be applicable to the given facts. Even remotely, we do not find that the Inspecting Assistant Commissioner or the Tribunal was not aware that section 271(1) (c) stood amended in the year 1964. Moreover, even in the question which came up for consideration before the Full Bench of this Court, only section 271(1) (c) was mentioned and there was no mention of either the amended Act or of the explanation added. When for the year 1971-72 with which we are concerned in this case, section 271(1) (c) of the Act has to be seen, it will be seen in the light of the law, as would be applicable to that year. It is not disputed before us that for the assessment year 1971-72, the amendment made by Finance Act No. 15 of 1964 would be applicable.

(10) It was then urged on behalf of the assessee that the Tribunal has rendered decision on facts as well and has accepted the explanation of the assessee. The entire reasoning of the Tribunal was by putting onus on the department and once that view of law is found to be incorrect the entire complexion for decision would change and fair decision will have to be rendered keeping in view the dictum of the Full Bench. That is why, in fairness the assessee will have full opportunity to rebut the presumptions, which arise against him in view of the explanation with liberty to the department to disprove the evidence led by the assessee.

(11) For the reasons recorded above, we decline to answar the referred question. However, the order of the Tribunal dated 27th February, 1976 is hereby set aside and the matter is remitted to it to re-decide the appeal afresh keeping in view the judgement of the Full Bench of this Court in *Vishwakarma Industries case* (supra) and the directions given above. The parties are left to bear their own costs.

N. K. S.

FULL BENCH

Before: *P. C. Jain, C.J., D. S. Tewatia, S. P. Goyal, I. S. Tiwana and D. V. Sehgal, JJ .*

SUBH RAM AND OTHERS,—*Petitioners.*

versus

GRAM PANCHAYAT AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 4401 of 1984

May 27, 1986

Punjab Gram Panchayat Act (IV of 1953) as amended by Haryana Act 3 of 1976—Sections 21, 23, 23-A, 38, 43, 48 and 51—Order passed

by the Gram Panchayat under Section 21—Dibobedience of—Whether amounts to an offence in terms of Section 23—Nature of jurisdiction—Gram Panchayat acting under Section 23—Whether exercise administrative jurisdiction—Penalty of recurring fine in anticipation of future and continuing disobedience—Whether could be imposed by the Gram Panchayat.

Held, (per majority D. S. Tewatia, S. P. Goyal and D. V. Sehgal, JJ., I. S. Tiwana and P. C. Jain, C.J., contra) that a perusal of section 23-A of the Punjab Gram Panchayat Act, 1952 would show that by mentioning that against the order of the Panchayat made *inter-alia*, under Section 23, the appeal would lie to the District Development and Panchayat Officer in the case of Punjab and Deputy Director, Panchayats, in the case of Haryana, the Legislature clearly spelt out that it is the Gram Panchayat which has to pass the order envisaged under Section 23 of the Act. If section 21 or section 23 constitutes an offence, then the cognizance of such an offence has to be taken as envisaged under section 43 of the Act but section 23 envisages a *suo moto* action on the part of the Gram Panchayat and not on a private complaint which shows that section 23 does not create an offence. Further, an order passed by the Panchayat while acting as a criminal Court can be cancelled or modified by a Chief Judicial Magistrate. The order passed under section 23 is made appealable to the District Development and Panchayat Officer in the case of Punjab and Deputy Director, Panchayats, in the case of Haryana. While adding section 23-A knowledge of the existence of section 51 of the Act must be attributed to the Legislature. If the remedy against the order passed under section 23 already existed in the statute, the Legislature would not have added superfluous section 23-A to the Act. The Chief Judicial Magistrate and the concerned authorities mentioned in section 23-A, therefore, must not be taken to be exercising jurisdiction over one and the same order of the panchayat. To hold otherwise is to invite anarchy, which would easily result if a given order passed under section 23 is upheld by the authority mentioned in section 23-A but is cancelled by the Chief Judicial Magistrate. This clearly indicates that the jurisdiction exercised by the Panchayat in proceedings under section 23 is not criminal and that section 23 does not create an offence. Another circumstance that fortifies this view is the clash between the provisions of section 23 and section 48 in regard to the extent of punishment if imposition of penalty is treated to be a punishment. If it is held that section 23 creates an offence, then that part of the provisions of section 23 which prescribes the extent of penalty, as also the provisions of section 23-A in its entirety, shall have to be written off as super fluous and redundant. That the order of the Panchayat passed under section 23 containing a direction that the continuing disobedience of the order passed under section 21 shall entail a penalty of Rs. 5/- per day, is clearly in the discharge of its administrative functions.

Though the heading of the chapter is not decisive of the character of a provision occurring in that chapter but the fact that sections 21 and 23 occur in a chapter which deals with 'Gram Panchayats Conduct of Business, Duties, Functions and Powers', further strengthens the view that the order passed under section 23 is administrative in character. It is, therefore, held that disobedience of an order passed under section 21 of the Act does not amount to an offence in terms of section 23 thereof and that the order passed under section 23 is in exercise of administrative jurisdiction and that under section 23 recurring fine can legitimately be imposed by the Gram Panchayat in anticipation of the subsequent and continuing disobdience of its order.

