

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

131

RSA-737-1993 (O&M).
Date of Decision: 20.03.2024.

BLOCK DEVELOPMENT AND PANCHAYAT OFFICER

... Appellant

Versus

SADHU RAM AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vipin Pal Yadav, Addl. A.G. Punjab,
for the appellant.

None for the respondents.

VINOD S. BHARDWAJ, J (ORAL).

Appellant-defemdant has preferred the present Regular Second Appeal against the judgment and decree dated 04.06.1988 passed in Civil Suit No.42 of 07.02.1985 by the Court of Senior Sub Judge, Hoshiarpur, as well as the subsequent dismissal of Civil Appeal No.62 dated 23.07.1988/26.07.1991 vide judgment and decree dated 21.11.1992 by the Additional District Judge, Hoshiarpur.

2 Briefly summarized, the facts of the present case are that respondent-plaintiff filed a civil suit for permanent injunction for restraining the appellants-defendants from taking any action on the basis of

the notices dated 23.11.1983 and 05.12.1984 for realization of an amount of Rs.21341.89 paise from the respondent-plaintiff on the strength of the above said notices.

3 It had been averred in the plaint that the respondent-plaintiff was Sarpanch of Gram Panchayat Dallewal. He was suspended and he handed over the charge of his office to one Sant Ram, Member Panchayat, Dallewal. As per the record of the Panchayat at the relevant time, an amount of Rs.25,180.50 paise was entered as Gram Panchayat fund out of which an amount of Rs.14,107.80 paise was lying deposited with the banks. The remaining amount of Rs.11,072.61 paise was spent by the respondent-plaintiff for various development activities in the village. He spent an amount of Rs.86.67 paise out of his own pocket in addition to the above amount. The above facts were explained to the Sarpanch to whom the charge had been handed over. Receipts/documents dated 09.10.1972 were also produced by the respondent-plaintiff in support of the expenditure. The same were handed duly over to Banta Ram, who gave the receipt in this regard, in writing, dated 09.10.1972 executed before the Block Development and Panchayat Officer. It was also averred that the respondent-plaintiff had contested against the said Banta Ram and had also filed his nomination papers against Banta Ram but the same were wrongly rejected. An election petition was thereafter filed by him which was accepted and election of Banta Ram as Sarpanch was set aside. In the new election, the respondent-plaintiff was declared as an elected Sarpanch of village Dallewal and on account thereof Banta Ram was inimical to the respondent-plaintiff. He suppressed the said receipts and documents and

the same were not entered into the Panchayat records. As a result thereof, the same continued to be reflected as an outstanding amount in the record of the Gram Panchayat. When the respondent-plaintiff was re-elected as the Sarpanch, he got adjusted the above amount spent by him, on 18.10.1975. The total amount covered by these receipts/documents was to a sum of Rs.11,159.31 paise. There was no objection raised to the same at that time. The respondent-plaintiff remained as Sarpanch upto 14.08.1978 and thereafter on 15.08.1978, the charge was obtained from him by the BDPO in the eve of the new Panchayat elections held on 20.8.1978 wherein Jai Ram son of Banta Ram became the Sarpanch and the respondent-plaintiff was elected as a member of the Gram Panchayat. An application was thereafter moved for inquiry against the Sarpanch Jai Ram by the respondent-plaintiff along with other members of the Gram Panchayat regarding certain irregularities and misappropriation committed by him. The said application was pending and that on coming to know about moving of the said application, as a counterblast, Jai Ram Sarpanch moved an application dated 21.10.1980 against the respondent-plaintiff before the BDPO, Hoshiarpur, for inquiring into the aforesaid disputed amount and other matters whereupon a notice dated 14.12.1981 was sent by the appellant-defendant.

4 A written request/information was sent by the respondent-plaintiff pointing that the notice could not be given till such time an inquiry is conducted by the Deputy Director Panchayat, Jalandhar, into the same. The said response offended the BDPO who fastened the liability on the respondent-plaintiff and directed effecting recovery of Rs.21,341.89 paise

instead of the disputed amount of Rs.11,072.61 by issuing two notices dated 23.11.1983 and 05.12.1984.

