

Redaram Vs. Bhoopram and ors.

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Court : Rajasthan

Decided On : Nov-21-1959

Reported in : AIR1960Raj209

Judge : K.L. Bapna,; D.S. Dave and; D.M. Bhandari, JJ.

Acts : Rajasthan Panchayat Act, 1953 - Sections 26A, 57(2) and 58(6); Rajasthan Panchayat Samitis and Zila Parishads Act, 1959

Appeal No. : Civil Ref. No. 67 of 1959 in Civil Writ Case No. 39 of 1958

Appellant : Redaram

Respondent : Bhoopram and ors.

Advocate for Def. : Gumanmal, Adv.

Advocate for Pet/Ap. : Ugam Raj, Adv.

Judgement :

Dave, J.

1. This case has been referred to Full Bench for answering the following questions posed by learned Judges constituting a division bench:

(1) Whether *Devi Lal v. Tehsil Panchayat, Padampur*, ILR (1958) 8 Raj 1119 has been correctly decided?

(2) Assuming that the answer to the first question is in the affirmative, what should be the period of limitation, if any, governing such appeals against the executive or administrative orders of a village Panchayat?

2. Before discussing the points which arise for determination, it would be proper to set out briefly the facts which have given rise to this reference.

3. Petitioner Reda Ram presented an application to the Grain Panchayat, Satdidi (Tehsil Padampur district Ganganagar) for the purchase of plot No. 19 at 29 B. B. in Tehsil Padampur. Non-petitioner No. 1 Bhoopram also made an application for the same plot. The Gram Panchayat allowed the petitioner's application and allotted the said plot to him and rejected the non-petitioner's application on 7-4-57. Aggrieved by this order, non-petitioner No. 1 presented an appeal to non-petitioner No. 2, i.e., Tehsil Panchayat, Padampur. This appeal was allowed on 23-1-58. The appellate authority cancelled the allotment which was in favour of the petitioner and allotted the same plot to non-petitioner No. 1.

The petitioner, thereupon, filed a writ application in this Court on 10-3-58 and challenged the jurisdiction of the Tehsil Panchayat to entertain and decide the appeal. The writ petition came for hearing before the learned Chief Justice in Single Bench. It was urged on behalf of the petitioner that the Tehsil Panchayat had no jurisdiction to sit in appeal over the executive or administrative orders passed by the Gram Panchayat and that the view taken by a division bench of this Court in ILR (1958) 8 Raj 1119 to the effect that Section 58(6) of the Panchayat Act confers powers of appeal upon the Tehsil Panchayat from all orders, decisions and directions made by the Gram Panchayat even in its administrative capacity was wrong.

It was also urged that Section 58(6) of the Act did not provide for any period of limitation and that even if the Tehsil Panchayat had powers to hear the appeal, the period of limitation provided under Section 57 should have been taken to be the period intended for such appeals also. It was contended that if Section 57 was applicable, the appeal was beyond limitation, and that the Tehsil Panchayat had no jurisdiction to decide the appeal on merits. It was observed by the Hon'ble Chief Justice that 'the decision in ILR (1958) 8 Raj 1119 requires reconsideration on the

question whether the orders mentioned in Section 58(6) of the Act refer to judicial orders or to orders of every character passed even in administrative or executive capacity by the Gram Panchayat'.

The second question regarding limitation was also considered to be one of great importance and therefore, it was considered that the matter should be decided by a larger bench. The case, thereafter, came before a division bench and the learned Judges were of the view that the questions involved were of considerable importance and should be decided by a Full Bench. They, therefore framed two questions which have been set out above.

4. Now, to begin with the first question, it may be mentioned here that the facts in Devi Lal's case, ILR (1958) 8 Raj 1119 were almost similar to the facts of the present case. In Devilal's case, ILR (1958) 8 Raj 1119 also the Gram Panchayat Binjwaila had sold a plot Khasra No. 274 to one Surja Ram and plots Khasra Nos. 248 and 249 to Devilal. On an appeal by one Sukhram, Tehsil Panchayat Padampur allotted plot Khasra No. 274 to him instead of Surja Ram. Similarly, on an appeal by one Hazura Singh plot No. 248 was allotted by the Tehsil Panchayat to him. In place of Devilal, Surja Ram and Devilal thereupon presented writ petitions to this Court and it was urged by them that the Tehsil Panchayat had no jurisdiction to hear appeals from the order of the Gram Panchayat in an administrative matter.