(Paras 8, 10, 11, 12, 22 and 23)

Held (per I. S. Tiwana, J., and P. C. Jain, C.J., contra), that the doctrine of 'stare decises' in a very valuable principle which can not possibly be departed unless there are extra-ordinary or special reasons to do so. One of the well settled principles of the law of precedence is that the binding effect of a decision does not depend on whether a particular argument was considered therein or not provided that the point with reference to which an argument was subsequently raised was actually decided. Merely because in the course of the judgment reference was not made to all the sections to which the learned counsel for the parties assailing the judgment may refer, it cannot be easily presumed that the Court overlooked those provisions at the time of deciding the point. The Full Bench jugdment in *Narain Singh Hira Singh and another* vs. *State of Punjab and Surat Singh* vs. *Punjab State and others* as all others scores of judgments reported or unreported either following these precedents or approved in these judgments should stand and do not deserve to be overruled. There is a stream of judgments of this Court wherein it is held that disobedience of an order passed by the Gram Panchayat under section 21 of the Act amounts to an offence in terms of section 23 and the proceedings resulting in the passing of the order under the latter section are in the nature of criminal judicial proceedings and in the light of that no recurring fine can legitimately be imposed under that section in anticipation of the subsequent disobedience of the order of the Panchayat. Moreover, the introduction of section 23-A providing for a forum of appeal against the order of the Panchayat under section 23 of the Act cannot possibly change or effect the scope or interpretation repeatedly put on that section by this Court. This section does nothing more than to provide a forum for appesal against an order passed by the Panchayat under section 23 of the Act. Even prior to the introduction of this section to the statute, the precedential or judge made law had laid down that the authority competent to pass the order under section 23 of the Act is the village Panchayat. This section when it says that any person

aggrieved by an order of the Panchayat made under section 23 of the Act may within a period of thirty days of the order, prefer an appeal to the Deputy Director, only reiterates the position that the authority competent to pass an order under section 23 of the Act is the village Panchayat and none else. This section does not detract anything from the dictum of this Court as expressed in the innumerable judgments. Further, the legal position that an order passed by the Panchayat under section 23 of the Act was revisable by the Chief Judicial Magistrate under section 51 of the Act was never in doubt. Now, if instead of this revisional forum an appellate forum has been provided for by section 23-A of the Act, it does not indicate in any manner that proceedings under section 23 of the Act are not in the nature of criminal judicial proceedings. Later part of section 23-A of the Act has made the appellate decision final and not liable to be questioned in any court of law, meaning thereby, that remedy of revision under section 51 of the Act is no more available against an order of the Panchayat under section 23 of the Act. This substitution of remedy of revision by an appeal against the order of the Panchayat under Section 23 is a matter of legislative policy. It is, therefore, held that proceedings taken by the Panchayat under section 23 of the Act are in the nature of criminal judicial proceedings and it cannot impose any recurring fine in anticipation of any subsequent disobedience of its order.

(Paras 26, 27 and 28)

Narain Singh Hira Singh and another *vs.* State of Punjab, A.I.R. 1958 Pb. 372.

Surat Singh *vs.* State of Punjab and others 1985 P.L.J. 402.
Naurang Lal *vs.* Gram Panchayat 1964 P.L.J. 28.

Sunder Singh and another *vs.* Gram Panchayat 1966 Cr. L.J. 500.

Sardara Singh and others *vs.* State of Punjab 1967 Cur. L.J. 333.

Ujjagar Singh *vs.* State of Punjab 1967 Cur. L.J. 859.

Bachan Singh and Baru *vs.* Gram Panchayat 1977 P.L.J. 192.
(OVER RULED)

CASE admitted to Full Bench by the Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice Pritpal Singh on May 7, 1985. Thereafter the case was referred by a Full Bench consisting of Hon'ble The Chief Justice, Mr. Prem Chand Jain, The Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice S. P. Goyal to a larger Bench for decision of an important

question of law involved in this case on January 30, 1986. *The Full Bench consisting of Hon'ble The Chief Justice Mr. Prem Chand Jain, The Hon'ble Mr. Justice D. S. Tewatia, The Hon'ble Mr. Justice S. P. Goyal, The Hon'ble Mr. Justice I. S. Tiwana and The Hon'ble Mr. Justice D. V. Sehgal, decided the question of law involved in the case and sent the case to the learned Single Judge for disposal on merits.*

WRIT PETITION *Under Article* 226, 227 *of the Constitution of India, praying that this Hon'ble Court be pleased to:—*

(i) *quash orders Annexures P.* 1, *Annexure P.* 2 *and Annexure P.* 3.

