the village instituted a civil suit for a declaration that this mutation so far as it pertained to 2,200 bighas of land was illegal and ultra vires. The plaintiffs' claim was admitted by the Sarpanch and other Ranches (now respondents) as they were advised by their counsel that it would be useless to defend the suit. It was contended that the impugned orders were made by the Director of Panchayats without any enquiry and without giving any opportunity to the petitioners in the writ petition to defend themselves and without any evidence or proof.

5. As would appear from the judgment of the learned Single Judge, the only submission before him by the learned counsel for the present appellants was that Annexure "A" was really a notice to show cause and cause having actually been shown in the form of explanation (vide Annexure "C") the order of the Director of Panchayats was valid and conclusive. The learned Single Judge observed that Annexure "A" neither purported to be a notice nor did its language by any stretch suggest that the Director of Panchayats was giving a show cause notice against any charge framed or against any proposed action, which was contemplated by

the Director. These observations appear to us to be unexceptionable. It does not appear that the departmental records were made available at the hearing of the writ petition. Mr. Mela Ram Sharma, who appeared on behalf of the appellants, maintained that actually the District Panchayat Officer had made an enquiry in the matter and he was prepared to produce the departmental records in support of his contention. No point, which was not urged before the learned Single Judge, can, however, be agitated in Letters Patent Appeal and it is amply clear from the judgment of the learned Single Judge that no such contention was raised at the bar in opposing the writ petition. Sub-section (2) of Section 102 of the Act, which confers upon the Government the power to remove any Panch, provides that this power is to be exercised "after such enquiry as it may deem fit". On the material placed before the learned Single Judge, the only finding possible was that there had been no enquiry as contemplated by the statute. His order allowing the writ petition cannot, therefore, be disturbed in Letters Patent Appeal. I would, therefore, dismiss the appeal but in the circumstances leave the parties to bear their own costs of the appeal.

Dulat, J.

6. I agree.

Mahajan, J.

7. I also agree.