

Om Parkash and others v. Joint Director of Rural Development and Panchayat, Punjab and another (M. M. Punchhi, J.)

the respondents from holding annual examination in April, 1987, on the ground that 1½ years has not yet elapsed from January, 1986 when the result of the pre-final year examination was declared. Reliance has been placed on a Division Bench decision of this Court in *Satish Kumar and others v. The Council of Homoeopathic System of Medicine, Punjab and another* (1). In view of this, the learned counsel for the respondents concedes that the Regulations regarding the time gap will be observed in fixing the date of the examination. On this statement of the learned counsel, the Civil Misc. No. 997 of 1987 also stands disposed of.

(5) In the circumstances of the case, there shall be no order as to costs.

S.C.K.

Before M. M. Punchhi, J.

OM PARKASH and others,—*Petitioners*

versus

JOINT DIRECTOR OF RURAL DEVELOPMENT AND PANCHAYAT, PUNJAB and another,—*Respondents*.

Civil Writ Petition No. 4417 of 1985.

April 2, 1987.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Sections 11, 21-A—Code of Civil Procedure (V of 1908)—Order 41, Rules 23 and 23-A—Proceedings initiated under section 11 before the Assistant Collector—Procedure to be adopted by Assistant Collector—Such procedure—Whether governed by the Code—Appeal before the Commissioner—Procedure to be adopted by the appellate authority—Power of remand—Such power—Whether controlled by the Code.

Held, merely because the statement of claim is required to be duly signed and verified in the manner provided in the Code of Civil Procedure, 1908, does not covert the statement to a plaint or the Collector to a Civil Court. If this be the position, the very object of taking away the Civil Court's jurisdiction would stand

(1) C.W.P. No. 2109 of 1986 decided on May 30, 1986.

negative. The Collector has been conferred quasi-judicial functions and not the functions of a Civil Court. He is not to be shackled by the intricate procedure of an adversary trial as adhered to by the Civil Court. All that is required is that he must arrive at a decision in accordance with the well known sound judicial principles and his order must *ex facie* show application of mind, for it is appealable to the Commissioner.

(Para 8)

Held, that the appellate jurisdiction of the Commissioner under sub-section (2) of section 11 provides that any person or a Panchayat aggrieved by an order of the Collector made under sub-section (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form and manner as may be prescribed, and the Commissioner may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit. The words "may pass such order as he deems fit" are very widely worded. It transpires that identical set of words in various statutes are employed when conferring appellate and revisional powers on higher authorities and these words have always been given the meaning that the jurisdiction conferred is wide enough to include power to remand a case. The Commissioner's power was not fettered by the strict provisions of Order 41, Rules 23, 23-A and 25 of the Code of Civil Procedure, 1908, and rather the provisions of the Code were not applicable to his jurisdiction.

(Para 9).

Civil Writ Petition under Articles 226 and 227 of the Constitution of India praying that :—

- (a) Operation of order of remand Annexure P-2 recorded by respondent No. 1 be stayed pending the disposal of this Writ Petition.
- (b) Service of notices under section 80 of the Code of Civil Procedure be dispensed with since the matter is already under adjudication.
- (c) That the costs of the petition may kindly be awarded to the petitioner.

K. S. Grewal, Advocate, for the Petitioners.

Govind Goel, Advocate, for the Respondents.

JUDGMENT

M. M. Punchhi, J. (oral)

(1) Whether the Collector on the original side and the Commissioner on the appellate side are required to conduct their proceedings under section 11 of the Punjab Village Common Lands (Regulation)

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Act, 1961, in accordance with the provisions of the Civil Procedure Code, 1908, is the pristinely jurisdictional question required to be settled in this petition.