5 It was further averred that the said notices were illegal and unauthorized and without jurisdiction and null as per Section 105 (4) of the Punjab Gram Panchayat Act, 1952 and for the reasons and grounds mentioned thereunder. It was further pointed out that the claim was time barred and that the respondent-plaintiff could not be made accountable to make good any loss after a period of 04 years of occurrence of the same or after a period of 02 years when he ceased to be a Sarpanch or member of the Gram Panchayat. The loss in question pertained to the period prior to 06.11.1971 and the application was made by Jai Ram Sarpanch only on 21.10.1980 i.e. after a lapse of more than 09 years. The respondent-plaintiff ceased to be a Sarpanch on 15.08.1978 and that the proceedings for recovery, if any, could have been initiated at best only upto 15.08.1980. Since the proceedings were instituted beyond the prescribed time under the Punjab Gram Panchayat Act, 1952, hence, the same was barred by limitation.

6 Written statement was filed by the appellant-defendant raising various objections including the maintainability of the proceedings. On merits, the facts were not disputed about the respondent-plaintiff having been a Sarpanch and having been suspended on allegations of misappropriation of funds. It was averred that the action of the appellant-defendant was in accordance with the provisions of Punjab Gram Panchayat Act, 1952 and the powers vested in them. It was alleged that even though the respondent-plaintiff gave an assurance to produce the receipts, however,

the same were not furnished and the charge was handed over piecemeal rather than in one go. A new cash book was started by the Secretary of the Gram Panchayat on 13.07.1971 and an entry was made therein showing dues against the respondent-plaintiff to the tune of Rs.11,072.64 paise. After the respondent-plaintiff got re-elected as a Sarpanch, he made an entry into the accounts of the Panchayat and adjusted the same. It was stated that an inquiry was conducted against the respondent-plaintiff as per the principles of natural justice and fair play and the above said amount was found to be due. An order dated 14.01.1982 was thereafter passed for recovery of Rs.21,341.89 paise and the same can be recovered as arrears of land revenue. It was also averred that the respondent-plaintiff was dismissed from the office of Panch vide order dated 09.12.1982 of the Deputy Director, Panchayat, Chandigarh, on account of the misappropriation committed by him and that the suit filed by the respondent-plaintiff ought to be dismissed.

7 On completion of the pleadings, the following issues were framed:-

- 1 Whether the plaintiff is entitled to the injunction prayed for ?OPP
- 2 Whether notice for the recovery of the amount is illegal ? OPP
- 3 Whether the suit is not within time ? OPD
- 4 Relief.

8 Parties led their respective evidence and upon consideration of the same, Senior Sub Judge, Hoshiarpur, findings with respect to issues No.1 and 2 were recorded as under:-

“11. The pleadings of the parties go to show that the defendants have admitted the contents of paras No.2&4 of the plaint in their written statements. It is further admitted that the Secretary of the Gram Panchayat started new cash book and made entry regarding payment of Rs.14,107.89 paise in the cash book and a sum of Rs.11,072.64 paise was left due against the plaintiff. No entry in this regard was made in the cash book. The said amount was to be added in the cash book only after receiving the sum from the plaintiff. Then further the said amount stood adjusted in view of the receipts handed over by the plaintiff. It is the fault of the Secretary, who has not carried over the entire amount in the new cash book. He should have kept a sum of Rs 11,072-64 paise standing against the plaintiff in the new cash book The receipts were handed over to Banta Ram, who is inimical towards plaintiff and he made no entry in the record/cash book of Gram Panchayat regarding the adjustment of a sum of Rs 11,072-64 paise without any entry in the record of the Gram Panchayat. The amount of Rs.11,072-64 paise cannot stand adjusted automatically. In para No.4 of the written statement the defendant has stated that after becoming Sarpanch of the Gram Panchayat the plaintiff prepared duplicate of the receipts and placed the same in the record of the Gram Panchayat and in order to make a fresh ground for withdrawal of an amount of Rs.11,072.64 paise from the Gram Panchayat fund which the plaintiff actually did and withdraw an amount of Rs 11,159-31 paise from the Gram Panchayat funds on 18-10-75 It has come in the middle of cross-examination of PW-3 Joginder Pal Singh that Sadhu

