

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA-660-2017 (O&M)

Date of Decision: 16.1.2019

Gram Panchayat Agwanpur, Sonapat

...Appellant.

Versus

Ram Chander and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. Puneet Gupta, Advocate for the appellant.

Mr. Ankit Rana, Advocate for

Mr. Rajeev Sharma, Advocate for respondent No.1.

AJAY KUMAR MITTAL, J.

1. Challenge in this Letters Patent Appeal is to the order dated 9.3.2017 passed by the learned Single Judge whereby CWP-4804-2017 filed by respondent No.1 was allowed.

2. Briefly stated, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. Respondent No.1 was elected as Sarpanch, Gram Panchayat, Agwanpur, District Sonapat in the elections held in the year 1995. In the year 1991, the Director, Development and Panchayats, Haryana, Chandigarh vide order dated 9.4.1991 granted approval for sale of shamlat land measuring 182 kanals to be divided in 447 plots situated in village Agwanpur, District Sonapat. In December, 1999, the term of Panchayat had expired and despite that the

Panchayat election was issued and the new Panchayat was constituted on 16.3.2000. The auction of the plots was conducted wherein about 81 plots of different sizes had been put to auction. At the time of auction, respondent No.1 in collusion with the Panchayat Secretary had flouted the conditions laid down by the Director, Panchayats vide letter dated 23.4.1991 and had executed the sale deeds on 21/22.3.2000 without any authority. Respondent No.1 did not deposit the sale proceeds of the plots into the Gram Panchayat fund and embezzled the same. Accordingly, the residents of the village moved an application under Section 10-A of the Punjab Village Common Lands (Regulation) Act, 1961 (in short "the Act") for cancellation of the registered sale deeds and auction conducted by the Gram Panchayat, Agwanpur. As per the Audit Report dated 19.3.2001 (Annexure A-1), respondent No.1 had openly flouted the rules and Regulations under different heads and misused the funds of the Gram Panchayat and even did not deposit the amount received on account of Gram Panchayat. The Assistant Collector 1st Grade, Sonapat vide order dated 12.10.2004 (Annexure A-2) dismissed the said application. Against the order, Annexure A-2, the villagers filed an appeal before the Collector, who vide order dated 28.3.2005 remanded the matter to the Assistant Collector 1st Grade, Sonapat. In pursuance thereto, the Assistant Collector 1st Grade, Sonapat vide order dated 4.4.2006 set aside the sale deeds dated 19.6.1999 and 21/22.3.2000 and issued a direction for refund of the money to the purchasers along with interest @ 8% per annum within a period of three months. Against the order dated 4.4.2006, the beneficiaries filed an appeal before the Collector. The Collector, Sonapat vide order dated 7.2.2008 dismissed the appeal and recommended for action against respondent No.1.

Some of the beneficiaries challenged the orders dated 28.3.2005, 4.4.2006 and 7.2.2008 by filing CWP-13795-2008 and the others filed civil suit dated 17.2.2009 (Annexure P-3). In compliance with the orders dated 4.4.2006 and 7.2.2008, a report dated 12.10.2010 (Annexure P-4) was prepared. The appellant passed a resolution dated 26.3.2012 (Annexure A-5) resolving to take necessary action against respondent No.1. The appellant had also made a representation dated 17.4.2012 (Annexure A-6) to the Inspector General of Police, Rohtak Range, Rohtak for taking action against respondent No.1 for misusing the funds of the Gram Panchayat. The trial Court vide order dated 6.11.2013 (Annexure A-7) dismissed the suit filed by some of the beneficiaries. When no action was taken against respondent No.1, the appellant and the other residents of the village made a representation dated 3.5.2016 to the Chief Minister, Haryana with copies to the Director, Panchayat, Director General of Police, Director General (Vigilance), Haryana and the Deputy Commissioner, Sonapat, but to no effect. Thereafter, the appellant filed CWP-15229-2016 and this Court vide order dated 1.8.2016 disposed of the said writ petition with a direction to respondent No.3 to consider the grievance raised vide representation dated 3.5.2016 and decide the same within a period of three months from the date of receipt of certified copy of this order. In response thereto, respondent No.3 vide order dated 29.11.2016, *inter alia*, directed respondent No.4 to get registered a criminal case against respondent No.1; to initiate recovery proceedings; to take possession of the plot and to file an application under Section 10-A of the Act for cancellation of the sale deed. Pursuant thereto, FIR No.0543 dated 10.12.2016, under Sections 406, 409, 420, 120-B (Annexure A-8) was got registered against respondent No.1 at Police

Station Gannaur, District Sonapat. When respondent No.4 had failed to initiate the recovery proceedings for recovery of ₹ 24,50,742/- along with interest and further to file application under Section 10-A of the Act for cancellation of the sale deed, the appellant moved a representation dated 17.1.2017 (Annexure A-9) before respondent No.3. Thereafter, the appellant filed CWP-3423-2017 which was dismissed as withdrawn by this Court vide order dated 22.2.2017 (Annexure A-10) with liberty to pursue the appeal. Respondent No.4 issued a letter dated 27.2.2017 to respondent No.1 to deposit the embezzled amount of ₹ 1,12,42,779/-. Respondent No.1 filed CWP-4804-2017 against the orders dated 29.11.2016 and 27.2.2017 (Annexures P-7 and P-8, respectively attached with the writ petition) passed by respondents No.3 and 4. This Court vide order dated 8.3.2017 (Annexure A-11) while issuing notice of motion had directed the Secretary, Department of Gram Panchayat, Haryana to be present in Court on 9.3.2017. This Court vide order dated 9.3.2017 allowed the writ petition and set aside the aforesaid orders. Hence, the present Letters Patent Appeal.

3. Learned counsel for the appellant submitted that the learned Single Judge had passed the impugned order without affording an opportunity of hearing to the appellant whose interests had been adversely affected. It was further submitted that the impugned order has been passed in violation of the principles of natural justice.

4. On the other hand, learned counsel for respondent No.1 supported the order dated 8.3.2017 (Annexure A-11) passed by the learned Single Judge.

5. After hearing learned counsel for the parties, we find merit in the contentions raised by the learned counsel for the appellant.

6. The learned Single Judge issued notice of motion on 8.3.2017 for 9.3.2017 and on the said date had allowed the writ petition. A perusal of the record shows that the appellant was arrayed as respondent No.4 in the writ petition but no notice was ever served upon respondent No.4-appellant. Therefore, it had been passed without affording an opportunity of hearing to the appellant. Further, the impugned order has been passed in violation of the principles of natural justice.

7. The Apex Court in **Canara Bank v. V.K. Awasthy AIR 2005 SC 2090** while dealing with the doctrine of principles of natural justice had noticed as under:-

“8. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions “natural justice” and “legal justice” do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice.

Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades

with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of **Cooper v. Wandsworth Board of Works, (1963) 143 ER 414**, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

8. Thus, the impugned order dated 9.3.2017 is passed without affording an opportunity of hearing to the appellant and is in violation of the

principles of natural justice as per law laid down by the Supreme Court in **V.K. Awasthy's case (supra)**, as noticed hereinabove.

9. Accordingly, the appeal is allowed and the order dated 9.3.2017 passed by the learned Single Judge is quashed. The matter is remitted to the learned Single Judge to pass a fresh order after affording an opportunity of hearing to the appellant in accordance with law. Needless to say that anything observed herein above shall not be taken to be an expression of opinion on the merits of the controversy

(AJAY KUMAR MITTAL)
JUDGE

January 16, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No