(ii) *issue an* ad interim *order staying the demolition of the houses of the petitioners, taking possession of the land and staying recovery of amount of penalties and recurring penalties.*

(iii) *issue any other appropriate Writ, direction or direct that this Hon'ble Court may deem fit and proper in the circumstances of this case.*

(iv) *Award cost of the petition to the petitioners.*

H. N. Mehtani, Advocate, *for the Petitioner.*

Harbhagwan Singh, Senior Advocate, Gurbachan Singh, Arun Walia and Jai Shri Anand, Advocates with him, Gopi Chand, Advocate, *for the State.*

JUDGMENT

D. S. Tewatia, J.

(1) This petition was admitted by the motion Bench to the Full Bench, as it entertained doubt as to the correctness of the law laid down by a Division Bench in *Bachan Singh and Baru* v. *The Gram Panchayat of Village Gurnala and another,* (1). When this petition came to be listed before a Bench of three Judges, it was brought to the notice of the Bench that a Full Bench of three Judges in *Surat Singh* v. *Punjab State and others,* (2) by majority, had in principle

(1) 1977 P.L.J. 192.
(2) 1985 P.L.J. 402.

upheld the law laid down in *Bachan Singh and Baru's case* (supra), but the Full Bench while hearing the present petition entertained doubt as to the correctness of the law laid down by the Full Bench in *Surat Singh's case* (supra). The Full Bench then referred the matter to a larger Bench of five Judges and that is how the matter is before us.

(2) As to whether disobedience of an order passed under section 21 of the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as the Act), is an offence in terms of section 23 of the Act and recurring fine can be imposed in anticipation of subsequent disobedience of the order in terms of the said section 23, is the legal proposition that falls for consideration.

(3) The nature of the jurisdiction of the Panchayat in terms of sections 21 and 23 of the Act came up for consideration before Full Bench of this Court in *Narain Singh Sira Singh and another* v. *The State*, (3) in the wake of the question whether proceedings under sections 21 and 23 of the Act were of administrative or executive nature and a petition under section 439 of the Code of Criminal Procedure, 1973 or article 227 of the Constitution of India would or would not lie in the High Court.

(4) The Full Bench first posed to itself the question as to whether the Gram Panchayat acts judicially or otherwise while acting under sections 21 and 23 of the Act. After holding that the proceedings under section 21 and 23 of the Act are decidedly of judicial nature, the Full Bench then proceeded to identify as to whether the jurisdiction in question is of criminal, civil or revenue nature. The Full Bench held that the Gram Panchayat while proceeding under sections 21 and 23 of the Act acts jodicially and exercises criminal jurisdiction. For so holding it took three circumstances into consideration (1) that section 23 of the Act did not identify the forum or the authority which was to pass the order imposing penalty and recurring fine for subsequent disobedience, (2) that the jurisdiction to pass the order under section 23 by the Panchayat could be spelled out only by referring to item (k) of Schedule 1-A and the provisions of section 38 of the Act, and (3) that the expression (offence' as per section 3(s) of the Act carries the same meaning as given to it in section 2 of the Code of Criminal Procedure, 1898, and which, in turn, defines into expression, if 'offence' as meaning 'any act or omission

(3) A.I.R. 1958 Punjab 372.

made punishable by any law for the time being in force .....' and then by referring to item (k) of Schedule 1-A, it was held that the only penal sections in the Act were sections 23 and 109.

(5) Before proceeding with the analysis of the judgment of the Full Bench in *Narain Singh Hira Singh and another's case* (supra) and the contentions addressed at the bar, it would be desirable to notice the relevant provisions of the statute.

(6) Relevant provision of section 3(s) of the Act defining the expression 'offence' is in the following terms:

"3. In this Act, unless the context otherwise requires—

* * * * *

(s) the expression 'offence'..... have the same meaning as in section 2 of the Code of Criminal Procedure, 1973."

Relevant provision of section 2(n) of the Code of Criminal Procedure, 1973, defines the expression 'offence' in the following words:

"2. In this Code, unless the context otherwise requires—

* * * * *

(n) 'offence' means any act or omission made punishable by any law for the time being in force ....."

Relevant provision of section 21 of the Act reads as under :

"21. (1) A Gram Panchayat either *suo motu* or on receiving a report or other information and on taking such evidence, if any, as it thinks fit, may make a conditional order requiring within a time to be fixed in the order —

* * * * *

Or if he objects so to do, to appear before it, at a time and place to be fixed by the order, and to move to have the order set aside or modified in the manner hereinafter provided. If he does not perform such act or appear and

show cause, the order shall be made absolute. If he appears and shows cause against the order the Gram Panchayat shall take evidence and if it is satisfied that the order is not reasonable and proper no further proceedings shall be taken in the case. If it is not so satisfied the order shall be made absolute.

(2) If such act is not performed within the time fixed, the Gram Panchayat may cause it to be performed and may recover the costs of performing it from such person."

Section 23, as existed when *Narain Singh Hira Singh and anothers's case* (supra) was decided, that is, in 1958, read as under :

"23. Any person who disobeys an order of the Gram Panchayat made under the two last preceding sectoins, shall be liable to a penalty which may extend to twenty five rupees;

and if he breach is 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."

Section 23, as it exists at present, reads as under:

"23. 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 fifty rupees; and if the breach is continuing breach, with a further penalty which may extend to five rupees 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."

Section 38 of the Act is in the following terms :

"38. The criminal jurisdiction of a Gram Panchayat shall be confined to the trial of offence specified in Schedule 1-A."

Item (k) of Schedule 1-A of the Act is in the following terms:

SCHEDULE 1-A

Offences Cognizable by a Gram Panchayat
Offences

* * * * *

(k) under this Act or under any rule or bye-law made thereunder."

