

objection was raised before the Collector or even in appeal before the Commissioner, and for the first time it was urged before the Financial Commissioner. The complaint that no standard for evaluating *rousli* land is prescribed is denied by the State, and in para No. 7(xii) of its return it is asserted that the schedule does prescribe valuation for *rousli* land in Sirhind Tehsil where admittedly the land in dispute is situate. This statement appears to be correct, as on reference to schedule A we find that in the valuation statement for Sirhind Tehsil under the category Barani three types of land are listed and they are *dakar*, *rousli* and *bhud* and separate valuation for each of them is prescribed.

I thus find no merit in this petition and dismiss the same with costs.

S. B. CAPOOR, J.—I agree.

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R.N.M.

APPELLATE CIVIL

*Before Shamsher Bahadur, J.*

GRAM PANCHAYAT MAUZA NANGLAN, DISTRICT

LUDHIANA,—*Appellant*

*versus*

NAGINA SINGH AND OTHERS,—*Respondents*

Second Appeal from Order No. 36 of 1966.

December 2, 1966.

*Punjab Gram Panchayat Act, 1952 (IV of 1953)—Ss. 104(2) and 108—Civil Suit against Panchayat—When barred—Suit against Gram Panchayat—Notice before institution—Whether necessary—Interpretation of statutes—Marginal heading—Whether provides key to the construction of section.*

*Held*, that under sub-section (2) of section 104 of the Punjab Gram Panchayat Act, a civil suit is only barred against a Panchayat if it relates to an act, which is performed in the discharge of its statutory duties. It has no application to the suit for a declaration that the land in suit was possessed by the plaintiff and for a perpetual injunction restraining the Gram Panchayat from taking possession thereof.

*Held*, that the persons against whom a suit cannot be instituted without the delivery of a notice are specified in sub-section 108 of the Punjab Gram Panchayat Act as an officer or a servant of a Gram Panchayat, or an Adalti

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Panchayat. A Gram Panchayat is not mentioned in this list and it is manifest that a notice need not be served on it before the institution of a suit or other legal proceedings.

*Held*, that the marginal heading cannot provide a key to the construction of the provisions of a section of an Act where the section is itself clear.

*Second Appeal from the order of Shri B. L. Mago, Senior Subordinate Judge, with enhanced Appellate Powers, Ludhiana, dated the 24th February, 1966, reversing that of Shri Shamsher Singh, Additional Sub-Judge, III Class, Ludhiana, Camp at Samrala, dated the 11th November, 1965, setting aside the judgment and the decree of the trial Court and sending back the case to the trial Court for deciding the case on other issues.*

S. S. KANG, ADVOCATE, for the Appellant.

S. K. PIPAT, ADVOCATE, for the Respondents.

#### JUDGMENT.

SHAMSHER BAHADUR, J.—The question for determination in this appeal is whether it is a condition precedent for a suit instituted against a Gram Panchayat to serve it with a notice under subsection (1) of section 108 of the Punjab Gram Panchayat Act, 1952 ?

The plaintiff-respondents brought a suit against the Gram Panchayat of Mauza Nanglan for a declaration to the effect that the land delineated in the plan annexed with the plaint was possessed by the plaintiffs and for the issue of a permanent injunction to restrain the Panchayat from taking possession of this site. The suit in the first instance was dismissed by the Court of the Subordinate Judge, Ludhiana, on 11th of November, 1965, on the ground that the requisite notice under section 108 of the Gram Panchayat Act had not been served on it. It may be mentioned that the issues on merit were not disposed of by the learned Judge. The lower appellate Court, to whom an appeal was preferred on behalf of the plaintiff, has disposed of the question covered by issue No. 4 in favour of the plaintiffs and has remanded the case for determination on the remaining issues.

Issue No. 4, on which the matter has been determined by the two Courts below, is to this effect :—

“What is the effect of non-compliance of the provisions of section 104 and 108 of the Gram Panchayat Act ?”

Section 104 of the Act provides a bar to actions and under sub-section (1), "no suit or other legal proceedings in a civil or criminal court shall lie against any Panch in respect of any act done in good faith under this Act" and under sub-section (2), "no civil or revenue suit or proceedings shall lie against any Gram Panchayat in respect of any act done in the discharge of any of its duties imposed under this Act". It is well to emphasise that under sub-section (2) a civil suit is only barred against a Panchayat if it relates to an act which is performed in the discharge of its statutory duties. Admittedly, sub-section (2) of section 104 is not applicable to the facts of this case and I cannot comprehend how this section was mentioned in the issue at all.

With regard to sub-section (1) of section 108, it is provided therein that :—

"No suit or legal proceeding shall be instituted against any officer or servant of a Gram Panchayat, or an Adalti Panchayat or any person acting under their direction for anything done in good faith under this Act, until the expiration of two months next after a notice in writing, stating the cause of action, the name and place of abode of the intending plaintiff, and the relief which he claims, has been in the case of any aforesaid body delivered or left at its office and, in the case of any individual as aforesaid delivered to him, at his office or usual place of abode; and the plaint shall contain a statement that such notice has been so delivered."

While sub-section (1) of section 108 has its marginal heading : "Suits against Panchayat or its officers", it would be plain that the notice which has to be delivered makes no reference to a suit or legal proceedings which have been instituted against a Gram Panchayat. Concededly, an institution described as 'Adalti Panchayat' does not include a Gram Panchayat and I fail to see how the marginal heading can provide a key to the construction of the provision itself. The persons against whom a suit cannot be instituted without the delivery of a notice are specified as an officer or a servant of a Gram Panchayat or an Adalti Panchayat. A Gram Panchayat is not mentioned in this list and it is manifest that a notice need not be served on it before the institution of a suit or legal proceedings.

Mr. Kang, the learned counsel for the appellant, contends that the words "aforesaid body" are indicative of the intention of the

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Legislature to include a Gram Panchayat also as an institution on which a notice has to be served before the filing of the legal suit or proceedings. It is to be observed that between the words "officer or servant of a Gram Panchayat" and "or an Adalti Panchayat", there used to be two other institutions, namely, "Thana" and "Panchayat Union". The first was omitted by Punjab Act No. 30 of 1954 and the other by Punjab Act No. 26 of 1960. Without the amendment, the provision would have read :—

"No suit or legal proceeding shall be instituted against any officer or servant of a Gram Panchayat, a Thana, Panchayat Union or an Adalti Panchayat or any person acting under their direction.....".

The words "aforesaid body" in such a context would not have been redundant or out of place. It appears that after the deletion of "thana" and "Panchayat Union", the words "aforesaid body" should have been suitably amended also. The failure of the Legislature to have done so cannot lead to the inference that it had intended to include a Gram Panchayat also as an institution on which notice had to be served before the filing of a legal suit or proceeding.

The conclusion reached by the lower appellate Court, therefore, appears to be correct and this appeal, therefore, must fail and is dismissed with costs.

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R. N. M.

APPELLATE CRIMINAL

*Before S. B. Kapoor and Gurdev Singh, JJ.*

THE STATE,—*Appellant*

*versus*

KALI RAM,—*Respondent*

Criminal Appeal No. 88 of 1965.

December 7, 1966.

*Code of Criminal Procedure (Act V of 1898)—S. 251-A—Scope of—Warrant case—Prosecution witnesses—Whether to be summoned by Court—Prosecution failing to produce witnesses—Whether entitles the Court to close prosecution evidence.*