

APPELLATE CIVIL

Before Bhopinder Singh Dhillon, J.

FAQIR CHAND,—Appellant

versus

Gram Sabha,—Respondent.

**Regular Second Appeal No. 439 of 1967**

March 4, 1970

*Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Sections 12 and 13—Punjab Land Revenue Act (XVII of 1887)—Sections 98 and 99—Revenue Recovery Act (I of 1890)—Rent payable to Gram Panchayat and recoverable as arrears of land revenue—Gram Panchayat—Whether has to establish the claim in Civil Court before such recovery is made—Remedy of the person challenging the arrears—Whether by way of suit after deposit of arrears.*

*Held*, that section 12 of the Punjab Village Common Lands (Regulation) Act, 1961, lays down that arrears of rent payable to a Panchayat shall be recoverable as arrears of land revenue. Thus for all practical purposes the arrears of rent are considered to be the arrears of land revenue. The scheme of the Act shows that Panchayat is not treated as an ordinary juristic person and provisions have been made in the Act wherein the Panchayat has been provided with summary remedies so that the land vested in the Panchayat could be managed without much of difficulty. For the purpose of recovery of rent as arrears of land revenue, the Panchayat has not to go to Civil Court to establish its claim before getting it recovered through the Collector. It can straightway send the request to the Collector to recover the amount of rent as arrears of land revenue and the moment the request is received, the Collector has no discretion but to proceed with the recovery under the provisions of Land Revenue Act. Civil Courts have jurisdiction after the amount is deposited under protest. The Panchayat is not a Judge in its own cause because according to the provisions of section 76 of the Punjab Land Revenue Act, the person, who is aggrieved and who feels that he has been asked to deposit the rent unduly, can go to the Civil Court after depositing the amount under protest and ultimately it will be civil Court which will determine as to whether the rent has been correctly recovered or not and in case it has been found that the same has not been correctly recovered, the same is liable to be returned to the plaintiff with costs. Thus the final adjudication will be by the civil Courts and not by the Panchayat.

(Paras 8, 11 and 14)

*Regular Second Appeal from the decree of the Court of Shri Shamshad Ali Khan, Additional District Judge, Patiala, dated the 1st day of April, 1967, affirming that of Shri Gurjit Singh Khurana, Additional Sub-Judge,*

*III Class, Bassi, dated the 8th February, 1966, dismissing the plaintiff's suit with costs.*

ACHHRA SINGH, ADVOCATE, for the appellant.

R. K. AGGARWAL, ADVOCATE, for the respondent.

#### JUDGMENT

B. S. DHILLON, J.—This is an appeal by the plaintiff who came to the Court with the allegation that the land measuring 13 *bighas* and 4 *biswas* situated in the area of village Latoor, was taken on lease by him from the Gram Panchayat at Rs. 12 per *bigha* besides two *Teh* at Rs. 50 for one year in the year 1961 which amount was duly paid to the Sarpanch of the Gram Panchayat. The further averment is that the amount of Rs. 1,230.25 Ps. is now being realized from him as arrears of land revenue by the Assistant Collector, 1st Grade, Bassi. Therefore, the suit was brought in, that the defendant Gram Panchayat be restrained from realizing this amount from him.

(2) The suit was opposed by the Gram Panchayat and a plea was taken that the Civil Court had no jurisdiction to try the suit. On the pleadings of the parties, the following issue was framed:—

“Whether the civil Court has jurisdiction to entertain and try the suit” . . . .

(3) Both the Courts below came to the finding that the civil Court had no jurisdiction to try the suit and dismissed the same. I have heard Mr. Achhra Singh, the learned counsel for the appellant, and Mr. Raj Kumar Aggarwal, the learned counsel for the Gram Panchayat at great length.

(4) The contention of the learned counsel for the appellant is that section 12 of the Village Common Lands (Regulation) Act, 1961, only provides that any arrear of rent payable to a Panchayat in respect of any land vested in the Panchayat, shall be recoverable as arrears of land revenue. His contention is that before the same can be recovered as the arrears of land revenue, it has to be found that the rent is in arrears and for that the Gram Panchayat cannot be allowed to become judge of its own cause and to determine as to what are the arrears. His further contention is that first the Gram Panchayat has to get it established from the civil Court as to what is the arrear

and then the question of recovery will come in. For this proposition, the learned counsel has relied on *The Custodian General of Evacuee Property, New Delhi and others v. S. Harnam Singh* (1). That was the case under the Administration of Evacuee Property Act. In that case the Division Bench of this Court held that before the money could be recovered as arrears of land revenue, the condition precedent as to the recovery of the arrears of land revenue was if the two conditions are satisfied (1) that the sum is due to the State Government or to the Custodian, and (2) that the sum is due under the provisions of the Act. Therefore, his contention is that the jurisdiction of the civil Court is not barred.