The learned Judges in *Narain Singh Hira Singh and another's case* (supra) were primarily faced with the situation as to whether the High Court had jurisdiction over the order passed by the Gram Panchayat under section 23 of the Act either in exercise of power under section 439 of the Code of Criminal Procedure (old) or under article 227 of the Constitution. It was conceded before the Court and it so held that the Court had no power under section 439 of the Code of Criminal Procedure to interfere with the order of the Gram Panchayat passed under section 23 of the Act.

(7) It may be observed that in exercise of power under article 227 of the Constitution High Court could interfere with the order of the Gram Panchayat passed under section 23, even if it was held that proceedings under section 23 of the Act were of quasi-judicial nature, although till then the judicial concensus was that an administrative or executive order was not amenable to the writ jurisdiction of the High Court. Once it was found that the order passed by the Gram Panchayat under section 23 was quasi-judicial, then the High Court could straightaway entertain even a writ petition under article 226 of the Constitution against the order and it was not necessary to further examine as to whether the Panchayat exercises criminal, civil or revenue jurisdiction while acting under sections 21 or 23 of the Act. The learned Judges had to go into the question of nature of jurisdiction of the Gram Panchayat, because section 23 in terms did not envisage the forum which was to pass the order imposing penalty and prescribing fine for subsequent disobedience of the order and the only way to spell out jurisdiction in Gram Panchayat was through item (k) of Schedule 1-A and section 38 of the Act and read with the definition of 'offence' as given in section 2(n) of the Code of Criminal Procedure, that is, if the learned Judges were not to hold that the Panchayat exercised criminal jurisdiction while acting under section 23, then a piquant situation would have arisen,

in that section 23 had not identified the Gram Panchayat as the forum to pass the order. So the Panchayat in that case had to be denuded of jurisdiction to pass the order under section 23 of the Act.

(8) After the decision in *Narain Singh Hira Singh and another's case* (supra), the Legislature, by enacting section 23-A,—*vide* Act No. 3 of 1976, in my opinion, sought to resolve the dilemma which the Full Bench had to face in *Narain Singh Hari Singh and another's case* (supra), both in regard to the competency of the Panchayat to act under section 23, as also regarding the nature of its jurisdiction Section 23-A of the Act is in the following terms :

> "23-A. Any person aggrieved by an order of the Panchayat made (under sections 21, 22 or 23—in Punjab) (section 21 or section 23—in Haryana) may within a period of thirty days of such order, prefer an appeal to the (District Development and Panchayat Officer in Punjab) (Deputy Director—in Haryana), whose decision shall be final and shall not be liable to be questioned in any Court of law."

A perusal of section 23-A would show that by mentioning that against the order of the Panchayat made, *inter-alia*, under section 23, the appeal would lie to the District Development and Panchayat Officer in the case of Punjab and Deputy Director, Panchayats, in the case of Haryana, the Legislature clearly spelt out that it is the Gram Panchayat which has to pass the order envisaged under section 23 of the Act.

(9) The next question that falls for consideration is : Did the Legislature by identifying the forum of appeal from the order of the Gram Panchayat under section 23 also indicate the jurisdiction which the Gram Panchayat exercises under that section? In my opinion, it did.

(10) The Full Bench in *Narain Singh Hira Singh and another's case* (supra) spelt out the criminal jurisdiction of the Gram Panchayat under section 23 with reference to item (k) of Schedule 1-A and section 38 of the Act which provides that the criminal jurisdiction of Gram Panchayat shall be confined to the trial of offences specified in Schedule 1-A.

Cognizance of criminal cases by the Panchayat is taken in terms of section 43 of the Act which, in the case of Haryana, is in the following terms :

> "43. (1) Any person who wishes to institute a criminal case before a Panchayat shall make a complaint orally or in writing to the Sarpanch and in his absence to any Panch and shall at the same time pay the fee prescribed in Schedule III.
>
> Provided that if the court fee stamp is not available at the place where the Panchayat ordinarily sits, an equivalent amount in cash shall be paid.
>
> (2) If the complaint is made orally, such particulars, as may be prescribed, shall be recorded by the Sarpanch or the panch as the case may be.
>
> (3) Notwithstanding anything contained in sub-section (1) a Panchayat shall be competent to take cognizance *suo montu* of cases falling under sections 160, 228, 264, 277, 289, 290, 294, 510 of the Indian Penal Code, and under sections 3 and 4 of the Punjab Juvenile Smoking Act, 1918 or any other Act for the time being in force."

If section 21 or section 23 creates an offence, then the cognizance of such an offence has to be taken as envisaged under section 43 of the Act. But section 23 of the Act envisages a **suo motu** action on the part of the Gram Panchayat and not on a private complaint which shows that section 23 does not create an offence. Further, an order passed by the Panchayat while acting as a criminal Court can be cancelled or modified by a Chief Judicial Magistrate. The order passed under section 23 is made appealable to the District Development and Panchayat Officer in the case of Punjab and Deputy Director, Panchayats, in the case of Haryana. While adding section 23-A knowledge of the existence of the following section 51 of the Act must be attributed to the Legislature :

> "51. (1) The Chief Judicial Magistrate, if satisfied, that a failure of justice has occurred, may, of his own motion or on an application of the party aggrieved, by order in writing after notice to the accused, or the complainant as the

case may be, cancel or modify any order in a judicial proceedings made by a Panchayat or direct the retrial of any criminal case by the same or any other Panchayat of competent jurisdiction or by a Court of competent jurisdiction subordinate to him.

