

The Indian Law Reports

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

RAM BHAGAT,—*Petitioner*

versus

THE GRAM PANCHAYAT, HAIBATPUR AND ANOTHER,—
Respondents

Civil Writ No. 1983 of 1962.

Punjab Gram Panchayat Act, 1952 (IV of 1953)—Ss. 21, 23 and 109—Person cutting shisham tree from a land claiming it to be his own and disputing the ownership of the Panchayat over it—Whether commits nuisance or encroachment and whether liable to be proceeded against under S. 21 or 23—Question of title—Whether can be decided by Panchayat—S. 109—Whether can be invoked.

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April, 29th.

Held, that under section 21 of the Punjab Gram Panchayat Act, 1952, 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* under section 21 is illegal.

Held, further, that it would be strange if section 109 of the Act 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 the 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. The right, title and interest of the Gram Panchayat having been challenged, it cannot be said that the property of the Panchayat had been interfered with to justify action under section 109 of the Act.

Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the order of respondent No. 1, dated the 21st June, 1962 and also that of respondent No. 2 dated the 18th October, 1962.

SRI CHAND, GOYAL, ADVOCATE, for the Petitioner.

M. K. MAHAJAN, ADVOCATE, for the Respondents.

ORDER

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SHAMSHER, 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 under section 97 of the Gram Panchayat Act.

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.

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 Shamilat 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.

On 23rd of March, 1962, a notice was given by the Gram Panchayat Haibatpur to the petitioner under section 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, under section 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* under section 21 is illegal. The petitioner sent a reply in response to this notice on 31st of March, 1962, stating thus :—

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“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.”

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

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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 under section 23 of the Gram Panchayat Act."

The petitioner then moved the Sub-Divisional Magistrate under section 97 of the Act and his application having been dismissed, he has now approached this Court in writ proceedings.

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 under section 21.

It seems clear from the annexures 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 under section 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 under section 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.

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

R.S.

APPELLATE CIVIL

Before H. R. Khanna, J.

M/S NEW ASIATIC TRANSPORT (P) CO. LTD.,—Appellant

versus

MANOHAR LAL AND OTHERS,—*Respondents*

F.A.O. 86-D of 1964.

Motor Vehicles Act (IV of 1939)—Ss. 95, 110 and 110-B—Appointment of Tribunal—Whether should be of a person by name—Appointment of Judge of the Small Cause Court as tribunal—Whether legal—Award of compensation by the Tribunal—Whether can be made only against the Insurer—General Clauses Act (X of 1897)—S. 15—Effect of.

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May, 4th.