(5) On the other hand the learned counsel for the respondent Mr. Raj Kumar Aggarwal relied on the provisions of sections 98 and 99 of the Punjab Land Revenue Act. Section 98 of the Act runs thus:—

“In addition to any sums recoverable as arrears of land-revenue under this Act or any other enactment for the time being in force, the following sums may be so recovered, namely .....

Section 99 of the said Act is in the following terms:—

- “99. (1) The provisions of Chapter VI shall, with respect to any sum mentioned or referred to in this Chapter, apply, so far as they can be made applicable as if the sum were an arrear of land-revenue and the person from whom, either as principal or as surety, it is due were a defaulter in respect of such an arrear.
- (2) Unless any such sum is declared by any enactment for the time being in force to be recoverable as if it were an arrear of land-revenue due in respect of the land charged therewith, the provisions of section 77 shall apply under subsection (1) to the recovery thereof.”

(6) The contention of the learned counsel is that section 98 mentions that in addition to the sums recoverable under the Punjab Land Revenue Act and any other enactment for the time being in force, the sums mentioned in this section can also be recovered as

(1) 1956 P.L.R. 490.

arrears of land revenue. And section 99 says that the provisions of Chapter VI, will apply with respect to any sum mentioned or referred to in this Chapter. His contention is that other enactments for the time being in force have been referred to in section 98. Therefore, the provisions of Chapter VI of the Punjab Land Revenue Act will become applicable. He has further contended that keeping in view the provisions of section 78 which is in Chapter VI of the Punjab Land Revenue Act, if the plaintiff claims that he was not liable to pay, he shall have to first deposit the amount and then of course he can institute the suit in the civil Court for the recovery of the amounts paid. The learned counsel has further relied on section 5 of the Revenue Recovery Act, 1890. Section 5 of the said Act is as follows:—

“Where any sum is recoverable as an arrear of land-revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land-revenue which had accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself.”

(7) His contention is that the moment the local authority sends a request to the Collector to recover the amount as arrears of land-revenue, the Collector has no discretion but to proceed with the recovery of the amount and the provisions of the Land Revenue Act would apply and the civil Court has jurisdiction only after the plaintiff has deposited the amount under protest.

(8) I have given due consideration to the respective contentions of the learned counsel for the parties and I am of the opinion that the contention of the learned counsel for the respondent must prevail. Section 12 of the Punjab Village Common Lands (Regulation) Act, 1961, is the following terms:—

“Any arrears of rent payable to a Panchayat in respect of any land in *shamilat deh* vested or deemed to have been vested in it under this Act or *shamilat* law, shall be recoverable as arrears of land revenue.”

From the above-mentioned section it would be seen that section 12 mentions that the arrears of rent payable to a Panchayat shall be

recoverable as arrears of land-revenue. Thus for all practical purposes the arrears of rent shall be considered to be the arrears of land revenue. In order to correctly appreciate the import of section 12 of the Punjab Village Common Lands (Regulation) Act, 1961, we have to see the scheme of the Act. Section 7 of the Act gives power to the Assistant Collector Ist Grade, having jurisdiction over the area, to put the Panchayat into possession of the land. Thus it has to be noted that the Panchayat is not left to the remedy of approaching the Civil Court as an ordinary litigant would do for getting possession of the land which vests in the Panchayat. A summary procedure has been provided under section 7 of the Act.

(9) Section 10-A of the said Act gives powers to cancel or vary leases etc. of lands vested in the Panchayat on the ground mentioned in sub-section (2) of section 10-A, and the moment an order is passed by the Collector under this sub-section, the terms of any lease, contract or agreement which have been varied by him, shall stand varied and under sub-section (5) of this section, no person shall be entitled to claim any compensation for the loss or damage caused to the lessee or such person which may result from such cancellation or variation of the lease deed etc.

(10) Then comes section 12, which I have already reproduced in the earlier part of my judgement. Section 13 of the Act bars the jurisdiction of the Civil Court, and the same is in the following terms :—

“No Civil Court shall have jurisdiction over any matter arising out of the operation of this Act.”