Ram deducted this amount of Rs.11,159.31 paise out of the funds of Gram Panchayat for the second time. The findings on both the issues can be given after discussing them in two parts. First part will relate to the adjustment of the amount by the plaintiff in the record of the Gram Panchayat and second part will relate to the withdrawal of the amount from the funds of Gram Panchayat for the second time and the onus to prove each part lies on the plaintiff and defendants respectively. Ex P5 is the copy of resolution dated 8.8.1975 passed by the plaintiff to adjust the amount in the cash book which was standing against him Ex P6 is the copy of the detail of the expenses incurred by the plaintiff for the welfare and common purposes of the village from the funds of the Gram Panchayat which comes out to be Rs 11,072-64 paise. Plaintiff has spent a sum of Rs.86.67 paise from his own pocket and adjusted a sum of Rs 11,159-31 paise in the cash book. At the end of Ex P6 Banta Ram had admitted the receipt of receipts of expenses Ex.P7 is the charge sheet handed over by the plaintiff to Sant Ram in the year 1971 and mentioned that the receipts of expenses are with him and will be produced later on. Ex.P8 is the copy of the entry of cash book dated 18.10.1975 wherein a sum of Rs.11,159.31 paise has been adjusted in the cash book. There is no documentary evidence on the file to show that the plaintiff has actually withdrawn the amount for the second time. Enmity with Sant Ram, who has suppressed those receipts and not entered those in the cash book has been proved beyond doubt. Ex.P15 copy of the election petition in which election of Banta Ram as Sarpanch was set aside and new election was held in which the plaintiff became the Sarpanch Jai Ram DW-2 is the son of Banta Ram against whom the plaintiff had made complaints and he is DW-2 Documents Ex-P9 and Ex-P10 show that the family of Banta Ram was against the plaintiff not only Banta Ram himself. DW-2 in his cross-examination stated

that he contested election against the plaintiff in the year 1978 but he did not know how many times his father contested election against the plaintiff Ex-D-2 is the entry report of Divisional Deputy Director against the plaintiff. The parties including the plaintiff Jai Ram son of Banta Ram and Gurdial Singh Panchayat Secretary were summoned for 26-5-1981 after recording the statement of complainant i.e. Jai Ram, the plaintiff was asked to make the statement in defence but the plaintiff produced the written reply which is Ex-R-1 on the enquiry file stating therein that he wants to take legal opinion in order to lead defence evidence and he may be given opportunity. His demand was accepted and the enquiry was adjourned to 16-6-1981 Then on 16.6.81 again the plaintiff sent by registered post a written reply with the same contents that he wants to take legal opinion But the officer has stated that the plaintiff has not appeared intentionally. The officer has further mentioned that the complaint is related to the record of the Panchayat, therefore, the requirement of the presence of the plaintiff is not much felt - because on 26.5.1981 he has already heard the statement of the complainant and inspected the record. But at the time of giving finding on offence No 2 stated that most of the receipts are of the earth and are seemed to be false/bogus. Gurbachan Singh Secretary was also asked why he had not carried over the entire amount in the new cash book but he replied nothing. This is no enquiry report in the eyes of law. The plaintiff was never proceeded against ex parte nor there is any order to this effect in the report Ex D2. Nor his statement was recorded. The order was passed at the back of the plaintiff. Ex-D-11 is the report of the auditor and in para D at page 5 stated that actual vouchers of expenses are stated to be lying with the Regional Deputy Director and in the absence of those, the amount adjusted on 18-10-1975 cannot be audited. The auditor never mentioned that it cannot be looked

