IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.R No.37 of 2020

Reserved on: 09.04.2026

Decided on : 27.04.2026

Amar Chand **...Petitioner**

Versus

Braham Lal **...Respondent**

Coram
Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge
Whether approved for reporting?[1] *Yes*

For the petitioner: Mr. Dhiraj Thakur, Advocate.

For the respondent: Mr. Sanket Sankhyan, Advocate.

Jiya Lal Bhardwaj, Judge

The petitioner, feeling aggrieved by the order dated 07.01.2020, passed by the learned Civil Judge, Bilaspur, H.P. in **Case No.524/4 of 2015**, titled, ***Braham Lal vs. Amar Chand and another***, has filed the present petition, whereby a warrant of attachment has been issued against the movable/immovable property of the petitioner with a further direction to him to

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

unblock the path, as per the order of Gram Panchayat, Kuddi.

2. The facts, which emerge from the pleadings are that the respondent had lodged a complaint against the petitioner and his mother with respect to causing hindrance to the path on the private property of the petitioner. Pursuant to the said complaint, Gram Panchayat Kandaraur, Bilaspur, initiated an inquiry and on the objection of the petitioner, the inquiry was transferred to another Gram Panchayat, Kuddi. Vide order dated 13.01.2015, Gram Panchayat, Kuddi, passed an order to open the path for the general public and further directed that, in case the petitioner obstructs any person from using the path or quarrels with anyone, he shall be found guilty and shall also be fined.

3. After passing the said order by the Gram Panchayat, the respondent filed an application under Section 71 of the Himachal Pradesh Panchayati Raj Act, 1994, for executing the order dated 13.01.2015, stating that, despite the order passed by the Gram Panchayat Kuddi, the petitioner had damaged and

blocked the path situated at Village Kandraur Ghat, being used by the public at large, including the respondent.

4. The petitioner filed reply to the application and averred that the order passed by the Gram Panchayat was wrong, as false witnesses were prepared and their statements were recorded. It was further stated that there was no path passing through the land of the petitioner and that an arbitrary order had been passed and thus prayed for dismissal of the application.

5. The learned Executing Court after noticing the fact that the petitioner had not filed an appeal against the order dated 13.01.2015, passed by the Gram Panchayat, Kuddi and that the order had become final, held that since the Gram Panchayat had failed in executing the decree and had forwarded the same to the executing Court, it was required to be executed by the Court. It was held that since the petitioner had not challenged the order, contention raised by him are without merit and thus, to execute the order, recourse to the

CPC has to be taken and a warrant of attachment was issued against the movable/immovable property of the petitioner.

6. Learned counsel for the petitioner has vehemently argued that his mother, Smt. Banti Devi, had passed away on 21.10.2015 and, therefore, no orders could have been passed against a dead person without taking recourse to Section 50 of the Code of Civil Procedure, which vitiates the entire proceedings, and as such the order is not tenable in the eyes of law. Further, the learned Court below has miserably failed to take into consideration the present position at the spot and the application has been decided on the basis of the orders passed by the Gram Panchayat, Kuddi, Bilaspur, inasmuch as it has failed to give justification for allowing the application. The learned Court below has erroneously ordered attachment of movable/immovable property of the petitioner, and its jurisdiction has been exercised illegally, which has resulted into a grave miscarriage of justice.

7. On the other hand, the learned counsel appearing

for the respondent has supported the order under challenge and has submitted that once the petitioner had not laid challenge to the order dated 13.01.2015, passed by the Gram Panchayat as required under the Himachal Pradesh Panchayati Raj Act, 1994, there is no infirmity or illegality having been committed by the learned trial Court.