It was held that the provisions of Section 58(6) of the Rajasthan Panchayat Act, 1953, which will hereinafter be referred as 'the Act', were very wide and that the Tehsil Panchayat had jurisdiction to hear appeals from all orders, decisions and directions made by the Gram Panchayat even in its administrative capacity. This objection was, therefore decided against the petitioners.

In that case, it was also urged by the petitioners that the Tehsil Panchayat had not acted in accordance with rule 37(a) of the Rajasthan Panchayat (General) Rules, 1954, which will hereinafter be referred as 'the rules'. This objection was allowed by the Court and since it was found that neither the Tehsil Panchayat nor the Gram Panchayat had acted according to rule 37(a), the sale of plots Nos. 274 and 248 was set aside and the Gram Panchayat was directed to proceed

according to rule 37 (a).

5. It is contended by learned counsel for the petitioner Redaram in the present case, that Section 58 appears in Chapter IV of the Act which deals with judicial powers of Panchayats, that Section 58(6), therefore, refers only to powers of the Tehsil Panchayat to hear appeals in judicial cases and that the view taken by this Court in Devilal's case, ILR (1958) 8 Raj 1119 to the effect that it also conferred powers of appeal from all orders passed by the Gram Panchayat in its administrative capacity was not correct. Since the argument raised by petitioner's learned counsel turns upon the interpretation of Section 58 of the Act, it would be proper to reproduce it here. It runs as follows:

'58. Establishment and constitution of Tehsil Panchayats, their jurisdiction and power:

(1) The State Government shall, by notification in the Rajasthan Gazette, establish a Tehsil Panchayat. consisting of a Sarpanch and six to eight panchas elected in the prescribed manner.

(2) For the purposes of election of a Sarpanch and Panchas of a Tehsil Panchayat, the Members consisting of the Sarpanchas and Panchas of all the Panchayats in the Tehsil established or deemed to have been established under this Act shall form an electoral college.

(3) Save as otherwise provided for in this section, the provisions of sections 7 to 23 (both inclusive) shall mutatis mutandis apply, so far as may be, to Tehsil Panchayats and to the Panchas and Sarpanchas thereof as if they were for the purpose-of such application Panchayats established under Section 3 or, as the case may be, the Panchas or Sarpanchas of the latter.

(4) Every person who is for the time being qualified for election or appointment as a Panch or Sarpanch of a Panchayat established under Section 3 within the Tehsil for which a Tehsil Panchayat is established under this section shall be eligible for election or appointment as a Panch or Sarpanch of such Tehsil Panchayat:

Provided that if any person so elected or appointed happens to be a Panch or Sarpanch of any Panchayat his seat on such Panchayat shall be deemed to have become vacant upon the announcement of the result of such election or upon such appointment:

Provided further that no such person shall take part in the transaction of any business of the Tehsil Panchayat relating to administration of civil and criminal justice, if he had taken part in the transaction thereof by the Panchayat of which he was the Panch or Sarpanch.

(5) Every Tehsil Panchayat shall meet for the transaction of its business as often as may be necessary but at least once in a month it shall meet at the Tehsil Headquarters and the presence of the Sarpanch and any four Panchas or any five Panchas shall form the quorum necessary for the transaction of such business.

(6) A Tehsil Panchayat shall exercise general supervision over the affairs of all Panchayats established within the local limits of its jurisdiction and shall also hear appeals from all or any of the decrees, sentences, decisions, orders and directions made by such Panchayat.

(7) In the performance of its duties under Subsection (6) a Tehsil Panchayat shall exercise the same powers as are exercisable by a Panchayat under this Act'.