into because the amount has been adjusted for the second time. This statement in cross-examination of PW-3 Joginder Pal Singh is false to this effect that the auditor has mentioned therein that enquiry in respect of the expenditure be conducted. The enquiry file of BD & PO for assessment of the amount standing against the plaintiff has not been produced. But PW-3 Joginder Pal Singh in his examination-in-chief states that the file related to the amount now in dispute. There is no evidence of any party recorded in connection with the enquiry of the present dispute. He further states that he cannot say if there is any statement of Sadhu Ram or of any other official recorded in the enquiry as he is not conversant with the file. He has brought the enquiry file. He is supposed to know each and every part of the file Moreover, there is no documentary evidence produced on the file by the defendant which shows that notices have been issued to the plaintiff and that if he did not put in appearance he would be proceeded against exparte, and enquiry will be conducted in his absence. The assessment order and the disputed notices issued by B.D. & P.O. on the basis of enquiry of Deputy Director and his own are illegal, against law, null and void. DW-1 Shangara Singh Sohal, retired B.D.&P.O. has stated in his cross-examination that there was no such letter in our record in which a specific date for evidence was fixed for evidence of the plaintiff. There is also no such letter in our record in which it is mentioned that Sadhu Ram plaintiff be proceeded against exparte, if he did not turn up for the fixed date. In view of my above detailed discussion, I am of the considered opinion that the notice for the recovery of the amount is illegal and the plaintiff is entitled to the injunction prayed for. So both these issues are decided in favour of the plaintiff and against the defendants.”

9 It was thus held by the Senior Sub Judge, Hoshiarpur, that there was no evidence led in connection with the inquiry conducted by the appellant-defendant and that the assessment order and the disputed noticed issued by the appellant-BDPO on the basis of inquiry were held to be illegal, against law and null and void. Absence of any such communication/notices or inquiry proceedings was admitted by the DW.1 Shangara Singh Retired Block Development and Panchayat Officer in his cross-examination. It was thus held that notices for recovery of the amount were hence illegal and that the injunction ought to be granted in favour of the respondent-plaintiff.

10 The suit filed by the respondent-plaintiff was accordingly decreed with costs.

11 Aggrieved thereof, the appellant-defendant preferred an appeal before the District Judge, Hoshiarpur. Vide judgment dated 21.11.1992, the Additional District Judge, Hoshiarpur, dismissed the said appeal by recording as under:-

“10. A perusal of the above para in the audit report clearly makes it evident that the audit objection had been raised because the supporting vouchers were not produced at the time of audit to show the expenditure books to the tune of Rs.11159.31 paise and not that the same expenditure had been booked twice. Para 2 of the written-statement is clear that the amount of Rs.11159.31 paise was shown out-standing against the plaintiff in the new cash book. Evidently, the plaintiff had thus made the entries in the new pass book to clear the outstanding balance against his name and not charged the Panchayat twice.

11. The onus was on the defendants to prove that the plaintiff had withdrawn the amount of Rs.11,159.31 paise second time. That could have been shown by producing the cash book That, however, was not done and an adverse inference has thus to be drawn against the defendants.

12. It also cannot be lost sight of that the plaintiff had fought the election again and was elected as a member Panchayat. He had produced the clearance certificate with his nomination papers at the time of his re-election. It is beyond comprehension as to why the clearance certificate was given to him to seek the election in case any amount was outstanding against him. This circumstance also belies the plea of the defendants that any amount was outstanding against the plaintiff. The defendants are as such by their act and conduct estopped to claim the amount in dispute. On the other hand, it is clear from the pleadings and the evidence of the plaintiff that he had merely made an entry in the cash book to adjust the outstanding amount against him, after securing the duplicate receipts as the successor Sarpanch had failed to make the necessary entry in the cash book, after he produced the relevant receipts. Unless the acting Sarpanch had made the entry in the cash book on the basis of sixty two receipts produced by the plaintiff, no adjustment could have automatically, been effected in the cash book It is thus not possible to accept the contention of the learned counsel that the plaintiff has actually withdrawn the amount of Rs.11,159.31 paise second time on 18-10-75 when he made the entry in the cash book.

13. When the defendants have failed to show that the amount demanded vide notice Ex.DX was actually due, the plaintiff could not have been burdened with any liability.”