8. I have heard the learned counsel for the parties and also perused the record carefully.

9. It is not in dispute that the land belongs to the petitioner and as such the Gram Panchayat had no jurisdiction to pass any order with respect to the land of the petitioner. Further, such rights can only be adjudicated by a Civil Court and such rights cannot be determined in a summary proceeding, as has been done by the Gram Panchayat Kuddi. Chapter IV of the Himachal Pradesh Panchayati Raj Act, 1994, deals with the judicial functions and powers of the Gram Panchayat. Section 41 lays down the jurisdiction of a Gram Panchayat, which reads as under:-

> *"41.* ***Extent of jurisdiction****-(1) The jurisdiction of a Gram Panchayat shall extend to any suit of the following description if its value does not exceed two thousand rupees:-*
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> *(a) a suit for money due on contract other than a contract in respect of immovable property;*
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> *(b) a suit for the recovery of movable property or for the value thereof;*
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> *(c) a suit for compensation for wrongfully taking or damaging a moveable property;*
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> *(d) a suit for damages caused by cattle trespass; and*
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> *(e) a suit under clauses (f) and (i) of sub-section (3) of section 58 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (8 of 1974).*
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> *(2) Notwithstanding anything contained in sub-section (1), the State Government or the prescribed authority may by notification in the Official Gazette extend the pecuniary jurisdiction of Gram Panchayat to five thousand rupees in respect of any or all the suits of the description mentioned in sub-section (1)."*

10. A careful perusal of above provision of Section clearly reveals that the Gram Panchayat can adjudicate the dispute in respect of any suit, where the value does not exceed two thousand rupees and a suit for money due on contract other than a contract in respect of immovable property; besides a suit for damages caused by Cattle trespass. As per sub-section

(e) a suit under clauses (f) and (i) of sub-section (3) of Section 58 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, can also be determined, but the same does not talk about the obstruction of path by a person in a property owned by a private person. At this stage, it is relevant to quote Section 58 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, which reads as under:-

> *"58.* ***Revenue Courts and suits cognizable by them.****-(1) When a Revenue Officer is exercising jurisdiction with respect to any such suit as is described in sub-section (3) or with respect to an appeal or other proceeding arising out of any such suit, he shall be called a Revenue Court.*
> *(2) There shall be the same classes of Revenue Courts as of Revenue Officers under this Act, and, in the absence of any order of the State Government to the contrary, a Revenue Officer of any class having jurisdiction within any local limits under this Act shall be Revenue Court of the same class having jurisdiction within the same local limits.*
> *(3) The following suits shall be instituted in, and heard and determined by, Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any suit might be instituted :-*
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> ***First Group***
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> *(a) suits between landowner and tenant for addition to or abatement of rent under section 22 or for commutation of rent;*
> *(b) suits under section 29 for the determination of rent or other sum on the expiration of the term of*

an assessment of land revenue:

Second Group

(c) suits by a tenant to establish a claim to a right of occupancy, or by landowner to prove that a tenant has not such a right;

(d) suits for ejectment of tenants;

(e) any other suit between landowner and tenant arising out of the condition on which a tenancy is held;

(f) suits for sums payable on account of village expenses:

(g) suits by a co-sharer in an estate or holding for a share of profit thereof or for a settlement of accounts;

(h) suits for the recovery of over-payments of rent or land revenue or of any other demand for which a suit lies in a Revenue Court under this sub-section;

Third Group

(i) suits by a landowner for arears of rent or for the money equivalent of rent [1][****]; and

(j) suits for sums payable on account of land revenue or of any other demand recoverable as an arrear of land revenue under any enactment for the time being in force.

Procedure where revenue matter is raised in Civil Court

(4) Except as otherwise provided in this Act or by any rule made by the State Government in this behalf-

(a) a Collector may hear and determine any of the suits mentioned in sub-section (3);

(b) an Assistant Collector of the First Grade may hear and determine any of the suits mentioned in the second and third groups of that sub-section, and, if he has by name been specially empowered

in this behalf by the State Government any of the suits mentioned in the first group; and

(c) an Assistant Collector of the Second Grade may hear and determine any of the suits mentioned in the third group.