(11) Thus it would be seen that the intention of the legislature is clear that the Panchayat should not be treated as an ordinary juristic person. The provisions have been made in the Act wherein the Panchayat has been provided with summary remedies so that the land vested in the Panchayat could be managed without much of difficulty.

(12) The authority relied upon by the learned counsel for the appellant in *Harnam Singh's case* (1) (supra), is not applicable to the facts of the present case because while interpreting section 48 of

the Administration of the Evacuee Property Act, the learned Judges considered the meaning of the word 'due' used in section 48(1) of the Administration of Evacuee Properties Act. The meaning given to the word 'due' in this Division Bench authority, was to mean that which is owed, that which custom, statute or law requires to be paid, that which anyone has a right to demand, claim or possess and that which can justly be required, and further, a debt or other obligation is due when it is legally enforceable, i.e., when the creditor has a right to demand payment and to enforce collection.

(13) In section 12 of the Punjab Village Common Lands (Regulation) Act, 1961, the word used is 'payable'. The meaning of the word 'payable' as defined in 'Words and Phrases', Permanent Edition, published by West Publishing Co., is: "capable of being paid; suitable to be paid; admitting or demanding payment; justly due;". But as far as the provisions of the Punjab Village Common Lands (Regulation) Act, 1961, are concerned, as I have already pointed out in the earlier part of my judgment. Various other provisions in the Act from which it can safely be presumed that the scheme of these provisions is completely different from those of the Administration of Evacuee Property Act (XXXI of 1950). Therefore, the authority cited by the learned counsel for the appellant is not helpful to him for the proposition for which he has relied upon the same.

(14) The provisions of section 5 of the Revenue Recoveries Act make it incumbent upon the Collector to proceed with the recovery of the sum, if the local authority requests for the recovery of the same. Section 4 of this Act provides an analogous provision to that of section 76 of the Punjab Land Revenue Act. If the recovery proceedings are transferred from one Collector to another, that exigency will be visualised by the provisions of section 4. The argument of the learned counsel for the appellant that the Panchayat cannot be allowed to be a Judge of its own cause, cannot hold the field for the simple reason that according to the provisions of section 76 of the Punjab Land Revenue Act, the person, who is aggrieved and who feels that he has been asked to deposit the rent unduly, can go to the civil Court after depositing the amount under protest and ultimately it will be civil Court which will determine as to whether the rent has been correctly recovered or not; and in case it has been found that the same has not been correctly recovered, the same is liable to be returned to the plaintiff with costs. Thus the final

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adjudication in this case will be by the civil Courts and not by the Panchayat.

(15) I am further inclined to agree with the contention of the learned counsel for the respondent to the effect that the other enactments under which the recovery has to be made under the Punjab Land Revenue Act are mentioned in section 98 of the Punjab Land Revenue Act and because of the provisions of section 99 of the Act, the provisions of Chapter VI of the said Act will apply and if the provisions of this Chapter are made applicable, the only remedy available is to deposit the amount under protest and then approach the civil Court of competent jurisdiction under section 78 of the said Act.

(16) For the reasons recorded above, there is no merit in this regular second appeal and the same is hereby dismissed with costs throughout.

N. K. S.

REVISIONAL CIVIL

Before H. R. Sodhi, J.

KULBIR INDER SINGH, AND ANOTHER,—*Petitioners*

*versus*

VIRAM SINGH AND OTHERS,—*Respondents*

Civil Revision No. 336 of 1969

March 5, 1970

*Court Fees Act (VII of 1970)—Sections 7(iv)(c) and 7(v)—Hindu Minority and Guardianship Act (XXXII of 1956)—Section 8—Specific Relief Act (1 of 1877)—Section 42—Property of a minor sold by the natural guardian without the permission of the Court—Sale voidable at the instance of the minor—Such minor—Whether must sue for cancellation of the sale-deed—Suit only for possession of the property sold—Whether maintainable—Plaintiff framing a suit in a particular form—Court fee—Whether to be paid on the plaint as framed—Question of Court fee and correct form of suit—Whether to be mixed.*

*Held*, that where a natural guardian of a minor sells minor's property without permission of the Court, such a disposal of the property has been declared by section 8 of the Hindu Minority and Guardianship Act, 1956, to be voidable at the instance of the minor or minors concerned or any person