

short, the right to appeal against an order of acquittal has primarily been given to the State Government. Sub-section (3) of section 417 is in the nature of an exception to that general rule. The word 'complainant', therefore, in that sub-section has to be interpreted in a restricted sense viz., the person on whose complaint the case had been instituted in the trial Court. In the instant case it was Amar Singh, father of Sadhu Singh, who had set the machinery of Criminal law in motion by making certain allegations in writing before it with regard to the commission of offences under sections 406/379/509, Indian Penal Code, and had further prayed that action be taken against the accused for committing those offences. Even if it is assumed that he was allowed under section 495, Criminal Procedure Code, to conduct the prosecution after the death of Amar Singh, Sadhu Singh did not become the complainant for the simple reason that the complaint on the basis of which the Magistrate had taken cognizance of the case, had not been made by him. In our opinion, the successor-in-interest of the complainant does not by operation of law become the complainant. There is no provision in the Code of Criminal Procedure which would give the status of the original complainant to the successor of the deceased complainant for the purpose of filing an appeal after special leave under section 417(3) of the Code. In the view we take we are fortified by a Single Bench judgment of the Calcutta High Court in *Monmathanath v. Niranjana Modal and others* (1) (supra).

(7) For the foregoing reasons, we would hold that Sadhu Singh not being the complainant was incompetent to maintain this appeal and we dismiss the same.

B. S. G.

CIVIL MISCELLANEOUS

Before A. D. Koshal, J.

M/S BHARAT SINGH & CO.,—Petitioner

versus

THE STATE OF HARYANA, ETC.,—Respondents.

Civil Writ No. 2857 of 1971.

November 12, 1971.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Section 10-A—Punjab Gram Panchayat Act (IV of 1953)—Section 97—Resolution of a panchayat embodying lease, contract or agreement relating to the land vested in the Panchayat—Such resolution cancelled without

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affording opportunity of being heard to the parties thereto—Order of cancellation—Whether without jurisdiction—Section 10-A(1)—Whether renders ineffective the provisions of Punjab Gram Panchayat Act affecting lease, contract or agreement of the land vested in the Panchayat.

Held, that if the resolution of a Panchayat embodies a lease, contract or agreement entered into in respect of any land vested or deemed to be vested in it, the provisions of sub-sections (1) and (2) of section 1-A of Punjab Village Common Lands (Regulation) Act, 1961, are at once attracted thereto. The proviso to sub-section (2) specifically raises a bar against the Collector passing an order under the sub-section without affording an opportunity of being heard to the parties concerned: so that if such opportunity is not afforded by the Collector, an order passed by him under sub-section (2) is illegal and in fact without jurisdiction.

(Para 4)

Held, that sub-section (1) of section 10-A of the Act begins with the *non obstante* clause and renders nugatory anything to the contrary contained in any other provision of this Act or in any other law for the time being in force in so far as they relate to the cancellation or variation of the terms of a lease, contract or agreement such as is mentioned in the sub-section. The Punjab Gram Panchayat Act is "any other law for the time being in force" and if any provision therein operates so as to affect a lease, contract or agreement such as is envisaged by sub-section (1) of section 10-A of the Lands Act, the same is rendered ineffective by the *non obstante* clause.

(Para 6)

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of Certiorari, Mandamus or any other appropriate writ, order or direction be issued quashing the impugned order dated 21st March, 1971 (Annexure 'E') and further praying that pending the decision of the Writ Petition, implementation of the impugned order be stayed.

P. S. Jain, Advocate, for the petitioner.

H. N. Mehtani, Assistant Advocate-General (Haryana), for respondents Nos. 1, 2 and 4.

R. N. Narula, Advocate, for Respondent No. 3.

JUDGMENT

KOSHAL, J.—(1) The Gram Panchayat, Sarai Khuaja, in Tehsil Ballabgarh, District Gurgaon (respondent No. 3 and hereinafter

referred to as the Panchayat) owns *shamilat deh* lands which include a stony area. In its meeting held on the 21st of March, 1971, the Panchayat passed a resolution (Annexure "A" to the petition), the operative part of which is reproduced below for facility of reference:

"The Panchayat has received the offers from the following persons concerned as per its resolution passed on 25th February, 1971 :

- (1) Shri Nand Lal, son of Harish Chand, owner of Maha Laxmi Crusher, Gurukul, Sarai Khuaja.
- (2) Shri Bharat Singh and Co.
- (3) Shri Prem Kumar Sahni, 10 Lady Hardinge Road, New Delhi.
- (4) Ram Sarup, 5, South Extension, New Delhi.