(2) A fee of one rupee shall be paid on every such application."

If the remedy against the order passed under section 23 already existed in the statute, the Legislature would not have added superfluous section 23-A to the Act. The Chief Judicial Magistrate and the concerned authorities mentioned in section 23-A, therefore, must not be taken to be exercising jurisdiction over one and the same order of the Panchayat. To hold otherwise is to invite anarchy, which would easily result if a given order passed under section 23-A is upheld by the authority mentioned in section 23-A but is cancelled by the Chief Judicial Magistrate. Hence, this clearly indicates that the juridiction exercised by the Panchayat in proceedings under section 23 is not criminal and that section 23 does not create an offence.

(11) Yet another circumstance that fortifies the above view is the clash between the provisions of section 23 and section 48 in regard to the extent of punishment, if imposition of penalty is treated to be a punishment. Under section 48, the Panchayat with ordinary powers is authorised to impose a maximum fine of Rs. 100 while exercising enhanced powers it can impose maximum fine not exceeding Rs. 200 or double the value of damage or less caused by the act of the accused, with a further restriction that such fine shall not exceed the maximum fine prescribed by law for the given offence. Section 23, on the other hand, authorises the Panchayat to impose a penalty which may extend to Rs. 500. The acts of omission and commission, which the provisions of sectios 21 either prohibit or require to be done, are such that these involve no damage. Such being the position, then if section 23 creates an offence, the punishment cannot exceed what is prescribed under section 48, with the result that that part of section 23 which prescribes the extent of penalty, would become redundant.

(12) If it is held that section 23 creates an offence, then that part of the provisions of section 23, which prescribes the extent of penalty, as also the provisions of section 23-A in its entirety, shall have to be written of as superfluous and redundant. With respect, I am unable to hold that the Legislature in vain enacted the provisions

of section 23-A and provided in section 23 the extent of the penalty. On the contrary, inference is irresitible that the Legislature intervened after the decision in *Narain Singh Hira Singh and another's case* (supra)) to resolve the question that had bothered the learned Judges in *Narain Singh Hira Singh and another's case* (supra) by spellingout two facts by adding section 23-A : (1) that the order under section 23 is passed by the panchayat, and (2) that the order under section 23 would be appealable to the District Development and Panchayat Officer in the case of Punjab and Deputy Director, Panchayats, in the case of Haryana. This latter fact, as per detailed discussion in the earlier part of the judgment, further spelt out the fact that the Panchayat while acting under section 23 did not exercise criminal jurisdiction.

(13) In view of the provision of section 23-A, the Full Bench judgment in *Narain Singh Hira Singh and another's case,* (supra) could no longer be held to be laying down the correct law insofar as it held that the Panchayat exercised criminal jurisdiction while acting under section 23 or that section 23 created an offence.

(14) In the wake of the ratio of the Full Bench judgment in *Narain Singh Hira Singh and another's case* (supra) that section 23 created an offence and that the Panchayat exercised criminal jurisdiction when passing order under section 23, this Court was next faced with the question as to whether in view of the ratio of Narain **Singh Hira Singh and another's case** (supra), the Panchayat while acting as a criminal Court under section 23 could impose a recurring fine in anticipation of the disobedience of the order passed under section 21. Khanna, J. (as he then was) in *Suram Singh* vs. *The Gram Panchayat of Samtana Kalan and another,* (4) relying on the ratio of *Ram Lal* vs. The *Municipal Board, Badaun,* (5) and of *Bombay High* Court in **re Limbaji Tulsiram,** (6) held that Panchayat could not impose a recurring penalty for future disobedience of the order by the same order by which it imposed the penalty for not complying with the order passed under section 21 on the date fixed in the order

(4) 1963 P.L.R. 417

(5) 1925 All 251

(6) I.L.R. (1898) 22 Bom. 766.

passed under section 21 by the Panchayat. In this regard, his following observations deserve notice :—

"It would appear from the above that whenever the question has arisen as to whether the fine can be imposed in anticipation for future disobedience the Courts in India have always taken in view that fine cannot be imposed for a breach which has yet to take place in future. It is no doubt that the language of the different enactments, which were the subject matter of the above mentioned cases, and that of section 23 of Punjab Gram Panchayat Act is not absolutely identical but that would not affect the applicability of the dictum laid down in those cases on the point of the imposition of fine in anticipation for breaches in future. Under section 23 of the Act the fine for the continuing breach after the first day of the breach can extend upto Re. 1 per day during the time the breach continues subject to a maximum of Rs. 500. The words 'which may extend to one rupee for every day' indicate that the fine may not necessarily be the maximum of Re. 1 per day, but may in appropriate cases be less, e.g. 0.50 n.p. or 0.20 n.p. per day. The question as to what should be the penalty for future breach can only be judged when the full facts get known as to why the breach continued. There may be cases when a man directed by the Panchayat to remove an encroachment may be anxious to do so after the order of fine is first passed against him but is incapacitated to remove the encroachment for considerable time because of some unavoidable difficulty like meeting with an accident. In such cases leniency would have to be shown to that man for the future breach. As against that, there may be the case of a person who deliberately and wilfully flouts the order for removal of encroachment and in whose case the Panchayat may like to impose a severer penalty. To pass a sentence in anticipation for future breach would be tantamount to treating the two cases alike. The question of sentence has always been important, and any view which prevents a Court from taking into consideration the extenuating circumstances for a breach cannot be readily countenanced. This aspect of the matter has been specifically emphasised by the High Courts of Allahabed and Bombay in *Ram Lal* vs. *The Municipal Board Budaun,*

