

from our decision, but then in case of conflict between administrative convenience on the one hand and constitutional guarantee and rule of law on the other, the latter must prevail over the former. This Court, as indeed all authorities and departments in this Republic, are expected, and indeed bound, to uphold the constitutional mandates and enforce the rule of law, no matter how great the administrative inconvenience. This position has to be clearly kept in the forefront by all administrative agencies who may, at times, by stress of administrative emergencies feel tempted—though unconsciously—to ignore the constitutional mandates or give it secondary importance for the sake of administrative convenience. Allegiance to the Constitution which is supreme in our country demands due resistance to such temptations.

For the foregoing reasons, we are constrained to allow this appeal and setting aside the order of the learned Single Judge allow the writ petition in part and quash the scheme only in respect of the three items mentioned above. In respect of the water channel 91 *kanals* 17 *marlas* are to be taken to have been reserved as admitted in the written statement. There would be no order as to costs of this appeal.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

B.R.T.

CRIMINAL MISCELLANEOUS

Before H. R. Khanna, J.

SURAM SINGH,—*Petitioner.*

versus

THE GRAM PANCHAYAT, SAMTANA KALAN AND
ANOTHER,—*Respondents.*

Criminal Miscellaneous No. 716 of 1962.

*Punjab Gram Panchayat Act (IV of 1953)—S. 23—
Gram Panchayat—Whether can impose a recurring fine
day till encroachment is removed.*

1963

Feb., 5th.

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and others
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Consolidation
of Holdings,
Punjab, and
others
Dua, J.

Held, that a Gram Panchayat can impose a fine of Rs. 25 for the disobedience of its order for the demolition of encroachment, but it cannot by the same order impose a further penalty of Re. 1 per day during time the encroachment was not removed in future. No fine can be imposed in anticipation for future disobedience or for a breach which has yet to take place. 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.

Petition under Article 227 of the Constitution of India praying that the orders dated the 2nd April, 1962 and 26th June, 1962, passed by the respondents Nos. 1 and 2, respectively, be quashed.

V. C. MAHAJAN, ADVOCATE, for the Petitioner.

G. C. MITTAL, ADVOCATE, for the Respondents.

JUDGMENT

Khanna, J.

KHANNA, J.—This petition under Article 227 of the Constitution of India has been filed by Suram Singh and is directed against the order dated 2nd April, 1962 of Gram Panchayat, Samtana Kalan, district Kangra, and the order dated 26th

June, 1962 of Sub-Divisional Magistrate, Hamirpur, whereby he dismissed the revision petition of the petitioner against the above-mentioned order of the Gram Panchayat.

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Brief facts giving rise to the present petition are that on 2nd November, 1961, the above-mentioned Panchayat made a conditional order under sub-section (1) of section 21 of the Punjab Gram Panchayat Act (4 of 1953), (hereinafter referred to as the Act) stating that the petitioner had narrowed the public thoroughfare by constructing a *danga* upon it. The petitioner was directed to remove that encroachment and in case he had any objection to appear before the Panchayat on 17th November, 1961. A report was made on 6th November, 1961 by the Chaukidar that the petitioner had refused to accept that notice. Accordingly on 2nd April, 1962, the members of the panchayat, after noting that the petitioner was absent and had refused to accept notice, passed an order stating that the petitioner had taken unlawful possession of the site in dispute. The petitioner was thus found guilty of making encroachment on a thoroughfare. He was fined Rs. 25 under section 23 of the Act. It was also ordered that if the encroachment continued as before, an additional fine of Re 1 per day be imposed upon him.

The petitioner filed a revision against the aforesaid order of the Gram Panchayat under section 97 of the Act, but the revision was dismissed by the Sub-Divisional Magistrate, Hamirpur.