This Panchayat is now fully in a position to transfer its rights in its *ghair mumkin pahar* in village Lakarpur for a period of five years to the person making the highest offer, for which period of 5 years, it had asked for the offers and the above-mentioned persons had made such offers. These rights are being granted under the provisions of Rule No. 61 of the Panchayat Mining Concessional Rules, 1964, that is to say, that the Panchayat is legally empowered to charge the proper compensation for giving such rights. This arrangement is being made because on account of some difficulties and complications, there was an apprehension that instead of usual monetary benefit obtained earlier, there might be loss to the Panchayat. Thus, the Panchayat transfers to the person giving the highest offer, the right to collect compensation and rent from an authorised occupant for a period of five years.

Because the last highest offer is of Shri Bharat Singh and Co. for Rs. 15,000 (Rupees fifteen thousand) per year, which is the highest as compared to the offers given by other persons, it is unanimously resolved to give its rights in the *ghair mumkin pahar shamilat deh* in village Lakarpur, and its compensation is fixed at Rs. 15,000 per year, i.e., Rs. 75,000 for five years, as per Rule No. 61, and the payment of the settled amount of compensation would be made in following manner and besides this, the resolution, dated 25th February, 1971, may be read along with this resolution. The

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details of the manner of paying compensation are that the compensation shall be paid in advance in the month of April, every year, 1/4th of the compensation for this year is being collected today on the spot and the remaining 3/4th has been agreed to be paid by 28th March, 1971. However, an additional condition applicable to the firm Bharat Singh and Co., 151 Sarai Julena, New Delhi-25 will be that they will have no right to cause any damage to the trees and *bajri* that exists on this *pahar* and the cattle of the villages will be grazing as heretofore, and there will be no obstruction. The period of this agreement will be from 21st March, 1971 to 20th March, 1976 and during this term both the parties will be bound by the conditions set out above and no party will have the right to interfere with this agreement."

(2) This resolution (hereinafter referred to as the resolution) and the one, dated the 25th of February, 1971, mentioned in its opening sentence, were suspended under section 97 of the Punjab Gram Panchayat Act (hereinafter called the Panchayat Act) and 'the lease or agreement as may have been agreed upon the Gram Panchayat with Shri Bharat Singh' was cancelled under the provisions of section 10-A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Lands Act) by an order, dated the 23rd of July, 1971 (Annexure "E" to the petition) passed by the "Collector and Deputy Commissioner, Gurgaon". This order is challenged by Bharat Singh and Company (mentioned in the above extracted resolution and hereinafter called the Company) in the petition before me under Articles 226 and 227 of the Constitution of India on numerous grounds of which only the following need be set down as they are sufficient for the disposal of the petition :

- (a) The order in so far as it has been made under section 97 of the Panchayat Act is without jurisdiction and illegal inasmuch as it was passed without obtaining any explanation of the Panchayat and also without hearing the Company.
- (b) In so far as it has been passed under section 10-A of the Lands Act, it contravenes the principles of natural justice inasmuch as it was passed without affording the Company any opportunity of being heard.

(3) I shall first consider ground (b). It is admitted on all hands that before the impugned order was passed, no opportunity of being

heard was granted to the Company and this circumstance strikes at the very root of the impugned order. Sub-sections (1) and (2) of section 10-A of the Lands Act may be reproduced with advantage:

“10-A. (1) Notwithstanding anything contained in this Act or the *shamilat* law or in any other law for the time being in force, the Collector may call for, from the Panchayat in his District, the record of any lease, contract or agreement entered into by any Panchayat in respect of any land vested or deemed to be vested in it, whether such lease, contract or agreement is entered into before or after the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1964 and examine such record for the purpose of satisfying himself as to the legality or propriety of such lease, contract or agreement.

