

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 5509 of 2021 (O&M)

Reserved on: 11.4.2023

Date of Decision: 20.4.2023

Sukhwinder Singh and others

.....Petitioners

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Sanjiv Gupta, Advocate
for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. H.P.S.Ishar, Advocate
for respondent No. 5.

Mr. Amit Jain, Senior Advocate assisted by
Mr. Harmurad Singh Gill, Advocate and
Mr. Gurmeet Singh, Advocate
for respondent No. 7.

SURESHWAR THAKUR, J.

1. The petitioners, who claim themselves to be the proprietors of the mohal concerned, where the writ lands are concerned, have taken to make a challenge to Annexure P-6, whereby the sale through public auction of the petition land, was made in favour of respondent No. 7-M/s Ruchira Papers Limited Tirlokpur road, Kala Ambh, Tehsil Nahan, District Sirmaur (Himachal Pradesh).

2. The grounds taken in the instant writ petition to impugn the said annexure, are centered upon the factum, that (a) the interest of the petitioners, as proprietors in the mohal concerned, would become adversely affected, (b) that the sale by public auction of the petition lands to the said entity, was made in breach of the provisions of Rule 12 of the Punjab

Village Common Lands (Regulation) Rules, 1964 (for short 'the Rules of

1964), and, also in breach of the provisions of Section 5 of the Punjab Village common Lands (Regulation) Act, 1961 (for short 'the Act of 1961'), (c) that no public notice became issued prior to the conducting of the public auction of the petition land(s), resultantly in the bid of respondent No.7, becoming accepted, and, (d) that the petition land(s) being sold at a throwaway price, therefore, a grave financial detriment, being caused to the monetary interest(s) of the Gram Panchayat concerned, over the petition land(s).

3. The writ petition was contested by the respondents, and, they have filed their detailed replies, on affidavits, to the instant petition.

4. The learned counsel for respondent No. 7, as also the learned State counsel have argued, that the instant petition is a gross abuse of the process of Court, besides have also taken to argue, that the petitioners have no locus standi to maintain the present writ petition, as they have no valid interest, as proprietors of the petition land(s), nor they have any justifiable interest to, in terms of the wazib-ul-arz concerned, make user of the petition land(s), so as to contend, that their rights either as proprietors, or as legitimate user of the petition land(s), would become jeopardized, in case the impugned annexure is validated by this Court.

The instant petition is a gross abuse of the process of the Court

5. The above made submission is rested upon the factum, that one Gurpiar Singh, brother of petitioner No. 2 along with other persons, had filed a writ petition, on a cause of action, and, relief but similar to the one in the instant petition, and, to which CWP No. 28735 of 2018, became assigned, but the said petition was, as revealed by Annexure-A, dismissed as withdrawn on 29.4.2019, and, upon an allegation being made by one of the co-petitioner therein, that his signatures therein, was forged, and, which

resulted in FIR No. 199 of 27.11.2018 becoming registered against the concerned.

6. Subsequently, another writ petition bearing CWP No. 12491 of 2019 being also, as revealed by Annexure-B, dismissed for non-prosecution on 20.4.2022,. Subsequently, as revealed by Annexure-C, another writ petition bearing CWP No. 14279 of 2019, filed by Gulzar Singh, father of petitioner No. 2 and others, becoming also dismissed as withdrawn on 22.3.2021.

7. The filing of the above writ petitions, respectively by the brother, and, by the father of one of the present petitioners along with others, which but resulted in theirs becoming dismissed for non prosecution, and/or as withdrawn, does constrain this Court, to mobilize an inference, that the petitioners are yet intending to entangle co-respondent No. 7, and, other respondents in unnecessary litigations but merely to harass and humiliate them, thus the instant petition is a gross abuse of the process of the Court.

8. It also appears that different writ petitions almost with a similar cause of action, and, similar reliefs to the one, as carried in the instant writ petition, were previously instituted, and, which as above stated, became rather dismissed as withdrawn, and/or, became dismissed for non-prosecution. The said writ petitions, as is evident, were filed by the closest relatives of one of the present petitioner. Therefore, it appears that one or the other relative of the previous petitioners, is still engineering, and, inventing the instant petitions, despite earlier filed petitions by his closest relatives, becoming dismissed as withdrawn. The open factum of dismissal as withdrawn of the earlier petitions, as filed by the closest relatives of one of the present petitioner, is but a loud speaking, that for want of any valid

cause of action therein, the petitioner therein, were yet led to institute the

said earlier petitions before this Court, and, that yet one amongst the present petitioners, despite his father, and, brother respectively filing the earlier petitions along with the other petitioners, but taking to, yet merely to untenably escape the bar of resjudicata attracting the instant petition, but obviously abuse the process of the Court.

