

Ram Ditta Singh *v.* The Deputy Commissioner, Ferozepore ,etc.
(Mehar Singh, C.J.)

if in dealing with a question of fact, the lower appellate court has placed the onus on a wrong party and its finding of fact was the result, substantially, of this wrong approach, that might be regarded as a defect in procedure.

The considerations which weighed with the lower appellate court were conjectural in the above sense as for instance, the fact that Basdev had claimed himself once to be the grandson of Ramji Lal, but was not found to be so by the court and, therefore, it should have been held that the adoption was in the nature of a farce. Similarly, the lower appellate court was influenced by the circumstance that a woman of eighty years had no reason to adopt a child and this should have been treated as a ground for holding that in fact there was no giving and taking in adoption. Another consideration was that if she wanted to adopt a child in accordance with the wishes of her husband, she might have done so earlier as she became a widow sometime in 1915 or 1916.

In this case, it is to be noticed that it was never alleged that the registration was bogus and once there is a registered deed of adoption and the factum of registration has not been doubted, what is open to disprove is non-compliance with the provisions of the Act. The circumstances considered by the lower appellate court do not displace the presumption which has to be raised under section 16 of the Act.

I am satisfied that the lower appellate court disregarded the presumption of section 16 and in doing so, committed an error of law. I would allow the appeal, set aside the decree of the lower appellate court and affirm that of the trial court. The defendant appellant will be entitled to his costs throughout.

K. S. K.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and R. S. Narula, J.

RAM DITTA SINGH,—*Petitioner*

versus

THE DEPUTY COMMISSIONER, FEROZEPURE AND OTHERS,—*Respondents*

Letters Patent Appeal No- 382 of 1967

January 10, 1968

*Punjab Gram Panchayat Act (IV of 1953)—S. 102—Deputy Commissioner—
Whether can suspend a panch when no inquiry against him has been ordered by*

the Government under section 102(2)—Section 102—Whether envisages two enquiries.

Held, that both the sub-sections of section 102 of The Punjab Gram Panchayat Act have to be read together and the plain meaning of the same is that when an inquiry is ordered to be started by the Government under sub-section (2), it is during the course of that enquiry that the Deputy Commissioner has the power to suspend a Panch under sub-section (1). If there is no enquiry ordered or started by the Government under sub-section (2), the power under sub-section (1) in the Deputy Commissioner does not become operative. The two sub-sections cannot be read in this way that there is some enquiry, apart from that under sub-section (2), during the course of which a Deputy Commissioner can suspend a Panch under sub-section (1). The language of sub-section (1) does not justify any such meaning. Sub-sections (1) and (2) do not envisage two enquiries, one for the purposes of suspension alone, another by the Government for the purposes of removal. Merely because the provisions of sub-section (1) precede the provisions of sub-section (2) giving power to the Government to hold or start an enquiry against a Panch, the provisions of the former sub-section cannot be read to provide for an enquiry independent and separate from that envisaged in sub-section (2). There may be some preliminary enquiry

period and order him to hand over the records, money or any property of the said body to the person authorised in this behalf.

- (2) Government may, after such enquiry as it may deem fit, remove any Panch (then appear a number of grounds on the basis of which such removal can be made)."

Respondent 1, while suspending the appellant, acted under sub-section (1), but his return to the petition of the appellant does not show that under sub-section (2) the Government has started any enquiry against the appellant. There are no two enquiries, one under sub-section (1) and another under sub-section (2). Both the sub-sections have to be read together and the plain meaning of the same is that when an enquiry is ordered to be started by the Government under sub-section (2), it is during the course of that enquiry that the Deputy Commissioner has the power to suspend a Panch under sub-section (1). If there is no enquiry ordered or started by the Government under sub-section (2), the power under sub-section (1) in the Deputy

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Dharamkot made enquiries regarding the irregularities committed by the appellant and submitted his report and that the enquiry was made under the orders of the Sub-Divisional Officer (Civil) at Zira. A show-cause notice was given to the appellant by the Block Development and Panchayat Officer, respondent 2, referring to certain allegations against him and asking him to explain why recommendation be not made to respondent 1 for his suspension. After that respondent 1 served a notice under sub-section (1) of section 102 of the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1953) calling upon the appellant to send his explanation, within a period stated, with regard to the allegations made against him in that notice. The appellant gave his explanation, but respondent 1 not being satisfied with that explanation proceeded, by an order of May 16, 1967, copy Annexure 'D', to suspend the appellant from the office of Sarpanch under sub-section (1) of section 102 of the Act. The appellant was required to hand over the money and property of the Gram Panchayat and the books of the Panchayat within a week and also to make a deposit of certain excess of cash said to be in his hands pertaining to the funds of the Gram Panchayat with interest at the rate of 4 per cent per annum, and then the order says that "he is also required to send his explanation to the Block Development and Panchayat Officer, Ferozepore, within a fortnight of the receipt of this order failing which it will be presumed that he has none to offer and action will be taken against him according to the merits of the case under section 102(2)(3) of the Gram Panchayat Act, 1952". It is this order of respondent 1 the legality of which was challenged by the appellant in his petition under Article 226 of the Constitution.

The learned Single Judge in his order of September 29, 1967, has dismissed the petition of the appellant on the one main ground that he still has an opportunity, during the course of the enquiry, to show-cause against the allegations against him and to demonstrate their falsity. This is an appeal under clause 10 of the Letters Patent against the order of the learned Single Judge.

In the Act, sub-sections (1) and (2) of section 102 read—

"102. (1) The Deputy Commissioner may, during the course of an enquiry, suspend a Panch for any of the reasons for which he can be removed, and debar him from taking part in any act or proceedings of the said body during that

period and order him to hand over the records, money or any property of the said body to the person authorised in this behalf.