(2) The petitioners claim themselves to be in possession of some land stately situated in front of their houses in village Badala Niashahar, Tehsil Kharar, District Ropar. Their houses and the said land are undisputably within the *abadi deh* of the village. It is also undisputed that no revenue record has been prepared for the *abadi deh*. As is the common case of the parties, a group of people styled as Jugal Kishore and others filed a civil suit for injunction against the petitioners (which expression means their predecessors-in-interest also). The suit was decreed on July 27, 1974, by a Civil Court at Kharar. The petitioners filed an appeal before the Senior Subordinate Judge, Ropar, who had enhanced appellate powers. The judgment and decree of the trial Court were reversed and it was held that the Civil Court had no jurisdiction to entertain and decide the suit. It was ordered that the plaint be returned to the plaintiffs, Jugal Kishore and others, for presentation to the proper Court. Such order was passed in the context of section 13 of the Act, which provides that no Civil Court shall have jurisdiction to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not *Shamlat deh* vested or deemed to have been vested in a panchayat under the Act. Jugal Kishore and others were successful in getting the orders of the first appellate Court upset from this Court in Regular Second Appeal No. 803 of 1977 on January 9, 1986. The view taken by this Court was that section 13 of the Act was not operative when the dispute was between two private individuals. The matter was then sent back to the District Judge, Ropar, for deciding the appeal on merits in accordance with law. It is further the admitted case of the parties that on remand the parties to that suit got the appeal disposed of on April 23, 1986, by making a joint statement that since the matter in issue in the suit was also pending before the revenue Court in a litigation, to which the present petitioners and the Gram Panchayat were parties, the suit be dismissed as withdrawn. The District Judge accordingly disposed of the appeal by dismissing the suit.

(3) As hinted earlier, the petitioners had filed an application under section 11 of the Act before the Collector, Ropar. The powers of the Collector were being exercised by the District Development

and Panchayat Officer, Ropar. The petitioners claimed in their application that they were in possession of the disputed land since 1949 where they had installed a water pump, stacked bricks, dug a manure pit, constructed mangers for cattle and vocationally put a blacksmith's furnace, and the said land being part of their houses vested in them under the law rather than in the panchayat. They seemingly were pressing their claim on the definition of the word 'house' in section 2(c) of the Act, which provides that a house includes a courtyard whether walled or not, as also on the definition of the word '*shamilat deh*' in section 2(g)(1) providing that *abadi deh* was not included in the *shamilat deh*. Added thereto was seemingly their claim under section 4(1)(b) of the Act, on the plea that any land which is situated within or outside the *abadi deh* of the village and which is under the house owned by a non-proprietor (the petitioners claim themselves to be non-proprietors) shall, on the commencement of the *Shamilat* law, be deemed to have been vested in such non-proprietor. It is undisputed that conversely if such land is not in possession of a non-proprietor, section 4(1)(a) of the Act would be applicable and it would vest in the Panchayat. So the dispute was merely based on oral assertions as to whether the petitioners were or were not in possession of the land in front of their houses on the date of commencement of the *Shamilat law* i.e. on the commencement of the Punjab Village Common Lands (Regulation) Act, 1953. The Panchayat disputed the claim of the petitioners and thus the parties came to grips.

(4) The petitioners besides making oral statements themselves, produced four witnesses. The Panchayat produced only one. The petitioners justified their coming to the Court of the Collector by producing some of the Civil Court's judgments so as to be on a sure footing that it was the Collector alone who had the jurisdiction to try the matter. The Collector thus on September 1, 1983,—*vide* order Annexure P-1, decided in favour of the petitioners. He held as follows:—

“After hearing the learned counsel of both the parties, I have come to the conclusion that the land in dispute has been in the possession of applicants since before 1949 which they have been using as blacksmiths for working the furnace. In the village generally, blacksmiths and carpenters use the vacant lands in front of their houses for furnace etc. for doing the jobs of the villagers and such land remains in their possession from generation to

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generation. Under these circumstances, the applicants' application is accepted."

On appeal by the Panchayat, the Joint Director, Panchayats, who exercises the appellate powers of the Commissioner, upset the order on June 4, 1985,—*vide* order Annexure P-2, and remanded the case back to the Collector to take a fresh decision after giving opportunity to both the parties to produce some solid evidence in support of their respective claims. He observed as follows:—

"...The order of the Collector is non-speaking and is based on his own observations that usually the carpenters and blacksmiths in the village do their personal work in front of their houses in the vacant land by installing blacksmiths' furnace etc. No evidence has been produced by either of the parties to establish their respective claims. The Gram Panchayat has not produced any solid evidence showing that the land was being used for common purposes such as playground etc. The arguments of the respondents that the land could have not been used as playground because the primary school is 100 yards away from the site and middle school about 300 yards away. I fail to understand how the distance of the site from the school is relevant. It is not necessary that the village children play only in the school premises and not at other place."