(supra) and In *re. Limbaji Tulsiram* (supra), referred to above."

This judgment was approved by a Division Bench of this Court in *Naurang Lal* vs. *The Gram Panchayat of Village Gujarwas and another* (6), with the following observations :

> 'The point is not that a Court or Panchayat cannot impose a recurring fine for a continuous 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 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."

And the Bench decision in *Naurang Lal's case* (supra) was thereafter followed in *Sunder Singh and others* v. *Gram Panchayat of Mankan Tehsil Naraingarh* (7), *Sardara Singh and others* v. *State of Punjab and others* (8) and *Ujjagar Singh* v. *State of Punjab and others*, (9).

(15) The Division Bench dealing with *Surat Singh's case* (supra) at the motion stage entertained doubt as to the correctness of the view expressed by the Division Bench in *Naurang Lal's case* (supra). So at the motion stage itself the Bench admitted the petition to a Full Bench. The majority judgment in *Surat Singh's case* (supra) followed earlier Full Bench decisios in *Narain Singh Hira Singh and another's case* (supra) for holding that the Panchayat exercised criminal jurisdiction while acting under section 23 and also further held that section 23 created an offence. The majority judg-

(6) 1964 PLR 28.
(7) 1966 Curr. L. J. 500.
(8) 1967 Curr. L. J. 833.
(9) 1967 Curr. L. J. 859.

ment while dealing with the aspect as to whether the Gram Panchayat could impose recurring penalty under section 23 in anticipation of the disobedience of the order passed under section 21. referred to the observations of Khanna, J. in *Suram Singh's case* (supra) and the observations of Division Bench in *Naurang Lal's case* (supra) and approved the law laid down by the Division Bench in *Naurang Lal's case* (supra).

(16) Both Khanna, J. and the Division Bench in *Naurang Lal's case* (supra) assumed the premises already furnished by the ratio of the Full Bench in *Narain Singh Hira Singh and another's case* (supra) that Panchayat acted as a criminal Court while exercising jurisdiction under section 23 and then proceeded to examine as to whether the discretion of the criminal Court could be fettered by prescribing that the Court would impose a penalty of Rs. 5 per day for subsequent disobedience of the order without being permitted to go into the question as to whether the disobedience was deliberate or the accused was in such circumstances that he could not help. With respect, as already held that after the enactment of section 23-A of the Act, *Narain Singh Hira Singh and another's case* (supra) could no longer be held to lay down the correct law, that is, the decision of the Full Bench in *Narain Singh Hira Singh and another's case* (supra) that the Gram Panchayat exercised criminal jurisdiction under section 23 and that section 23 created an offence was no longer good law. In view of this, the premises from which Khanna, J. and the Division Bench in *Naurang Lal's case* (supra) had proceeded was no longer available to base their said conclusion and, therefore, the question of examining the power of the Panchayat as criminal Court in terms of section 23 could no longer arise. The ratio of the decisions of Allahabad High Court in *Ram Lal's case* (supra), of Bombay High Court in *re Limbaji Tulsiram's case* (supra), of Calcutta High Court in *Phani Bhusan* v. *Corporation of Calcutta* (10), and of Patna High Court in *Haluman Sah* v. *Motihari Municipality* (11), which have been approvingly referred to in *Surat Singh's case* (supra) in the majority judgment, can be of no avail. All these cases deal with the provision in the Municipal Act which provision on the face of it created an offence punishable by the Magistrate; for instance, in *re Limbaji Tulsiram's case* (supra) the

(10) A.I.R. 1952 Cal. 737.
(11) A.I.R. 1937 Patna 352.

power was exercised by the Presidency Magistrate, and the provision of section 472 of the Bombay Municipal Act was in the following terms :

> "472. Whoever after having been convicted of contravening any provision of any of the sections ..... herein below in this section mentioned.....continues to contravene the said provision ..... shall be punished for each day that he continues so to offend."

In the decision of the Allahabad High Court in *Ram Lal's case* (supra), the reference was made to the High Court by the Sessions Judge against the order convicting the accused by the Magistrate under section 307(b) of the U. P. Municipalities Act.

(17) In the decision of the Calcutta High Court in *Phani Bhusan's case* (supra), it was the Magistrate who exercised power under sections 271/488 of the Calcutta Municipal Act.

(18) In the case before the Patna High Court in *Haluman Sah's case* (supra), the power was exercised under section 197 read with section 203 of the Bihar and Orissa Municipal Act by the Magistrate and the matter was then taken in criminal reference to the Patna High Court.