- (2) Government may, after such enquiry as it may deem fit, remove any Panch (then appear a number of grounds on the basis of which such removal can be made)."

Respondent 1, while suspending the appellant, acted under sub-section (1), but his return to the petition of the appellant does not show that under sub-section (2) the Government has started any enquiry against the appellant. There are no two enquiries, one under sub-section (1) and another under sub-section (2). Both the sub-sections have to be read together and the plain meaning of the same is that when an enquiry is ordered to be started by the Government under sub-section (2), it is during the course of that enquiry that the Deputy Commissioner has the power to suspend a Panch under sub-section (1). If there is no enquiry ordered or started by the Government under sub-section (2), the power under sub-section (1) in the Deputy Commissioner does not become operative. The two sub-sections cannot be read in this way that there is some enquiry, apart from that under sub-section (2), during the course of which a Deputy Commissioner can suspend a Panch under sub-section (1). The language of sub-section (1) does not justify any such meaning. Sub-sections (1) and (2) do not envisage two enquiries, one for the purposes of suspension alone, and another by the Government for the purposes of removal. Merely because the provisions of sub-section (1) precede the provisions of sub-section (2) giving power to the Government to hold or start an enquiry against Panch, the provisions of the former sub-section cannot be read to provide for an enquiry independent and separate from that envisaged in sub-section (2). If sub-section (2) were sub-section (1) and sub-section (1) were sub-section (2), the result would be as I have already indicated, and merely because sub-section (1) comes first, it does not mean that it refers to an enquiry other than an enquiry under sub-section (2). The two sub-sections, as I have already said, have to be read together, and the obvious consequence is that it is only when the Government has ordered or started an enquiry under sub-section (2) against a Panch, that the Deputy Commissioner concerned has the power under sub-section (1) to suspend that Panch. He cannot suspend him in consequence of an enquiry not ordered or started by the Government under sub-section (2). The Legislature has designedly framed the

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two sub-sections in the manner in which the same are, leaving the power to order or start an enquiry against a Panch with the Government alone. The reason is obvious, for a Panch is member of an elected local body and a representative of his constituency so far as that elected body is concerned, and the Legislature did not intend to leave interference with such elected bodies in the hands of local officers by way of starting enquiries against the elected members of such local bodies. The power of suspension was previously with the Director of Panchayats and it is only the recent amendment that has given the same to a Deputy Commissioner, but that is only after the Government has taken the more serious decision of interfering with the tenure of an elected member of a Panchayat for irregularities or breaches referred to in sub-section (2) of section 102. The initial step that has to be taken to order or to start an enquiry has been confined by the Legislature only to the Government at the highest level, and this has been done as a matter of sound policy so as to obviate interference with such elected institutions in the State at the lower levels. There may be some preliminary enquiry or looking into the affairs of a Panchayat by the Government for the purpose of making up its mind to order or start an enquiry under sub-section (2), and it is only when it thus makes up its mind to act under that sub-section that an order by a Deputy Commissioner under sub-section (1) may follow, but such a preliminary enquiry does not give power to a Deputy Commissioner to act under sub-section (1) without there being an order by the Government for an enquiry under sub-section (2). In this case, as is clear from the return of respondent 1, the enquiry was only by respondent 2, the Block Development and Panchayat Officer, ordered by the Sub-Divisional Officer (Civil) and not by the Government under sub-section (2). The learned counsel appearing for the respondents contends that in his petition the appellant never raised this point in this form, but what the appellant did clearly say was that the order of suspension made by respondent 1 against him is without jurisdiction, and that covers this that it is an order made without there being first an order of Government starting an enquiry against him according to sub-section 2.

In the circumstances, the suspension of the appellant under sub-section 102 by respondent 1 is without jurisdiction and beyond his powers. As pointed out, the stage for the exercise of his powers under sub-section (1) has never arisen. Consequently, the appeal is

accepted, the order of the learned Single Judge is reversed, and the impugned order, dated May 16, 1967, of respondent 1, the Deputy Commissioner of Ferozepore, is thus quashed. In this appeal, respondent I will bear the costs of the appellant, counsel's fee being Rs. 100.

R. S. NARULA, J.—I agree.

K.S.K.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

BASANT SINGH,—Appellant

versus

GRAM PANCHAYAT, HABOLI, AND OTHERS,—Respondents

R.S.A. No. 799 of 1959

January 11, 1968

Punjab Land Revenue Act (XVII of 1887)—S. 44—Land recorded as Shamilat Deh in Revenue Records—Presumption as to its correctness—Whether arises—Decree of partition passed—Whether by itself rebuts the presumption—Such decree—Whether can be presumed to have been given effect to even when not executed.

Held that, if in the revenue records, a land has continued to be recorded as *Shamilat Deh*, presumption of correctness attaches to such entries and it is for the person challenging them to prove that the entries are erroneous. Even if there has been a decree of partition, that will make no difference. The decree by itself, unless given effect to, will not alter the existing state of affairs. The mere fact that there is a decree will not lead to the conclusion that what the decree decided was finally given effect to, and the subsequent state of affairs must be presumed to accord with that decree. It will, in each case, depend whether the decree has been executed or not and it cannot be held as a matter of law that a decree must be presumed to have been given effect to.

Second appeal from the decree of the Court of Shri A. N. Bhanot, Additional District Judge, Ambala Camp at Hoshiarpur, dated the 13th day of February, 1959, affirming with costs that of Shri K. L. Wason, Sub-Judge, 4th Class, Hoshiarpur, dated the 31st March, 1958 dismissing the plaintiffs suit with costs, to be paid to defendant No. 1.

M. K. MAHAJAN AND K. N. TEWARI, for the Appellant.

D. N. AWASTHI, ADVOCATE, for the Respondents.