(5) The petitioners, challenging the order of the Commissioner in this petition under Articles 226/227 of the Constitution, have urged that the appellate officer, bound as he was by the rules of civil procedure, had no jurisdiction to remand the case and re-open the trial. Stress has been laid on the provisions of Order 41 Rules 23, 23-A and 25 of the Code of Civil Procedure. It has been urged on their behalf that without guiding the trial officer with a specific issue, the order of remand could not have been passed. Alternatively, it has been urged that if the appellate officer had inherent powers to remand the matter, he could not do so on his whim or humour, but in accordance with some sound judicial principles and that too with great circumspection. It has been highlighted that the evidence of the parties was available on the record and he could very well decide the appeal on such material ; his observations that no evidence had been produced by either of the parties to establish their respective claims showed total lack of application of mind.

(6) On the other hand, learned counsel for the respondents urges that proceedings under section 7 of the Act are not governed by the Code of Civil Procedure. It has been explained that the original as well as the appellate authority under section 7 of the Act exercises quasi judicial functions, free to decide these matters impartially and in accordance with the sound principles of fair play, equity and justice. And in the context of the present controversy, it has been urged that the appellate authority decided rightly in remitting the case back opening the scope of the trial.

(7) I have heard learned counsel for the parties at length. The question posed at the very outset needs to be answered first.

(8) It is well known that Civil Courts in the country by virtue of section 9 of the Civil Procedure Code have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It also is an established principle that a suit in which the right to property is agitated, is purely one of a civil nature. Now the claim of the petitioners against the Panchayat was ordinarily triable by a Civil Court in accordance with the provisions of the Civil Procedure Code. However, by the force of section 13 of the Act, the jurisdiction of the Civil Court stands taken away. Section 11(1) provides that any person claiming right, title or interest in any land vested or deemed to have vested in a Panchayat under the Act or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner, and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed. The claim of the petitioners' learned counsel is that since the statement of claim is required to be signed and verified under rule 21-A of the Punjab Village Common Lands (Regulation) Rules, 1964, in the manner provided in the Code of Civil Procedure, that by itself was a clear pointer that the Code of Civil Procedure would apply to proceedings before the first officer, and necessarily in appeal before the appellate officer. The argument, on mere noting, deserves rejection. Merely because the statement of claim is required to be duly signed and verified in the manner provided in the Civil Procedure Code, does not convert the statement to a plaint or the Collector to a Civil Court. If this be the position, as suggested by the learned counsel for the petitioner, the very object of taking away the Civil Court's jurisdiction would stand negated. The Collector has been conferred quasi judicial functions and not the

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functions of a Civil Court. He is not to be shackled by the intricate procedure of an adversary trial as adhered to by the Civil Court. All what is required is that he must arrive at a decision in accordance with the well known sound judicial principles and his order must *ex facie* show application of mind, for it is appealable to the Commissioner.

(9) Sub-rule (2) of the aforesaid Rule also lends some light to the afore conclusion, because the Collector after receipt of the application is required to send notice to the Panchayat concerned along with a copy of the application directing it to appear before him on the date fixed for the purpose. The Collector is then required to decide the matter after affording a reasonable opportunity to the parties to substantiate their respective claims. Thus, the Collector self-regulates the procedure so that nothing remains unsaid what is required to be said on behalf of both the parties. And further he decides the case as guided by the principle afore-quoted in the rule, in an appropriate manner.

