

## CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and A. N. Grover, J.

NARURANG LAL,—*Petitioner.*

*versus*

THE GRAM PANCHAYAT AND ANOTHER,—*Respondents.*

Civil Miscellaneous No. 2835 of 1962

1963  
Sept., 19th.

*Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 23—Recurring fine—Whether can be imposed on the first conviction of the offender.*

*Held*, that the imposition of recurring fine on the offender on his first conviction for the breach of the provisions of section 21 of the Punjab Gram Panchayat Act, is illegal since it tantamounts to imposing fine for an offence not yet committed, which cannot be done. In such a case the course to be adopted by the Panchayat is to summon the offender from time to time if he has not removed the encroachment and continue imposing on him the recurring fine as it becomes due up to the limit prescribed in section 23 of the Act.

*Case referred by Hon'ble Mr. Justice Grover, on 19th April, 1963, to a larger Bench for decision of the important question of law involved in the case and the case was finally decided by the Hon'ble Chief Justice, Mr. D. Falshaw and Hon'ble Mr. Justice A. N. Grover, on 19th September, 1963.*

*Petition under Article 227 of the Constitution of India praying that the orders of respondent No. 1, dated 1st March, 1961, 24th March, 1961 and 10th March, 1961, and that of respondent No. 2, dated 13th July, 1961 be quashed.*

H. L. SARIN, AND V. P. SOOD, A. L. BAHRI AND K. K. CUCCRIA, ADVOCATES, for the Petitioners.

S. C. GOYAL AND S. S. MAHAJAN, ADVOCATES, for the Respondents.

## JUDGMENT

FALSHAW, C.J.—This case has been referred to a Division Bench by my learned brother because of conflicting decisions of two learned Single Judges of this Court concerning the interpretation of section 23 of the Punjab Gram Panchayat Act, IV of 1953. Falshaw, C.J.

The facts are that the Gram Panchayat of Gujarwas, Mohindergarh District, took proceedings against the petitioner Naurang Lal under section 21 of the Act on the 1st of March, 1961, on the ground that in constructing a house he had encroached one public pathway. It was held that he had offended in this manner and he was ordered under section 23 of the Act to pay a fine of Rs. 20 and also a penalty of 50 nP., per day as from the 10th of March, 1961, until the day when the encroachment was removed. His revision petition against this order was dismissed by a Magistrate at Narnaul and he then came to this Court under Article 227 of the Constitution.

Section 23 of the Act reads:—

“Any person who disobeys an order of the Gram Panchayat made under the two last preceding sections, shall be liable to a penalty which may extend to twenty-five rupees; and if the breach is a continuing breach, with a further penalty which may extend to one rupee for every day after the first during which the breach continues:

Provided that the recurring penalty shall not exceed the sum of rupees five hundred.”

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The main point raised in the petition was that in spite of the provisions of section 23 of the Gram Panchayat had no power to impose a prospective recurring penalty and when the case came up for hearing before my learned brother on the 19th of April, 1963 a judgment of Khanna, J., *Suram Singh v. The Gram Panchayat of Samtana Kalan and another* (1), in which this contention was upheld was cited on the one side while on the other side an unreported decision of Gurdev Singh, J., in *Banta Singh v. Gram Panchayat of Mouza Bhutta*, Cr. M. No. 183 of 1962, decided on the 14th of August, 1962, was cited in which he had upheld a similar order of the Panchayat.

In that case the learned Judge relied on a remark made by S. B. Capoor, J., in *Narain Singh-Hira Singh and another, v. The State* (2), which consists of a single sentence to the effect, "the last point urged was that a continuing fine could not be imposed in this case, but such a continuing fine is clearly authorised by the terms of section 23 of the Act", and the only case which was cited before him to the contrary, *Emperor v. Mohan Lal* (3), was considered by him to be of dubious authority, since the decision in that case merely referred to an unreported previous decision under the Municipal Act to the effect that a Magistrate had no power to inflict a fine for prospective disobedience.