6. It is true that Section 58 appears in Chapter IV of the Act and the heading of that Chapter is given as 'Judicial Powers of Panchayats', but for that reason alone, it would not be proper to put a restricted meaning on the language of Section 58(6) and to say that it refers only to the judicial powers of the Tehsil Panchayat and that it has nothing to do with its power to hear appeals in administrative or executive matters. A perusal of the entire Chapter IV would show that sections 28 to 37 lay down the judicial powers of a Gram Panchayat with regard to the hearing of criminal cases. Similarly, sections 38 to 53 lay down its powers and jurisdiction to hear certain civil cases. Then Section 54 lays down that no Sarpanch or Panch who is interested in any suit or case shall sit on the Panchayat to hear and decide that case. Section 55 empowers the Gram Panchayat to refer intricate and important cases to a regular court, if it thinks it to be necessary.

The next 3 sections 56, 57 and 58 then deal with the powers of a Tehsil Panchayat. Section 56 empowers the Tehsil Panchayat to cancel the jurisdiction of any Gram Panchayat with respect to any suit or case Or to quash its proceedings at any stage. Section 57 lays down that any person aggrieved by a sentence, decree or order made by a Panchayat in a suit or case under the Act may file an appeal to the Tehsil Panchayat within the time prescribed therein. It also provides that the Tehsil Panchayat may, after hearing the appeal in the prescribed manner, confirm, vary or set aside the sentence, decree or order appealed from. It would thus appear that Section 57 contains all necessary provisions with regard to the appellate powers of the Tehsil Panchayat for hearing judicial cases both civil and criminal and if the interpretation of Section 58(6) be restricted only to judicial cases, then this subsection would be entirely redundant.

A perusal of Section 58 would show that it deals with the establishment and constitution of Tehsil Panchayats as also with their jurisdiction and powers. Sub-section (1) empowers the State Government to establish a Tehsil Panchayat consisting of a Sarpanch and Panchas by a notification in the Rajasthan Gazette. Sub-section (2) provides for an electoral college which is to elect the members of the Tehsil Panchayat. Sub-section (3) only lays down that the provision of sections 7 to 23 of the Act shall apply mutatis mutandis, so far as may be, to Tehsil Panchayats and to the Panchas and Sarpanchas. Then, Sub-section (4) deals with the qualification of those who are entitled to stand for election to the Tehsil Panchayat. Sub-section (5) provides for the transaction of business by the Tehsil Panchayat.

A brief summary of the provisions of the first five sub-sections has been given above to show that none of them deals with the judicial powers of the Tehsil Panchayat, and therefore simply because Section 58 happens to appear in Chapter IV, it would not be proper to say that the next Sub-section (6) deals only with judicial powers of the Tehsil Panchayat. It would have been much better if the legislature had given a different heading while dealing with the Tehsil Panchayats and their powers. In fact, the first five sub-sections of Section 58 ought to have come even before Section 56, because they deal with the establishment and constitution of Tehsil Panchayats. The arrangement of the sections is not a happy

one and, therefore, Sub-section (6) of Section 58 should be interpreted as it stands, and the mere fact that it appears in Chapter IV should not be allowed to sway one's opinion about its real meaning.

7. Now a plain reading of Sub-section (6) of Section 58 would show that it enjoins upon a Tehsil Panchayat that it must exercise its general supervision over the affairs of all the Panchayats established -within the local limits of its jurisdiction. The use of the word 'affairs' clearly denotes that this general supervision of the Tehsil Panchayat was not restricted only to judicial cases, but it was also extended over the administrative and executive affairs of the Panchayats. Then, this sub-section further provides that a Tehsil Panchayat shall also hear appeals from all or any of the decrees or sentences, decisions, orders and directions made by a Gram Panchayat. It is significant that the legislature did not content itself by laying down that the Tehsil Panchayat shall exercise general supervision over the affairs of the Gram Panchayat, but further provided for the Tehsil Panchayat's powers to hear appeals from all or any of the decrees or sentences, decisions, orders and directions made by a Gram Panchayat.

The use of the word 'all or any' 'decisions' 'orders' and 'directions' clearly show that the Tehsil Panchayat was given wide powers to hear appeals not only against decrees and orders passed in civil and criminal cases or sentences and orders in criminal cases, but even against 'decisions', 'orders' and 'directions' made in administrative or executive matters. Sub-section (7) of Section 58 lays down that in the performance of its duties under Sub-section (6) a Tehsil Panchayat shall exercise the same powers as are exercisable by a Panchayat under this Act. This provision is also significant inasmuch as it gives to the Tehsil Panchayat not only those judicial powers which are given to the Gram Panchayats under Chapter IV, but all those which are exercisable by the Gram Panchayat under the Act.