(10) Now, with regard to the appellate jurisdiction of the Commissioner, sub-section (2) of section 11 provides that any person or a Panchayat aggrieved by an order of the Collector made under sub-section (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form and manner as may be prescribed, and the Commissioner may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit. The words "may pass such order as he deems fit" are very widely worded. It transpires that identical set of words in various statutes are employed when conferring appellate and revisional powers on higher authorities and these words have always been given the meaning that the jurisdiction conferred is wide enough to include power to remand a case. No decision to the contrary view has been brought to my notice. It would not be wrong to take it as well settled or as never questioned that when an appellate authority has been conferred power to pass such order as it may deem fit in relation to an order appealed against, the power to order remand is included in it. Thus, I hold that the Commissioner had the power to remand the case to the Collector for re-decision and his power was not fettered by the strict provisions of Order 41 Rules 23, 23-A and 25 of the Civil Procedure Code and rather the provisions of the Civil Procedure Code were not applicable to his jurisdiction.

(11) For the view above taken, the question posed at the outset is answered in the negative by holding that neither the original officer nor the appellate officer exercising functions under section 11 of the Punjab Village Common Lands (Regulation) Act, 1961, is required to observe the procedure as prescribed in the Civil Procedure Code, except to the entertainment of the claim application in the form of a statement duly signed and verified in the manner provided in the Civil Procedure Code.

(12) The mere fact that the Commissioner had the authority to remand the case back does not *ipso facto* mean that order Annexure P-2 would deserve upholding. The operative portions of the orders of the Collector as well as the Commissioner have been extracted above. It appears rather strange that the Commissioner while finding fault with the Collector in generalising the matter, himself committed the same error of generalising. The Collector generalised the use of sites by carpenters and blacksmith in front of their houses and the Commissioner generalised that children are not confined to play at any particular site. The Collector had recorded evidence of both the parties and yet the Commissioner observed that no evidence had been led by the respective parties. To say that there was no evidence on the record is a jurisdictional error correctable on a *certiorari* by this Court. The evidence is very much there. It may be true that the Panchayat has not led any *solid* evidence, as the Commissioner terms it, but that *per se* is no ground for remand, for the Commissioner while exercising the powers under the Act, cannot look to the interests of the Panchayat on the mere fact that he holds a dual power, additionally being a Joint Director of Panchayats. The power of remand, also must be used with great circumspection. As an impartial authority the Commissioner is to adjudicate upon the matters as put by the parties before him in that capacity, uninfluenced by the factors which weigh with him as Joint Director of Panchayats. The language employed by the Commissioner in the operative portion of his order is plain to conclude that he has not gone into the evidence as led by the parties. It cannot be forgotten that in our processual law an appeal is a continuation of the original cause. The power of appeal is conferred on a higher authority to correct the error committed by the lower authority. The mere fact that the Collector had not given any reasoning was no ground for remanding the case back to the Collector. As an appellate authority, while re-hearing the cause, the Commissioner too could have supplied the reasoning while confirming, varying or reversing the order. The

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matter, as it appears to me, has been dealt with administratively rather than quasi-judicially. Thus, I am of the considered view that to this limited extent the writ petition deserves acceptance in as-much as the order of the Commissioner need be and is hereby quashed and a direction is issued to him to decide the appeal on merits on the material already existing on the record. It is so ordered.

(13) The end result is that this petition succeeds to the limited extent afore-indicated. The parties through their learned counsel are directed to put in appearance before the Joint Director of Panchayats, Punjab, exercising the powers of the Commissioner, under the Act on April 28, 1987. No costs.

S.C.K.

Before D. V. Sehgal, J.

MANGAL PATI and others,—Appellants.

versus

HARI SINGH and others,—Respondents.

Second Appeal from Order No. 57 of 1964.

April 17, 1987.

Code of Civil Procedure (V of 1908)—Sections 96(3), 104, 115, Order 23, Rule 3, Order 43 Rule 1-A—Parties entering into compromise—Trial Court passing decree in accordance therewith—Appeal against such decree—Such appeal—Whether competent under Section 96(3)—Appeal allowed by first appellate Court—Whether second appeal competent.

Held, that under Section 96(3) of the Code of Civil Procedure no appeal lies from a decree passed by the Court with the consent of the parties. It is, therefore, clear that the appeal which was preferred from the order of the trial Court recording the compromise and passing the decree and which has been disposed of by the learned Additional District Judge, was not an appeal falling within the ambit of Section 96 of the Code. Rule 1-A of Order 43 provides that in an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not have been recorded. It is