

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

201

**CWP-5088-2020(O&M)
Date of Order: 08.10.2021**

SURJIT SINGH

..Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manish Kumar Singla, Advocate
for petitioner.

Ms. Kanica Sachdeva, AAG, Punjab.

Mr. D.S. Malwai, Advocate
for the applicant.

Mr. Amarinder Pal Singh, DDPO.

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

Through this writ petition, the petitioner prays for issuance of a writ in the nature of certiorari to quash notice dated 19.12.2019, whereby, he was directed to deposit an amount of Rs.9,68,648/-. The petitioner is a former Sarpanch. The Department alleges that he has caused loss to the Gram Panchayat. As per the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as "the 1994 Act"), the legislation has made a provision for proceeding against the members of the Panchayat for recovery of loss, if any, in a particular manner.

Section 216 of the 1994 Act is extracted as under:-

"216. Liability of members of Panchayat. (1) Every member of a Panchayat shall be liable for the loss, waste or misapplication of any money or property belonging to the Panchayat, if such loss, waste or misapplication is a consequence of his neglect or misconduct while such member and shall also be liable to pay interest at the prescribed rate, from the date of loss, waste or

misapplication, on the amount assessed under subsection (2) or sub-section (3) as the case may be.

(2) The Block Development and Panchayat Officer concerned may, on the application of a Gram Panchayat or otherwise, and after giving the member concerned an opportunity to explain, assess, by order, in writing the amount due from him in account of such loss, waste or misapplication; Provided that –

(a) where such member happens to be the Chairman or a member of the Panchayat Samiti, the proceedings under this subsection shall be taken by the District Development and Panchayat Officer;

(b) where such member happens to be the Chairman, ViceChairman or a member of the Zila Parishad, the proceedings under this sub-section shall be taken by the Deputy Director.

(3) Any person aggrieved by an order made under sub-section (2) may within a period of thirty days from the date of such order, appeal to: -

(a) the District Development and Panchayat Officer, if the order has been made by the Block Development and Panchayat Officer;

(b) the Deputy Director, if the order has been made by the District Development and Panchayat Officer; and

(c) the Director, if the order has been made by the Deputy Director;

and on appeal being filed, the appellate authority may suspend the execution of the order upon such terms as to costs, payments of the amount involved or otherwise as he thinks fit and subject to the result of appeal, if any, the order of Block Development and Panchayat Officer, District Development and Panchayat Officer and the Deputy Director, as the case may be, shall be final.

(4) Notwithstanding anything contained in this section no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of 109 four years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be a member, whichever is later.

(5) The State Government may call and examine the record of any order made under this section for the purpose of satisfying itself as to the legality and propriety of such order and may confirm, modify or rescind such order;

Provided that no order prejudicial to any person shall be made by the State Government, unless that person has been afforded a reasonable opportunity of showing cause against the proposed order.

(6) The amount assessed as due from a member may, in the event of his death, be recovered from his legal heirs to the extent of property inherited by them from such member.”

It is not in dispute that the notice of recovery of the amount (Annexure P-2) has been issued to the petitioner without following the procedure. This is not the first case which has come to the notice of this Court in which the officials of the Department have proceeded in an arbitrary manner.

On the request of the Court, Sh. Amarinder Pal Singh, DDPO has entered appearance and tried to explain that in fact, the notice (Annexure P-2) was never acted upon and thereafter, the notice under Section 216 of the 1994 Act was issued.

On being asked, Sh. Amarinder Pal Singh, DDPO fairly admits that till date, the procedure as prescribed in Section 216 of the 1994 Act, has not been followed.

Once there is a statutory provision laying down a proper procedure in the concerned matter, the officials of the Department are required to follow the same in letter and spirit. They do not have any jurisdiction to go beyond the procedure prescribed in the 1994 Act. Hence, the officials are warned to be careful in future.

Keeping in view the aforesaid facts, notice (Annexure P-2) is quashed. The Department shall have liberty to proceed in accordance with Section 216 of the 1994 Act.

Petition stands disposed of accordingly.

All the pending miscellaneous applications, if any, are also disposed of.

October 08, 2021

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No