The use of the words 'under this Act' instead of 'under this Chapter' is a further pointer to the wide administrative and executive powers given to the Tehsil Panchayat. It has already been pointed out above that Section 57(2) and (4) already lay down the power of the Tehsil Panchayat to hear and decide appeals from decrees, sentences and orders in judicial cases and it was altogether

unnecessary to provide for the same in Section 58 (6). It appears that these words were repeated only by way of abundant caution and the further fact that 'all decisions' and 'all directions' were also mentioned in Sub-section (6) of Section 58 shows that the Tehsil Panchayats were given powers to hear appeals even against administrative and executive decisions, orders and directions made by Gram Panchayats.

8. The main argument raised by learned counsel for the petitioner which was not raised in *Devilal's case*, ILR (1958) 8 Raj 1119 is that Sub-section (6) of Section 58, even if interpreted widely, only provides the forum, but since there is no express provision for giving a right to appeal against administrative or executive orders, an appeal to the Tehsil Panchayat could not be so long as such a provision was not made. In support of this argument, learned counsel has referred to *Collector of Dacca v. Gholam Kuddus Choudhury*, AIR 1936 Cal 688. In that case it was held that 'an appeal did not exist in the nature of things; a right of appeal from any decision of any tribunal must be given by express enactment; such a right could not be implied'.

He has also referred to *P.V. Rao v. Ahmed Haji Noormahomad Latiff*, AIR 1949 Bom 125 where it was observed that 'appeals are creatures of statutes and a Court can never have an inherent right to hear an appeal from another Court unless the law so expressly provides'. Reference has also been made to *Suraj Narayan Singh v. Bishamhar Nath*, AIR 1925 Oudh 260 where it was observed that 'the right of appeal must always be founded upon an express rule to that effect or a rule by unavoidable implication'.

He has also referred to *Wamanrao Deorao v. Shrikumar Jaikumar*, AIR 1946 Nag 42 in which it was held that 'the Courts are merely to interpret the provisions of the Code when they are dealing with a statute. If the words are plain, they must give effect to them. They are not permitted to add words nor are they allowed to subtract words from the statute'.

9. It may be observed that there can be no two opinions on the point that an appeal is a creature of statute and a court has no inherent right to hear an appeal from another court unless an appeal is expressly provided by law. The rulings

pointed out above by learned counsel for the petitioner, however, have no application in the present case, because there is an express provision in Sub-section (6) of Section 58 to the effect that a Tehsil Panchayat shall hear appeals from all or any of the decisions, orders and directions made by a (Gram) Panchayat in addition to hear appeals from decrees and sentences in judicial cases. The question is only one of interpretation, namely, whether the words 'decisions' 'orders' and 'directions' refer to administrative and executive orders, decisions and directions, or even these words should be restricted to judicial cases.

It is contended by petitioner's learned counsel that if the legislature meant to provide appeals from administrative and executive orders, it would have laid down that 'an appeal shall lie from administrative and executive orders of the Gram Panchayat to the Tehsil Panchayat'. It is pointed out by him that similar language appears in Section 18 of the Rajasthan High Court Ordinance, 1949, where a right to appeal from certain judgments of a Single Judge to a division bench is provided. It may be observed that it is not necessary for the legislature to use the same language in every statute.

A plain reading of Section 58(6) clearly shows that a duty was cast upon a Tehsil Panchayat to hear appeals from all decisions, orders and directions made by a Gram Panchayat. It follows as a necessary corollary that aggrieved persons were given the right to file an appeal before the Tehsil Panchayat from all decisions, orders and directions made by a Gram Panchayat; otherwise there would be little meaning left in making this provision. There could be some room for argument in favour of the petitioners if the word 'appealable' were to appear before the words 'decisions, orders and directions', but when the legislature qualified these words with 'all', then there is no doubt left that the Tehsil Panchayat was given powers to hear appeals not only from judicial cases, but from all decisions, orders and directions made by the Gram Panchayat.