(5) Notwithstanding anything contained in sub-section (3)-

(i) where in suit congnizable by and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court, the Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by order VII, rule; 10 of the Code of Civil Procedure, 1908 and return the plaint for presentation to the Collector;

(ii) on the plaint being presented to the Collector, the Collector shall proceed to hear and determine the suit where the value thereof exceeds Rs. 1,000 or the matter involved is of the nature mentioned in first group of sub-section (3) of this section and in other cases may send the suit, to an Assistant Collector of the First Grade for decision.

NOTES

Legislature barred only those suits from cognizance of Civil Courts where there is no dispute between parties about relationship of landlord and tenant - In instant case plaintiff claiming himself to be in possession of property as tenant under defendant-Defendant not admitting status of plaintiff-Hence Civil Court undoubtedly had jurisdiction to entertain and decide instant suit. Babu Ram (deceased) through LRs Smt. Sita Devi and others versus Pohlo Ram (deceased) through LRs. Smt. Vidya Devi and others, 1991(2) Sim LC 211 (HP): AIR 1992 HP 8; 1992 PLJ 612.

S58(3) -Suit by person claiming to be tenant - Tenancy not

admitted by land owner - jurisdiction of Civil Court not barred.
Birbal v Udhami and others. ILR 1990 HP 1647: 1992 (1) shim LC 153; ILR 1990 (II) 1469."

11. Clause (f) of the aforesaid Act, pertains to suits for sums payable on account of village expenses, and clause (i) pertains to suits by landowners for arrears of rent or for the money equivalent thereto.

12. Since the matter pertains to the path in the land owned by a private person, is not contemplated to be adjudicated by the Gram Panchayat, thus the said order having been passed by the Gram Panchayat, is without any authority of law.

13. As per the provisions of the Himachal Pradesh Panchayati Raj Act, 1994, a procedure has been laid down under Section 60, to ascertain the truth and to receive such evidence in a case, suit or proceedings, as the parties may adduce and may call for such further evidence as in their own opinion may be necessary for the determination of the points in issue.

14. No doubt, as per provision of Section 68, a decree or

order passed by the Gram Panchayat shall be final, subject to the provisions of Section 67, which prescribes the filing of an appeal by any person aggrieved by any order or decree of a Bench of Gram Panchayat, within a period of 30 days from the date of such order or decree to the Judicial Magistrate/Sub-Judge, in respect of any case or suit, as the case may be. However, the fact which remains to be adjudicated in the present lis is, whether the Gram Panchayat had the right to adjudicate upon the land owned by the petitioner, that too without calling for the evidence and further granting opportunity to the parties to lead their evidence.

15. No doubt, the statement of the parties have been recorded but that is after passing the order by the Gram Panchayat, and even therein it has been noticed that the petitioner has obstructed the path on the land belonging to him, which is not a common path.

16. Learned counsel for the petitioner has placed reliance upon the judgment reported in ***Pran Nath Kundu vs.***

The King-Emperor, **AIR 1930 Calcutta 286,** to contend that a path which lies over private land and which is used by the villagers or by the inhabitants of some other villages, the same cannot be said to be a public path. He also placed reliance upon the judgment of the Hon'ble Supreme Court in ***Cicily Kallarackal vs. Vehicle Factory***, **(2012) 8 SCC 524**, to contend that if the order passed by the authority is without jurisdiction, it is not always necessary to set aside that order. The relevant para of the judgment reads as under:-

> "3. *So far as the issue of jurisdiction is concerned, the learned counsel for the petitioner is right that the High Court had no jurisdiction to deal with the matter against the order of the Commission. However, while dealing with a similar issue this Court in Mohd. Swalleh v. Addl. District Judge, Meerut observed: (SCC p. 46, para 7)*
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> > *"7. It was contended before the High Court that no appeal lay from the decision of the prescribed authority to the District Judge. The High Court accepted this contention . . . (sic no appeal lay) . . . On that ground the High Court declined to interfere with the order of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. But the High Court was exercising its jurisdiction*

