

Before G. C. Mital and K. S. Bhalla, JJ.

VED PARKASH,—Petitioner.

versus

THE GRAM PANCHAYAT AND ANOTHER,—Respondents.

Civil Writ Petition No. 1152 of 1984.

September 8, 1988.

Punjab Gram Panchayat Act (IV of 1953)—S. 109(1) and (2)—Illegal removal of tree from Panchayat Land causing loss—Gram Panchayat imposing penalty and damages by composite order under section 109(2) without assessing the quantum separately—Penalty imposable under Section 109(1) only—Such composite order under Section 109(2)—Whether valid.

Held, that the amount was imposed as fine but because the petitioner was required to pay the same under sub-section (2) of Section 109 of the Gram Panchayat Act, 1952, obviously the Panchayat meant damages plus penalty in assessing that amount. Penalty prescribed under Section 109(1) of the Act for such an act no doubt extends upto Rs. 50 only, but the Gram Panchayat made an order under sub-section (2) of Section 109 of the Act and not under sub-section (1) thereof. It provides that in case a person on whom penalty is imposed has caused any damage to the property of a gram Panchayat, the person incurring such penalty shall be liable to make good such damage as well as such penalty. Therefore, the amount of Rs. 150 which includes the damage caused to the Gram Panchayat besides the penalty cannot be said to be excessive. Hence it has to be held that the said order directing person to pay penalty and damages is valid. (Paras 1 and 2).

Punjab Gram Panchayat Act (IV of 1953)—Ss. 109(2) and 109-B—Dispute between land holder and Gram Panchayat regarding ownership of property—Gram Panchayat—Whether has jurisdiction to decide.

Held, that the Gram Panchayat is a statutory body set up under the Act which is an Act to provide for better administration in the rural areas of Punjab Panchayats. It enjoys both executive and judicial powers. In exercise of its control relating to miscellaneous matters, Gram Panchayat Rangeelpur passed an order under Section 109(2) of the Act. Appeal against the order is also provided under section 109-B of the Act and we see no illegality in any of the two impugned orders. Hence it has to be held that the Gram Panchayat has jurisdiction to decide this matter and not a civil court.

(Para 3).

Ram Bhagat v. The Gram Panchayat Haibetpur and another, 1969
Curr. L.J. 582.

PARTLY OVERRULED.

Civil Writ Petition under Article 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to issue a writ of Certiorari, mandamus and prohibition or any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

It is further prayed that :—

- (a) the record of the case be summoned.*
- (b) after perusal of the record, quash the impugned orders annexures P-1 and P-2/T.*
- (c) the respondents Nos. 1 and 2 be directed not to recover the penalty imposed amounting to Rs. 150,—vide Annexure P-1;*
- (d) production of certified copy of annexure P-2 be dispensed with.*
- (e) issuance of advance notice to the respondents may also kindly be dispensed with as the writ petition involves stay matter;*

It is further prayed that during the pendency of the writ petition, recovery of the fine may kindly be stayed.

The writ petition may kindly be accepted with costs.

V. K. Vashishat, Advocate, for the Petitioner.

ORDER

K. S. Bhalla, J.—

1. A *kikar* tree was removed from the land bearing Khasra No. 138 of village Rangeelpur which belonged to the Gram Panchayat of the said village. On the report of the Chowkidar that the same was removed by petitioner Ved Parkash, notice was given to him under Section 109 of the Punjab Gram Panchayat Act, 1952 (for short 'the Act' hereinafter). When the petitioner failed to show

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any justification for the removal of that tree despite repeated opportunities given to him for the purpose, he was directed to pay Rs. 150 under Section 109(2) of the Act. No doubt the amount was imposed as fine but because the petitioner was required to pay the same under sub section (2) of Section 109 of the Act, obviously the Panchayat meant damages plus penalty in assessing that amount. Aggrieved by the order of the Gram Panchayat, petitioner preferred appeal before District Development and Panchayat Officer Roop Nagar and that was dismissed,—*vide* his order dated 27th October, 1983. Through this writ petition petitioner Ved Parkash has assailed both those orders, of the Gram Panchayat as well as District Development and Panchayat Officer, Roop Nagar and has prayed for their quashing. It was admitted for hearing to Division Bench because it was felt that the judgment reported as *Ram Bhagat v. The Gram Panchayat Haibctpur and another* (1) cited by the petitioner required reconsideration.

2. Penalty prescribed under Section 109(1) of the Act for such an act no doubt extends upto Rs. 50 only but as already referred to above, the Gram Panchayat made an order under sub-section (2) of section 109 of the Act and not under sub-section (1) thereof. It provides that in case a person on whom penalty is imposed has caused any damage to the property of a Gram Panchayat, the person incurring such penalty shall be liable to make good such damage as well as such penalty. Therefore, the amount of Rs. 150, which includes the damage caused to the Gram Panchayat besides the penalty cannot be said to be excessive.

3. The case of the respondent before the Gram Panchayat was that the *Kikar* tree was removed from the land comprising khasra No. 9/24/1/1 belonging to him and not from the Panchayat land. Despite repeated opportunities given to him to show that the *Kikar* tree was removed from his land and not from the land of the Gram Panchayat, he could not establish that fact before the gram Panchayat. The District Development and Panchayat Officer, Roop Nagar has also rejected the appeal of the petitioner through well reasoned order (Annexure P-2). It is not the case of the petitioner that the land bearing khasra No. 138, which is claimed by the gram Panchayat belonged to him that a question of title was involved for determination of a Civil Court between the two. On the other hand the case set up by him was that the *kikar* tree was cut from

(1) 1965 Curr. L.J. 582.

a different land and not from khasra No. 138, for which he was required to satisfy the Gram Panchayat. The question involved therefore, cannot be said to be a cause between the Gram Panchayat and the petitioner. Gram Panchayat is a statutory body set up under the Act which is an Act to provide for better administration in the rural areas of Punjab Panchayats. It enjoys both executive and judicial powers. In exercise of its control relating to miscellaneous matters, Gram Panchayat Rangeelpur passed an order under Section 109(2) of the Act. Appeal against that order is also provided under Section 109-B of the Act and we see no illegality in any of the two impugned orders. The law laid down in *Ram Bhagat's case* (supra) through general observation, 'moreover the Panchayat cannot be allowed to be a judge in its own cause by deciding that the property which petitioner claims to be his is in fact that of the Panchayat', in somewhat similar circumstances cannot be considered to be good law and is hereby overruled as it relates to management and control of the property belonging to Gram Panchayat and cannot possibly be taken to be a dispute between an individual and the Gram Panchayat for determination by a Court of law as a civil cause. In that ruling, what mainly weighed with the learned Single Bench of this Court was that the petitioner of that case before removal of the tree got permission from the forest department for its removal which was considered to provide support to his assertion.

4. For the foregoing reasons, we see no merit in this writ petition and the same is dismissed. No order for costs is however made.

R.N.R.