

Gram Panchayat Birdhana, Tehsil Jhajjar, District Rohtak and another *v.* State of Haryana and others (M. M. Punchhi, J.)

Controller did not understand the legal position in correct perspective. If he had invited his attention to the provisions of Section 7 of the Act, he would not have acted in the manner as adopted by him in the instant case.

(7) Resultantly, I allowed the revision petition, set aside the order of the Appellate Authority dated August 5, 1989 and that of the Rent Controller dated December 17, 1988 and remit the case to the Rent Controller for re-decision in accordance with law. He will treat the written statement filed by the tenant as an application under Section 7 of the Act and frame proper issue with regard to rate of rent and after so doing, permit the parties to lead evidence and thereafter render judgment. If he finds that the rate of rent is Rs. 40 and not Rs. 90 per month as pleaded by the tenant, he will order the landlady to restitute the excess rent with interest at the rate of 9 per cent per annum from the date of payment of excess rent by the tenant. The parties through their counsel are directed to appear before the Rent Controller on January 10, 1990. They shall bear their own costs

P.C.G.

Before : M. M. Punchhi and A. L. Bahri, JJ.

GRAM PANCHAYAT BIRDHANA, TEHSIL JHAJJAR, DISTRICT ROHTAK AND ANOTHER,—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 11471 of 1989.

8th September, 1989.

Constitution of India, 1950—Art. 226—Punjab Gram Panchayat Act (IV of 1953)—S. 102—Complainant has no right to file appeal against order revoking suspension of Sarpanch—Appellate authority should decline to entertain appeal—Complainant has no right to invoke writ jurisdiction.

Held. that if the complainant is not to be given an opportunity of being heard as held by the Full Bench in the case of *Saktu Ram v. State of Haryana and others*, 1988(2) I.L.R. P&H 149 and the revocation order can be passed in his absence, it logically follows that an

appeal, which in the processal law of our country is re-hearing of the original matter, cannot be filed by him on merits.

(Para 3)

Held, that if the complainant has no right of hearing in an appeal on merits, he has no such right in these proceedings under Article 226 of the Constitution.

(Para 3)

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

- (a) to issue any appropriate writ to quash the impugned orders dated 12th July, 1989 (Annexure P-7) and dated 23rd August, 1989 (Annexure P-9), passed by the Deputy Commissioner (Respondent No. 3) and the Secretary (Respondent No. 2) respectively, and allow the Civil Writ Petition with costs.
- (b) to exempt the petitioners from filing the certified copies of the Annexures P-1 to P-9.
- (c) to exempt the petitioners from the service of the advance notices to the Respondents.
- (d) to summon the record of the case.
- (e) to grant any other appropriate relief to the petitioners as deemed fit and proper in the circumstances of the case.

CIVIL MISC. NO. 15164 of 1989.

Application under Section 151 of the C.P.C. praying that your Lordships may be pleased to stay the operation of the impugned orders dated 12th July, 1989 (Annexure P-7) and dated 23rd August, 1989 (Annexure P-9) passed by the Deputy Commissioner (Respondent No. 3) and the Secretary (Respondent No. 2) respectively, pending the final disposal of the Civil Writ Petition.

Mr. C. P. Sapra, Advocate, for the Petitioners.

JUDGMENT

M. M. Punchhi, J. (Oral)

(1) Petitioner No. 1 is the Gram Panchayat of Village Birdhana, tehsil Jhajjar, district Rohtak. Petitioner No. 2 is a Panch who on account of the suspension of the Sarpanch was made an acting Sarpanch. The Sarpanch was suspended on some allegations of

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misconduct. Out of the nine members of the Panchayat, five had even passed a no-confidence motion against him, the petitioner being one of them. The matter was regularly enquired into and the Deputy Commissioner,—*vide* order Annexure P-7 ordered reinstatement of the Sarpanch. The petitioner filed an appeal against the said order before the competent appellate authority which was dismissed. The appellate authority took the view that the complainant had no right either to get the Sarpanch suspended or file an appeal against the order revoking suspension. He further observed that the complainant also had no right to be associated in the enquiry. This has given rise to the present writ petition.

(2) We do not appreciate petitioner No. 1-Gram Panchayat coming forward to litigate the matter. In sum and substance, the litigation is on behalf of petitioner No. 2, the Acting Sarpanch. Learned counsel for the petitioners justifyingly says that it is in essence a petition to voice grievance of petitioner No. 2 relying as he is on a Full Bench decision of this Court in *Saktu Ram v. State of Haryana and others* (1). We are unable to accept his contention. The Full Bench and considered the question whether any notice need be given to the complainant before the revocation of the order of suspension. The Bench took the view that it was not. The Full Bench further observed that while dealing with the question, the validity of the order had to be kept apart, which was entirely different from the question whether notice shall be given to the complainant before ordering revocation of suspension. The Full Bench conceded the right to the complainant that even though he had not been given notice, he might have a right to question the order on the ground that there was no material for revoking the order on the ground that the same is *mala fide* but that was not to say that before ordering revocation, notice shall be issued to the complainant.

(3) It has thus expressly been ruled that a notice is not necessary to the complainant before recording an order of revocation of suspension. The revocation order might by itself give him a right to question it further on the limited ground of the order being *mala fide*. The object of giving notice to a party is to afford him an opportunity of being heard before any step is taken by a judicial or quasi-judicial authority. If the complainant is not to be given an opportunity of being heard and the revocation order can be passed

(1) 1988 (2) I.L.R. P & H 149.

in his absence, it logically follows that an appeal, which in the processual law of our country is re-hearing of the original matter, cannot be filed by him on merits. So far as the impugned order declining to entertain the appeal of petitioner No. 2 is concerned, we do not find any fault with it. Challenge directly by petitioner No. 2 to this Court about the legality of the revocation order does not impress us because it is after a regular enquiry that the order of suspension was revoked and not at an interim stage. If the complainant has no right of hearing in an appeal on merits, how can he have such a right in these proceedings under Article 226 of the Constitution. The petitioner as it appears to us is more keen to preserve his acting Sarpanchship on being a complainant in the case.

(7.) For the aforesaid reasons, we dismiss the petition *in limine*.

R.N.R.

Before : J. V. Gupta and K. P. Bhandari, JJ.

RAM DAYAL (DECEASED) AND OTHERS,—Appellants.

versus

STATE OF HARYANA,—Respondent.

R. F. A. No. 389 of 1976.

17th November, 1989

Code of Civil Procedure (V of 1908)—Ss. 149, 151 and 153. O. 6, Rl. 17, O. 41, Rls. 3 and 22—Claim for enhanced compensation—Application for amendment of memorandum of appeal filed 10 years after decision in Regular First Appeal—Application not maintainable.

Held. that the application has been filed after more than 10 years of the decision of the appeal by this Court. The said matter has become final between the parties and, therefore, could not be reopened after more than ten years by permitting the appellants to amend the memorandum of appeal to claim enhanced amount of compensation now. Once the appeal is disposed of, that jurisdiction is lost and that, therefore, it was not possible for the claimants to ask for amendment of the grounds so as to increase the claim for disposal of appeal.

(Para 2)