

The Indian Law Reports

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

KHUSHAL SINGH,—Petitioner

versus

THE JUDICIAL MAGISTRATE, 1ST CLASS, KHARAR, AND ANOTHER,—

Respondents

Civil Revision No. 1005 of 1967

August 8, 1968

Punjab Gram Panchayat Act (IV of 1953)—Ss. 23, 48(3) and Schedule 1-A—Gram Panchayat imposing fine under section 23—Such fine—Whether recoverable under section 48(3)—Order of imposition of recurring fine by a Gram Panchayat—Whether a nullity and non est—Such order—Whether becomes final if not challenged.

Held, that Schedule 1-A of the Punjab Gram Panchayat Act mentions the offences cognisable by a Gram Panchayat and the offences under the Act or under any rule or bye-law made thereunder, are included in clause (k) thereof. That means that all the offences under the Act were cognisable by a Gram Panchayat and the criminal jurisdiction of a Gram Panchayat was confined to the trial of those offences. The offence under section 23 of the Act and the penalty imposed thereunder would fall under Chapter 4 of the Act. That being so, if the Panchayat imposes a penalty under section 23 of the Act and it is not paid, the Panchayat can forward the papers to the nearest Magistrate who under section 48(3) will then proceed to realise that penalty as if that order has been passed by him. (Para 4)

Held, that a Gram Panchayat cannot impose a recurring fine for future, but that does not mean that if by misinterpreting section 23 of the Act, some Gram Panchayat has passed such an order, that order would become a nullity. It can be said that that decision is contrary to law and is liable to be reversed on appeal or in revision. If the same, however, is not challenged by way of appeal or revision, it becomes final. The Gram Panchayat has the inherent jurisdiction to deal with the matter and if during the exercise of that jurisdiction, it makes an erroneous order in law by misinterpreting some provision, it cannot be said that that order will be considered to be

a nullity as if it does not exist in the eye of law. Only that order of Panchayat will be considered to be nullity, if it can be shown that the Panchayat lacks inherent jurisdiction to deal with the matter in which the said order is passed. (Para 5)

Petition under Article 227 of the Constitution of India praying that an appropriate order or direction be issued quashing the order, dated 28th of September, 1967 passed by the Judicial Magistrate, 1st Class, Kharar, District Rupar.

B. KAPOOR, ADVOCATE, for the Petitioner.

K. L. KHANNA, ADVOCATE FOR ADVOCATE-GENERAL, PUNJAB, for Respondent No. 1.

NAGINDER SINGH, ADVOCATE, for respondent No. 2.

JUDGMENT

PANDIT, J.—This is a petition under Article 227 of the Constitution filed by Khushal Singh, challenging the legality of the order dated 28th of September, 1967, passed by the Judicial Magistrate, 1st Class, Kharar, district Rupar.

(2) On 28th of June, 1959, the Gram Panchayat Badali, tehsil Kharar, district Rupar, imposed a fine of Rs. 15 and a recurring fine of Re. 1 per day on Khushal Singh petitioner, under section 23 of the Punjab Gram Panchayat Act, 1952 (hereinafter called the Act) for making some encroachment on a public street. The revision petition filed by Khushal Singh against that order was dismissed by the Sub-Divisional Magistrate, Rupar, on 24th August, 1959. Another petition for revision was filed by the petitioner before a Magistrate, 1st Class, at Chandigarh. That also was rejected on 20th October, 1959. The petitioner then kept quiet for six years and after that he again filed a revision petition against the same order before the Judicial Magistrate, 1st Class, Rupar in 1965 and it also met with the same fate on 24th of March, 1965. Thereafter, when the Panchayat filed an application for the realization of Rs. 1,550 as fine from the petitioner in the Court of the Judicial Magistrate, Kharar, the petitioner, on 23rd June, 1967, moved the said Magistrate praying for the stay of the realization of the fine. On 24th of July, 1967, a similar application was again made before the said Magistrate.

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The Panchayat gave their reply on 24th August, 1967. After hearing the arguments, the learned Magistrate dismissed the applications of Khushal Singh on 28th of September, 1967. Against that order, the present revision petition under Article 227 of the Constitution has been filed by Khushal Singh.

(3) The following two contentions were raised by the counsel for the petitioner before the learned Magistrate and in this Court:—

(1) That under section 48 of the Act, only those fines could be realised by the Magistrate which had been imposed for offences falling under Chapter 4 of the Act. The fine inflicted under section 23 was not covered by section 48 of the Act ; and

(2) the petitioner had been awarded a fine of Rs. 15 and a recurring fine of Re. 1 per day. This Court had held that a recurring fine could not be imposed and the same was, therefore, passed without jurisdiction and, consequently, the order of the Panchayat was a nullity and could not be executed.

(4) So far as the first contention is concerned, section 48, sub-clause (3), says :—

“Where a Panchayat imposes a fine under the provisions of this section and such fine is not paid as required, it shall record an order declaring the amount of fine imposed and it has not been paid, and shall forward the same to the nearest Magistrate who shall proceed to execute it as if it were an order passed by himself, and such Magistrate may also sentence the accused to imprisonment in default of payment.”

Section 48 occurs in Chapter 4 of the Act and that chapter deals with criminal judicial functions of the Panchayat. Section 38 is the first section under that chapter and it lays down that the criminal jurisdiction of a Gram Panchayat shall be confined to the trial of offences specified in Schedule 1-A. Schedule 1-A mentions the offences cognisable by a Gram Panchayat and the offences under the Act or under any rule or bye-law made thereunder, are included in clause (k) thereof. That means that all the offences under the Act were cognisable by a Gram Panchayat and the criminal jurisdiction of a Gram Panchayat was confined to the trial of those offences. The

offence under section 23 and the penalty imposed thereunder, would, therefore, fall under Chapter 4 of the Act. That being so, if the Panchayat imposed a penalty under section 23 of the Act and it was not paid, the Panchayat could forward the papers to the nearest Magistrate who, under section 48(3) would then proceed to realise that penalty as if that order had been passed by him. The first contention of the petitioner, therefore, fails.

(5) As regards the second contention, it is true that it has been held by this Court in some decisions that the Gram Panchayat cannot impose a recurring fine of Re. 1 per day for future, but that does not mean that if by misinterpreting section 23 of the Act, some Gram Panchayat had passed such an order, that order would become a nullity. It could be said that that decision was contrary to law and was liable to be reversed on appeal or in revision. If the same, however, was not challenged by way of appeal or revision, the same had become final. No decision was cited by the learned counsel for the petitioner in which it was held that such a decision of the Gram Panchayat was a nullity. The Gram Panchayat had the inherent jurisdiction to deal with the matter and if during the exercise of that jurisdiction, it had made an erroneous order in law by misinterpreting some provision, it could not be said that that order would be considered to be a nullity as if it did not exist in the eye of law. Only that order of the Panchayat would be considered to be a nullity, if it could be shown that the Panchayat lacked inherent jurisdiction to deal with the matter in which the said order was passed. This contention, therefore, also is without any substance.

(6) The result is that this petition fails and is dismissed, but with no order as to costs.

R. N. M.

CIVIL MISCELLANEOUS

Before R. S. Narula and S. S. Sandhawalia, JJ.

RAM KISHAN AND OTHERS,—Petitioners

versus

**SECRETARY TO GOVERNMENT, STATE OF HARYANA AND OTHERS,—
Respondents.**

Civil Writ No. 2076 of 1968

August 8, 1968

*Punjab Co-operative Societies Act (XXV of 1961)—By-laws of the
Panipat Co-operative Sugar Mills, Ltd.—By-law 9(B) (vii)—Interpretation*