(2) Where, on examination of the record under sub-section (1) and after making such inquiry, if any, as he may deem fit, the Collector is satisfied that such lease, contract or agreement:—

(i) has been entered into, in contravention of any of the provisions of this Act or the rules made thereunder;

(ii) has been entered into as a result of fraud or concealment of facts; or

(iii) is detrimental to the interests of the Panchayat as prescribed ;

the Collector may, notwithstanding anything as aforesaid, cancel the lease, contract or agreement or vary the terms thereof, unconditionally or subject to such conditions as he may think proper :

Provided that no order under this sub-section shall be passed by the Collector without affording an opportunity of being heard to the parties to the lease, contract or agreement.”

(4) The proviso to sub-section (2) specifically raises a bar against the Collector passing an order under the sub-section without affording an opportunity of being heard to the parties concerned; so that if such opportunity is not afforded by the Collector, an order passed by him under sub-section (2) would be illegal and in fact without jurisdiction. If the resolution embodies a lease, contract, or agreement entered into by the Panchayat in respect of any land vested or deemed to be vested in it, the provisions of sub-sections (1) and (2)

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are at once attracted thereto and the impugned order is vitiated as it attracts the bar enacted by the proviso. In so far as the order has been made under section 10-A of the Lands Act, therefore, it must be quashed as being without jurisdiction, provided the resolution fulfils the requirement just above mentioned.

(5) Learned counsel for the Panchayat and the State of Haryana and its officers who are the respondents before me contended that the tenure granted under the resolution did not amount to a lease. Even if that be so, it is certainly a contract or, in any event, an agreement entered into by the Panchayat in respect of land vested in it. In fact, the resolution itself calls the transaction entered into by the Panchayat with the Company as an agreement. Reference in this connection may be made to the last sentence of the resolution which states:

“The period of this agreement will be from 21st March, 1971 to 20th March, 1976 and during this term both the parties will be bound by the conditions set out above and no party will have the right to interfere with this agreement.”

The transaction is entered into by the Panchayat with the Company. It is in respect of land vested or deemed to be vested in the Panchayat. It also amounts to an agreement. All the requirements of sub-section (1) of section 10-A of the Lands Act are thus fulfilled. The contention raised on behalf of the respondents to the contrary must, therefore, be turned down.

(6) In view of the provisions of sub-section (1) of section 10-A of the Lands Act, I do not think that ground (a) need be considered. That sub-section begins with the *non obstante* clause and renders nugatory anything to the contrary contained in any other provision of the Lands Act or in any other law for the time being in force in so far as they relate to the cancellation or variation of the terms of a lease, contract or agreement such as it mentioned in the sub-section. The Panchayat Act is “any other law for the time being in force” and if any provision therein operates so as to affect a lease, contract or agreement such as is envisaged by sub-section (1) of section 10-A of the Lands Act, the same is rendered ineffective by the *non obstante* clause.

(7) Now the impugned order in so far as it suspends the resolution under section 97 of the Panchayat Act is clearly calculated to cancel

the agreement embodied in the resolution. That agreement being of the kind envisaged by sub-section (1) of section 10-A of the Lands Act, the *non obstante* clause is at once attracted thereto and the impugned order rendered illegal to the extent that it interferes therewith.

(8) The result is that the impugned order is illegal and without jurisdiction whether it is viewed as having been passed under the provisions of section 10-A of the Lands Act or is deemed to be one under section 97 of the Panchayat Act. It must, therefore, be and is hereby quashed. The petitioner will have his costs of the proceedings from respondents Nos. 1 and 3. Council's fee Rs. 100.

K. S. K.

MISCELLANEOUS CIVIL

Before Bal Raj Tuli, J.

BALDEV RAJ SHARMA,—Petitioner.

versus

THE STATE OF PUNJAB AND ANOTHER —Respondent.

Civil Writ No. 2290 of 1969.

November 16, 1971.

Punjab Municipal Act (III of 1911)—Section 236—State Government ordering the annulment of a resolution passed by a Municipal Committee—Person affected by such annulment—Whether entitled to notice and hearing before such annulment.

Held, that sub-section (2) of section 236 of the Punjab Municipal Act, 1911, authorises the State Government to annul or modify any proceeding of a Municipal Committee which it considers to be not in conformity with law or with rules as are in force. Before passing the order, no notice has to be issued to the Municipal Committee concerned or to any person who is affected by that resolution or annulment order. The Municipal Committee whose resolution is annulled may have a grievance but the person, to whom that resolution relates, has no right to urge that he has not been given any notice or hearing before annulling that resolution.

(Para 4)