Mr. Vikram Chand Mahajan, learned counsel for the petitioner, has raised two contentions at the hearing of the petition in this Court. It is urged that the Panchayat could not by its order dated 2nd April, 1962 impose a daily fine of Re 1 upon the

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petitioner and that respondent No. 1 was biased against the petitioner. For the sake of convenience I would deal first with the latter contention, which is contained in clause (IV) of paragraph 7 of the petition. It is stated therein that respondent No. 1 was biased against the petitioner as the petitioner had appeared against it in criminal proceedings. Respondent No. 1 is the Gram Panchayat of Samtana Kalan through its Sarpanch and it is obvious that the petitioner could not have appeared as a witness against the Gram Panchayat in criminal proceedings. Mr. Mahajan has tried to clarify it by saying at the hearing of the petition that the petitioner appeared as a witness not against the Gram Panchayat but against the Sarpanch of the Panchayat. The date on which the petitioner appeared as a witness has not been mentioned. It is also not clear as to which was the Court and what was the nature of the case in which the petitioner appeared as a witness. No objection on that score, it appears, was taken either before the Panchayat or before the learned Sub-Divisional Magistrate. No application for transfer of the case also seems to have been filed on that ground when the case was pending before the Panchayat. In the circumstances, it cannot be held that the order is vitiated by bias or personal interest and the petitioner can derive no benefit from section 67 of the Act to which reference has been made by his learned counsel in this connection.

The other contention raises a question of some importance with regard to the interpretation of section 23 of the Act which reads as under:—

“23. Penalty for disobedience of a special or general order of the Panchayat.—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 twenty-five rupees; and if the breach is a continuing breach, with a further penalty which may extend to one rupee for every day after the first during which the breach continues:

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Provided that the recurring penalty shall not exceed the sum of rupees five hundred."

According to Mr. Mahajan the Panchayat could impose a fine of Rs. 25 for the disobedience of its order for the demolition of the encroachment, but it could not by the same order impose a further penalty of Re 1 per day during the time the encroachment was not removed in future. There is, in my opinion, force in this contention and it has the weight of judicial authority behind it. Section 307 of the U.P. Municipalities Act, 1916, deals with disobedience of a notice issued under that Act. Clause (b) of that section, with which we are concerned, read as under:—

"307. *Obedience to notice issued to individual.*—If a notice has been given under a rule or by law to a person requiring him to execute a work in respect of any property, movable or immovable, public or private or to provide or do or refrain from doing anything within a time, specified in the notice, and if such a person fails to comply with such a notice, then—

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(b) the said person shall be liable, on conviction before a magistrate, to a fine which may extend to five hundred rupees, and in case of a continuing breach, to a further fine which may extend to five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence."

Dealing with the above provision of law it was observed in *Ram Lal v. The Municipal Board, Budaun* (1), as under:—

"Under section 307 (b) of the Municipalities Act, it is illegal for a Magistrate to sentence the accused to a further daily fine at the same time that he sentences him to a fine for disobedience of the notice."

A similar view was taken in *Ramzan v. The Municipal Board of Benares* (2), and *Hurmat v. Emperor* (3).

Section 203 of the Bihar and Orissa Municipal Act, 1922, provides penalties for encroachments on public streets, drains and water courses. Sub-section (2) of that section reads as under:—

"203 (2) Any person who fails to comply with a requisition issued by the Commissioners under section 196, 197 or 202 shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the default is continued

(1) A.I.R. 1925 All. 251.
 (2) A.I.R. 1926 All. 204.
 (3) A.I.R. 1932 All. 109.

after the expiration of eight days from the date of service on him of such requisition."

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In *Haluman Sah v. Matihari Municipality* (4), arising under the above provisions of law, it was observed as under:—

"It has been held in a series of cases that a fine in respect of an offence which has not yet taken place cannot be imposed in anticipation of the commission of offence. That is precisely what the learned Magistrate has done in the present case by directing the petitioner to pay a fine of Re 1 a day after the expiry of one month from his order if the hut has not been removed by that time. The learned Government pleader points out that under section 203 of the Act it was competent for the Magistrate to impose a daily fine. This, however, is in respect of an offence which has already taken place, that is to say, it was open to the Court to impose a daily fine from the date when the petitioner failed to comply with the Municipal order directing him to vacate the land. The learned Magistrate, however, did not apparently see fit to impose that fine, but has imposed a fine in respect of an offence which had not been committed at the date of the order. The order directing the petitioner to pay a fine of Re 1 a day till the encroachment is removed is, therefore, set aside and if any part of this daily fine has been realised, it will be refunded."