However, in the case decided by Khanna, J., an abundance of authority was cited all pointing in the same direction.

The point is not that a Court or Panchayat cannot impose a recurring fine for a continuance breach of an order of this kind, but that it cannot do so on the first conviction of the offender for the breach, since by doing so it would be tantamount to imposing fine

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(1) I.L.R. (1963) 2 Punj. 137=1963 P.L.R. 417.  
(2) A.I.R. 1958 Punj. 372.  
(3) A.I.R. 1915 Lah. 147.

for an offence not yet committed, which cannot be done. In other words, after a conviction for disobedience of an order of this kind, whether passed by a panchayat or a municipal authority, the recurring fine can only be imposed after the continuance of the breach has taken place, and as long as the breach continues the Panchayat or Court must call the offender and impose the recurring fine on him from time to time as it becomes due.

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The terms of many Municipal Acts contain provisions similar to those in the Punjab Gram Panchayat Act and the view which I have set out above has been expressed by the Allahabad High Court in *Ram Lal v. The Municipal Board, Budaun* (4), *Ramzan v. The Municipal Board of Benares* (5), and *Hurmal v. Emperor* (6). The same is the view of the Patna High Court in *Haluman Sah v. Motihari Municipality* (7), and *Suman Tawaff v. Gaya Municipality* (8), as well as of the Bombay High Court in *In re: Limbaji Tulsiram* (9), Calcutta High Court in *Phani Bhusan v. Corporation of Calcutta* (10), and Assam High Court in *Md. Nadir Shah v. The State* (11).

As against this view, which appears to be almost universally accepted by the Courts in India, there appears only to be the decision of Gurdev Singh, J., supported by the passage of the judgment of S. B. Capoor, J., and in neither of these cases does it appear that the matter was considered from the point of view of at what stage such a recurring fine can be imposed, there being no question about the legality of imposing such a fine at a proper stage.

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- (4) A.I.R. 1925 All. 251.  
 (5) A.I.R. 1926 All. 204(1).  
 (6) A.I.R. 1932 All. 109.  
 (7) A.I.R. 1937 Patna 352.  
 (8) A.I.R. 1952 Patna 45.  
 (9) I.L.R. 22 Bom. 766.  
 (10) A.I.R. 1952 Cal. 737.  
 (11) A.I.R. 1959 Assam 103.

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I am, therefore, of the opinion that the imposition of a recurring fine at the stage of first conviction for the breach must be held to be illegal and, therefore, that part of the order of the Panchayat in this case must be set aside. In future in such case the course to be adopted by the Panchayat is to summon the offender from time to time if he has not removed the encroachment and continue imposing on him the recurring fine as it becomes due up to the limit prescribed in the section. The petition is, therefore, accepted to this extent.

A. N. GROVER, J.—I agree.

B.R.T.

REVISION CIVIL

*Before S. S. Dulat and Prem Chand Pandit, JJ.*

JAIMAL SINGH AND ANOTHERS,—*Petitioners.*

*versus*

GINI DEVI *alias* GINI BAI,—*Respondent.*

Civil Revision No. 330 of 1962.

1963  
Sept., 26th.

*Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 29 and Displaced Persons (Compensation and Rehabilitation) Rules 1955—Rule 90—Auction-purchaser of evacuee property—When acquires title to property and becomes landlord qua tenants occupying that property—Whether on the date of sale or its confirmation or issue of sale certificate—When can he sue for eviction or tenant—From which date is he entitled to receive rent from tenant.*

*Held*, that Rule 90 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, and the form, Appendix XXII, indicate that the auction-purchaser is declared the purchaser of the property after his bid has been accepted and the value thereof has been paid by him either in cash or by adjustment of compensation. That date is mentioned in the sale certificate. The Form clearly prescribes that with effect from that particular date, the auction-pur-