> *under Article 226 of the Constitution. The High Court had come to the conclusion that the order of the prescribed authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order of the High Court as it is setting aside the order of the prescribed authority in exercise of the jurisdiction under Article 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the prescribed authority has been set aside, no objection can be taken."*
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> ***In view of the above, it is not always necessary to set aside an order if it is found to have been passed by an authority/court having no jurisdiction."***

17. Learned counsel for the petitioner also placed reliance upon the judgment of the Hon'ble Supreme Court in ***Jagmittar Sain Bhagat and others vs. Director, Health Services, Haryana and others***, **(2013) 10 SCC 136**, to contend that the conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by the superior Court and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the

matter goes to the root of the cause and such issue can be raised at any stage of the proceedings. The law does not permit any Court/Tribunal/Authority to usurp jurisdiction on any ground whatsoever in case such an authority does not have jurisdiction on the subject matter. The relevant paras of the judgment read as under:-

> "9. *Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a court/tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation. The court cannot derive jurisdiction apart from the statute. In such eventuality the doctrine of waiver also does not apply. (Vide United Commercial Bank Ltd. v. Workmen, Nai Bahu v. Lala Ramnarayan, Natraj Studios (P) Ltd. v. Navrang Studios and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar.)*
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> *10. In Sushil Kumar Mehta v. Gobind Ram Bohras this Court, after placing reliance on a large number of its earlier judgments particularly in Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke, Kiran Singh v. Chaman Paswan and Chandrika Misir v. Bhaiya Lal held, that a*

> *decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the common law court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, "performance cannot be forced in any other manner".*
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> *11. The law does not permit any court/tribunal/ authority/forum to usurp have jurisdiction on the subject-matter. For the reason that it is not an objection as to the place of suing; "it is an objection going to the nullity of the order on the ground of want of jurisdiction". Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide on the adjudicatory facts or facts in issue. (Vide Setrucherla Ramabhadraraju v. Maharaja of Jeypore, State of Gujarat v. Rajesh Kumar Chimanlal Barot, Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. and Carona Ltd. v. Parvathy Swaminathan & Sons.)"*

18. Learned counsel for the respondent, on the other hand, has vehemently argued that once the petitioner had not availed the remedy of a statutory appeal as envisaged under Section 67 of the Himachal Pradesh Panchayati Raj Act, 1994, and the order having attained finality, there is no error having been committed by the trial Court while ordering the attachment of movable/immovable property of the petitioner.

However, once the Gram Panchayat had no jurisdiction, the petitioner was not under an obligation to lay challenge to the said order.

19. It is not disputed by the respondent that the Gram Panchayat had passed the impugned order without framing the issues and collecting the evidence. The learned counsel tried to justify the order under challenge, on the ground, that after passing the order by the Gram Panchayat, the revenue officers had visited the spot and found that the petitioner had digged up the path, but the same cannot be justified, for the reason that the order has to be supported on the basis of the material existing before passing the order and the competence of the authority.

20. Apparently, in the present case, the Gram Panchayat had no jurisdiction to entertain the dispute or to pass an order directing the petitioner not to block the path, that too, on the land belonging to him and thus the subsequent order passed by the trial Court, being based on an order without jurisdiction,

cannot stand in the eyes of law and as such, is liable to be quashed and set aside. This Court is well aware about the limits of jurisdiction under Section 115 of the Code of Civil Procedure. However, when the order passed by the learned trial Court is based on an order, which was being passed by the Gram Panchayat, Kuddi, having no jurisdiction to decide the dispute, this Court as a revisional Court has exercised the jurisdiction and is of the considered view that the learned trial Court has committed illegality while ordering to attach the immovable/movable property of the petitioner and direct him to unblock the path as per the order of Gram Panchayat Kuddi.

21. Resultantly, the present revision petition is allowed, and the impugned order dated 07.01.2020 passed by the learned Civil Judge, Bilaspur, H.P. in **Case No.524/4 of 2015**, titled, ***Braham Lal vs. Amar Chand and another,*** is quashed and set aside. Pending application(s), if any, shall also stand disposed of.

27th April, 2026 **(Jiya Lal Bhardwaj)**

(ankit) **Judge**