(4) A.I.R. 1937 Pat. 352.

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The last mentioned case was followed in a Division Bench case in *Suman Tawaff v. Gaya Municipality* (5).

In *In Re Limbaji Tulsiram* (6), a case arising under sections 471 and 472 of the City of Bombay Municipal Act, the accused was fined Rs. 5 and Re 1 per *diem* until work was completed by him. Section 472 of that Act provides—

“472. Whoever after having been convicted of contravening any provision of any of the sections * * * hereinbelow in this section mentioned * * * continues to contravene the said provision * * * shall be punished for each day that he continues so to offend.”

It was held—

“Clearly this necessitates a separate prosecution for a distinct offence,—a prosecution in which a charge must be laid for a specific contravention for a specific number of days, and for which charge, if proved, the Magistrate is to impose a daily fine of an amount which is left to him in his discretion to determine. The orders in the present cases are bad as being convictions and punishments for offences which the accused persons had not committed, and with which they were not and could not have been charged, at the time the sentences were passed. The effect of such orders would be to deprive the accused persons of the opportunity to deny the commission of the offence or plead extenuating circumstances, and to take away from the

(5) A.I.R. 1952 Patna 45.

(6) (1898) 22 Bom. 766.

Magistrate, who might have afterwards, to levy the fine, the discretionary power vested in him by law to determine the amount that should be inflicted after investigation of the case."

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Phani Bhusan v. Corporation of Calcutta (7), was a case under section 488 of Calcutta Municipal Act, 1923, and it was observed as under:—

"Where the accused has been punished under section 488 of the Act, it is no part of the Magistrate's business, either to purport to impose daily fine for offences not yet committed, or to make threats about what may happen in the future. If the order has not been complied with, it is for the corporation to apply for a separate summons in a separate case and the Magistrate may then, if satisfied that the offence has been committed for any number of days, impose a further fine appropriate to that number of days and so on *ad infinitum* or until the party does comply with the order."

Section 217 of the Assam Municipal Act, 1923, reads as under:—

"217. Whoever, being the owner or occupier of any land wilfully or negligently permits the same to be used as a market without a licence under section 216 shall be liable to a fine not exceeding two hundred rupees for every such offence, and to a further fine not exceeding forty

(7) A.I.R. 1952 Cal. 737.

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rupees for each day during which the offence is continued after conviction of such offence.”

Dealing with the above provision of law in *Md. Nadir Shah v. The State* (8), it was observed as under:—

“Section 217 of the Assam Municipal Act contemplates two stages. On the first conviction a fine upto Rs. 200 can be imposed and afterwards if the accused continues to commit an offence, the Magistrate is empowered to impose a daily fine for that period on enquiry. Therefore, section 217 does not by itself authorise the Magistrate to impose such a recurring fine at the first trial.”

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 the view that fine cannot be imposed for a breach which has yet to take place in future. It is no doubt true 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 up to 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

(8) A.I.R. 1959 Assam 103.

less, e.g., 0.50 nP. or 0.20 nP. 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 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 Allahabad and Bombay in *Ram Lal v. The Municipal Board, Budaun* (1), and *In Re Limbaji Tulsi-ram* (6), referred to above.

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I, therefore, am of the view that the Gram Panchayat could not pass an order on 2nd April, 1962, directing that if the encroachment continued as before the petitioner should pay an additional fine of Re 1 per day. Such an order was not warranted by law and to that extent it is set aside. The order with regard to the payment of Rs. 25 as fine for the past breach is maintained.

K.S.K.