(19) Almost a parallel provision exists in the Punjab Municipal Act, which is section 219, and is in the following terms :

> "219. Whoever disobeys any lawful direction or prohibition given by the committee by public notice under this Act or any written notice lawfully issued by it thereunder, or fails to comply with the conditions subject to which any permission was given by the committee to him under those powers, shall, if the disobedience or omission is not an offence punishable under any other section, be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing breach, with a further fine which may extend to five rupees for every day after the first during which the breach continues :
>
> Provided....."
> ....."

A perusal of the above section would show that the section in terms uses the word 'offence' and the word 'punishable' and the power to punish or convict and impose fine rests with the Magistrate.

(20) For the aforesaid reasons, we hold that the aforesaid judgments cannot be an authority for holding that section 23 of the Act creates an offence and the Gram Panchayat while acting under that section exercises criminal jurisdiction.

(21) The reasoning that since the provision of section 23 provides for the imposition of recurring penalty and since such a provision for imposition of recurring penalty existed in the Municipal Act and while examining the given provision of the municipal Act the various High Courts had held that the Magistrate was not competent to pass a composite order of the kind imposing the recurring penalty at the time of the first conviction itself, so it must follow that the Panchayat too could not pass a similar order or the provision of section 23 being somewhat akin to the provision of section 136 of the Code of Criminal Procedure, the disobedience of the order passed thereunder is punishable under section 188 of the Indian Penal Code, so too it must be taken that section 23 of the Act created an offence, is, with respect, not correct. It is for the Legislature as to whether it treats a certain disobedience of the order of the Panchayat as an offence or not. The Legislature, in the present case, as has already been shown, had not intended the provision of section 23 as creating an offence nor had it intended that the Panchayat while acting under section 23 exercised criminal jurisdiction.

(22) The order of the Panchayat passed under section 23 containing a direction that the continuing disobedience of the order passed under section 21 shall entail a penalty of Rs. 5 per day, in our opinion, is clearly in the discharge of its administrative functions. Though the heading of the chapter is not decisive of the character of a provision occurring in that chapter, but the fact that sections 21 and 23 occur in a chapter which deals with 'Gram Panchayats Conduct of Business, Duties, Functions and Powers', further strengthens the view that the order passed under section 23 is administrative in character.

(23) For the reasons aforementioned, we hold that the disobedience of an order passed under section 21 of the Act does not amount to an offence in terms of section 23 thereof; that the order passed

under section 23 is in exercise of administrative jurisdiction; and that under section 23 recurring fine can legitimately be imposed by Gram Panchayat in anticipation of the subsequent, and continuing, disobedience of its order. In this view of the matter, we further hold that the Full Bench decision in *Narain Singh,Hira Singh and another's case* (supra) after the enactment of section 23-A of the Act, no longer holds the field and is, therefore, overruled. Consequently, the Division Bench and other decisions in *Suram Singh's case* (supra), *Naurang Lal's case* (supra); *Sunder Singh and another's case* (supra), *Sardara Singh and others' case* (supra), *Ujjagar Singh's case* (supra), *Bachan Singh and Baru's case* (supra), and *Surat Singh's case* (supra), taking that view do not lay down the correct law and are, therefore, overruled.

(24) The writ petition may now be listed for hearing before a single Judge for decision on merits in the light of our answer to the legal proposition posed before us.

I. S. Tiwana, J.

(25) I have had the advantage of going through the lucid judgment prepared by my learned brother, D. S. Tewatia, J. I, however, have not been able to persuade myself to fall in line with the opinion expressed therein. I do not repeat the details of the case which have been fully described by my learned brother in his judgment. My reasons are as follow :—

(26) Firstly, I am of the view that judicial consistency may not be the highest state of legal bliss, yet that does not mean that the periodic change in the composition of the Court on account of change in roster is to be accompanied by changes in its rulings. To my mind, the doctrine of 'stare decises' is a very valuable principle which cannot possibly be departed unless there are extra-ordinary or special reasons to do so. One of the well settled principles of the law of precedence is that the binding effect of a decision does not depend on whether a particular argument was considered therein or not provided that the point with reference to which an argument was subsequently raised, was actually decided. (See *Smt. Somawanti and others* v. *The State of Punjab and others,* (12). Merely because in the

(12) A.I.R. 1963 S.C. 151.