10. It was next urged by petitioner's learned counsel that no time limit has been provided by the legislature for appeals against administrative or executive decisions, orders and directions and, therefore, it should be taken that Section

58(6) related only to judicial cases for which limitation was provided in Section 57 for filing an appeal. It is true that no period of limitation has been provided by the Act against appeals in administrative and executive matters, but as pointed out in Devlal's case, ILR (1958) 8 Raj 1119 it may be that the legislature might have left this to be done by the State Government by its rule making power under Section 89 of the Act.

At the most, it can be said in this connection that a lacuna was left and it would have been much better if a period of limitation for such appeals were provided in the Act itself. The absence of the period of limitation cannot, however, restrict the powers of the Tehsil Panchayat to hear appeals, nor can it deprive an aggrieved person of his right to file an appeal. It may be pointed out in the end that although the provisions of Section 58(6) did not come for detailed discussion, it was held in Bhagwan Singh v. District and Sessions Judge Ganganagar, 1958 Raj LW 313 that an order by the Panchayat in its executive capacity was appealable to the Tehsil Panchayat under Section 58(6). Similarly, in Sher Singh v. Tehsil Panchayat, Padampur, 1959 Raj LW 2 it was assumed that the Tehsil Panchayat had a power to hear appeal in administrative matters. Thus, the provisions of Section 58(6) came before three division benches and all of them were of the view that it provided wide powers to a Tehsil Panchayat to hear appeals even from administrative and executive orders of a Gram Panchayat.

It cannot be denied that the language of this Sub-section (6) of Section 58 and the place where it appears is not very happy, but it does seem that the legislature in its wisdom did not consider it proper to give finality even to the administrative and executive orders of a Gram Panchayat which were newly constituted at most of the places, by the Act and, therefore, it not only gave general supervisory powers over the affairs of the Gram Panchayat to the Tehsil Panchayat, but also provided for appeals to that body. It is a well known rule of interpretation that effect must be given so far as possible to all the words used in a statutory provision, for the legislature is deemed not to waste its words or to say anything in vain. In other words one should not without necessity or some sound reason impute to the language of the legislature any superfluity.

If meaning be given to all the words which appear in this Sub-section (6), then the view taken in Devilal's case, ILR (1958) 8 Raj 1119 appears to be correct. Although an Amendment Act cannot be used for interpreting the language of the Act, which is amended thereby, it may be pointed out that the learned Judges who decided Devilal's case, ILR (1958) 8 Raj 1119 correctly understood the intention of the legislature which seems to have been brought out more clearly in the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959. A perusal of Section 4 Clause (viii) would show that Section 26A has been added to the Rajasthan Panchayat Act, 1953, and while power to hear appeals from judicial cases has been given to the Tehsil Panchayat, the power to hear appeal from administrative and executive orders of the Gram Panchayat has been given to Panchayat Samitis.

This further shows that the legislature from the very beginning meant to provide power to hear appeals even from administrative and executive orders of the Gram Panchayat and it has only been given now to a different body, because the functions of the Tehsil Panchayat have been separated.

11. Our answer to the first question, therefore, is that Devilal's case was, in our opinion, correctly decided.

12. Now coming to question No. 2, it has already been pointed out above that no period of limitation was provided in the Act for governing appeals against executive or administrative orders of a Gram Panchayat and it is not within our province to lay down a provision for limitation. It was urged by learned counsel for the petitioner that Section 57(2) should be deemed to provide for such limitation, but that provision is meant expressly for appeals against sentences, decrees and judicial orders and we cannot extend its provision to appeals against administrative and executive orders. Section 26A which has been added to the Act by the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959, now provides a period of limitation even for appeals from administrative orders of the Panchayats.

13. Our answer to question No. 2 is that there was no period of limitation for appeals against administrative and executive orders of the Gram Panchayat except those covered by Section 27 of the Act before the Rajasthan Panchayat

Samitis and Zila Parishads Act, 1959, came into force.

14. Before parting with the case, it may be observed that we should not be understood to mean to justify the order of the Tehsil Panchayat passed in appeal on merits. That matter has not been referred to this Bench and, therefore, it would be for the division bench to decide whether the Gram Panchayat had the authority or had proceeded according to law in selling away the disputed plot or whether the Tehsil Panchayat has acted in accordance with law in setting aside the order of the Gram Panchayat.

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