12 Hence, the present appeal was filed.

13 Learned State counsel appearing on behalf of the appellant-defendant has reiterated his arguments as already noticed and to the effect that both the Courts failed to take into consideration the evidence that there was embezzlement on the part of the respondent-plaintiff. The proceedings of effecting recovery were rightly initiated by the Department. It was argued that the Courts have failed to appreciate the evidence in proper perspective and that an inquiry was conducted as per law after affording the opportunity. Reference was also made to the provisions of the Punjab Gram Panchayat Act, 1952 to contend that recoveries in matters of misappropriation of funds of Gram Panchayat could be undertaken and that the Civil Court shall not have jurisdiction to entertain such suits against orders/actions taken by the competent authority under the said Act.

14 No other argument has been raised.

15 I have heard learned counsel appearing for the appellant and have perused the judgments passed by the Courts below which have been the subject matter of challenge before this Court.

16 Both the Courts have concurrently held that that appellant-defendant has failed to adduce any evidence on record on the basis whereof the appellant-defendant could be stated to have carried out any inquiry and to have determined the recoverable amount from the respondent-plaintiff. It

was also noticed that the Additional District Judge, Hoshiarpur, had directed framing of additional issues on 07.11.1990 and a report was sought from the then Senior Sub Judge, Hoshiarpur. Evidence was recorded on the said additional issues and a report was sent. The evidence recorded on the additional issues by the Senior Sub Judge, was also considered at the stage of consideration of main appeal. It was duly recorded from the perusal of the audit report that no evidence had been produced in support of the supporting vouchers which were not produced. It was noticed that the respondent-plaintiff had made the entries in the new cash book to clear the outstanding balance against his name and not charged the Gram Panchayat twice. It was also recorded that burden lay on the appellant-defendant to prove that the respondent-plaintiff had withdrawn the amount of Rs.11,159.31 paise even for the second time which such aspect could not be established by the appellant-defendant. On account of having withheld the specific evidence to demolish the claim made by the respondent-plaintiff, an adverse inference is required to be drawn against the appellant. It was also noticed that the respondent-plaintiff had contested election again as a member of Gram Panchayat and had also submitted his clearance certificate about no outstanding dues along with his nomination papers. Had any amount been outstanding against him as is being claimed now, the no dues/clearance certificate would not have been issued to the respondent-plaintiff. The contemporaneous conduct of the appellant-defendant was noticed that on account of issuance of no dues/clearance certificate, the appellant-defendant would be estopped from raising a claim to the contrary. It was also recorded that the respondent-plaintiff had merely made an entry

in the cash book to adjust the amount outstanding against him after securing the duplicate receipts as the successor Sarpanch had failed to make the said entry in the cash book. Unless an inquiry had been made as regards the entry in the cash book on the basis of the receipts produced by the respondent-plaintiff, no assessment could have been automatically attracted in the cash book. Hence, there was no force in contention that he had actually withdrawn the above said amount for the second time and it was only an entry made to reestablish the accounts/receipts that were not reflected in the cash ledger of the Gram Panchayat.

17 Besides, it is not in dispute that the respondent-plaintiff seized to be an office barer and the proceedings were instituted more than two years thereafter. Nothing has been shown as to how a recovery could be ordered once a remedy is taken away by law.

18 It is also a settled position in law that when an act aggrieved of has been done in violation of law or procedure prescribed therein, Civil Court shall have a jurisdiction to decide such a claim.

19 In the absence of any evidence adduced by the appellant-defendant to hold that the concurrent findings recorded by the Courts are illegal, perverse and are not sustainable on the basis of the evidence led, the judgment and decrees are not to be ordinarily interfered with.

20 The present appeal is accordingly dismissed. The judgment and decree dated 04.06.1988 passed by the Court of Senior Sub Judge, Hoshiarpur, as well as the judgment and decree dated 21.11.1992 passed by the Additional District Judge, Hoshiarpur, are affirmed.

21 Pending, misc. application(s), if any shall also stand(s)
disposed of accordingly.

March 20, 2024.
raj arora

(VINOD S. BHARDWAJ
JUDGE
Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*