course of the judgment reference was not made to all the sections to which the learned counsel for the party assailing the judgment may refer, it cannot be easily presumed that the Court overlooked those provisions at the time of deciding the point. The same principle was reiterated by the Supreme Court in *Md. Ayub Khan* v. *Commissioner of Police, Madras and others,* (13) and *T. Govindaraja Mudaliar etc.* v. *The State of Tamil Nadu and others,* (14). Within this Court a Full Bench, while considering the question as to when and under what circumstances a binding precedent can be subjected to reconsideration, has ruled that if the ratio of the earlier judgments is to be merely rested on the quick sands of the ingenuity of the counsel to raise some fresh or novel argument (which had not been earlier raised or considered) in order to dislodge them, then the hallowed rule of the finality of binding precedent would become merely a teasing mirage. I, therefore, feel that in the light of this principle alone, the earlier Full Bench judgments of this Court in *Narain Singh-Hira Singh and another* v. *The State,* (supra) and *Surat Singh* v. *Punjab State and others,* (supra), as all other scores of judgments reported or unreported either following these precedents or approved in these judgments should stand and do not deserve to be overruled. It may be highlighted here that there is a stream of judgments of this Court—a good number of them are referred to in the judgment prepared by my learned brother Tewatia, J. wherein it is held that disobedience of an order passed by the Gram Panchayat under section 21 of the Punjab Gram Panchayat Act, 1952 (for short, the Act) amounts to an offence in terms of section 23 of the Act and the proceedings resulting in the passing of the order under the latter section are in the nature of criminal judicial proceedings, and in the light of that no recurring fine can legitimately be imposed under that section in anticipation of the subsequent disobedience of the order of the Panchayat. These judgments have by now held the field for about three decades.

(27) Secondly, I have not been able to find out as to how the introduction of section 23-A of the Act with effect from February 11, 1976,—*iide* Haryana Act No. 3 of 1976, providing for a forum of appeal against the order of the Panchayat under section 23 of the Act can possibly change or effect the scope or interpretation repeatedly put on that section by this Court. This section does nothing more than to provide a forum for appeal against an order passed by the

(13) A.I.R. 1965 S.C. 1623.

(14) A.I.R. 1973 S.C. 974.

Panchayat under section 23 of the Act. Of course, the order passed by the appellate authority shall be final and shall not be liable to be questioned in any Court of law. Even prior to the introduction of this section to the statute, the precedential or judge made law had laid down that the authority competent to pass the order under section 23 is the village Panchayat. Thus this section, when it says that any person aggrieved by an order of the Panchayat made under section 23 of the Act may, within a period of thirty days of the order, prefer an appeal to the Deputy Director, only reiterates the position that the authority competent to pass an order under section 23 of the Act is the village Panchayat and none else. This section thus does not detract anything from the dictum of this Court as expressed in the innumerable judgments referred to above. In a nut shell, this section, to my mind, reiterates what this Court had said earlier to its introduction, rather than to indicate any thing contrary to those decisions. Further, the legal position that an order passed by the Panchayat under section 23 of the Act was revisable by the Chief Judicial Magistrate under section 51 of the Act was never in doubt. (See *Suram Singh* v. *The Gram Panchayat of Samtana Kalan* (supra), *Naurang Lal* v. *The Gram Panchayat of village Gujarwas and another*, (15); *Ujjagar Singh* v. *The State of Punjab and others*, (supra) and *Roshan Lal* v. *Rai Singh and another*, (16). Now if instead of this revisional forum an appellate forum has been provided for by section 23-A of the Act, it does not indicate in any manner that proceedings under section 23 of the Act are not in the nature of criminal judicial proceedings. Later part of section 23-A of the Act has made the appellate decision final and not liable to be questioned in any Court of law, meaning thereby, that remedy of revision under section 51 of the Act is no more available against an order of the Panchayat under section 23 of the Act. This substitution of remedy of revision by an appeal against an order of the Panchayat under section 23 of the Act is a matter of legislative policy. The reason appears to be that the jurisdiction exercisable by the Panchayat under section 23 of the Act is in the nature of a special or summary jurisdiction as compared to the one exercisable under Chapter IV of the Act. However, the nature of the jurisdictions—may be exercisable in a summary manner or in the manner of a regular trial-remains as per section 38 of the Act "criminal jurisdiction of a Gram Panchayat". This also explains the reason or the differentiation in the methodo-

(15) (1964) 66 P.L.R. 28.
(16) (1969) 71 (Delhi Section) 336.

logy of taking cognizance of the offences and the difference or distinction in the punishment to be awarded as a result of those trials. Further, to me it appears clear that the extent of punishment or the fine imposable on a convict or a person held guilty, as provided for in section 48 of the Act, relates to a conviction and not to repeated convictions as is the case under section 23 of the Act.

(28) For all the abovesaid reasons and those stated in the above-noted two Full Bench judgments in *Narain Singh-Hira Singh and Surat Singh's cases* (supra) I would like to uphold the view that the proceedings taken by the Panchayat under section 23 of the Act are in the nature of Criminal judicial proceedings and it cannot impose any recurring fine in anticipation of any subsequent disobedience of its order.

P. C. Jain, C.J.

(29) I have the advantage of going through the judgments prepared by my learned brothers D. S. Tewatia and I. S. Tiwana, JJ. I agree with the view of brother I. S. Tiwana, J.

S. P. Goyal, J.—I agree with Tewatia, J.

D. V. Sehgal, J.—I agree with the views taken by D S. Tewatia, J.

ORDER OF THE COURT

Prem Chand Jain, C.J. (Oral).

(30) In the light of the majority judgment, this petition would now go before the learned Single Judge for disposal on merits.

PREM CHAND JAIN,
Chief Justice.
D. S. TEWATIA,
Judge.
S. P. GOYAL,
Judge.
I. S. TIWANA,
Judge.
D. V. SEHBAL,
JUDGE

N.K.S.

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