9. Irrespective of the above, yet there was an imperative necessity for the petitioners to prove the striking fact of theirs being the proprietors of the land(s) concerned, and/or to produce cogent evidence personifying, that they had a legitimate right to use the petition land(s), but in terms of the wazib-ul-arz, as appertaining to the petition land(s). However, the above evidence is not forthcoming. Even if it was forthcoming, the validity of the said evidence cannot be either rested nor can be determined in the instant petition, as the validity thereof is a disputed question of fact, fact whereof, cannot be determined in the writ proceedings, rather can be determined only in the proceedings, to be drawn either before the statutorily designated authority or before the Civil Court concerned.

10. Even otherwise, the instant writ petition is a sequel of co-petitioner No. 2 joining the instant petition despite his earlier filing a civil suit, claiming relief therein, that he is the lessee of the land, and, as such asked for a relief, that the respondent be restrained from auctioning the land in dispute. Thus, the suppression of the above fact by co-petitioner No. 2, in the instant petition, does but attract against co petitioner No. 2, the vice of *suppressi veri and suggestio falsi*, which but coaxes this Court to conclude, that the instant petition is a ploy, being used by the petitioners, to forestall the setting up, of an industrial unit by co-respondent No. 7 on the petition land(s), especially when, as revealed by replies on affidavits, furnished to

the instant petition, all the requisite formalities have been completely

complied with.

11. Moreover, the effect of the said made averment in the civil suit, inasmuch as of co-petitioner No. 2 became a lessee over the petition land, is that obviously he is not the proprietor of the petition land but is admittedly a lessee thereof. Thus, the said limited status, if any, of co-petitioner No. 2 as a lessee, upon the petition land, does not enable him to contend, that his rights, as a proprietor over the petition land would become jeopardized in case Annexure P-6 is vindicated by this Court.

All procedural formalities complied with

12. Before proceeding to assess the imperative factum of whether the procedural compliances have been made by the authorities concerned, in theirs approving the resolution of the Gram Panchayat concerned, for the sale of the petition land(s) by public auction to respondent No. 7, it is deemed appropriate to extract the provisions of Rule 12 of the Rules of 1964, and, of Section 5 of the Act of 1961.

12. Purposes for which land may be sold. [5 and 15(2)(f)J:-

(1) A Panchayat may, with the previous approval of the government, sell land in shamlat deh vested in it under the Act for-

(i) the purpose of constructing building for Block Samiti Office or any department of or institution recognized by the Government;

(ii) the purpose of any industrial or commercial concern; or

(iii) executing such a scheme as may be a source of recurring income for the benefit of the inhabitants of the village;

(iv) residential purposes of the inhabitants of the village;

(v) for the purpose of financing the construction of buildings for schools and for veterinary and civil dispensaries in the Sabha area-

(2) Where it is proposed to sell the land in Shamlat deh under sub-rule(1), the Panchayat shall forward to Government a copy of its resolution passed by a majority of the threefourth of its members proposing to sell and the land through the Panchayat Samiti and Divisional Deputy Director' Panchayati Raj stating-

(a) the area and location of the land proposed for sale;

(b) the estimated income from the sale and whether the income would increase if the land is sold after some years;

(c) the reasons as to why the Panchayat wants to sell the land and the plans for utilization of the income from the sale.

(3) The publicity for sale of land in shamlat deh by auction shall be made by the Deputy Commissioner in acc with the procedure laid down in sub-rule (10) of rule 6 on receipt of the approval of Government who shall also decide whether the land should be sold in one or more lots and the officer who should be present at the auction."

"5. Regulation of use and occupation, etc of lands vested or deemed to have been vested in Panchayats-

(1) All lands vested or deemed to have been vested in a Panchayat under this Act, shall be utilised or, disposed of by the Panchayat for the benefit of the inhabitants of the village concern in the manner prescribed.

Provided that where two or more villages have a common Panchayat, Shamilat deh of each village shall be utilised and disposed of, by the Panchayat for the benefit of the inhabitants of that village.

Provided further that where there are two or more Shamilat tikkas in a village, the Shamilat tikka shall be utilised and disposed of, by the Panchayat for the benefit of the inhabitants of that tikka.

[Provided further that where the cultivable area of land in Shamilat deh of any village, so vested or deemed to have been vested in panchayat is in excess of two-thirds of the total of that village (excluding abadi deh), then

cultivable area upto the extent of two-thirds of such total area shall be left to the Panchayat and one-half of the remaining cultivable area of Shamilat deh, shall be utilised for the settlement of landless tenants any other tenants ejected or to be ejected of that village and the remaining cultivable area shall be utilised for distribution to small land owners of the village by the collector in consultation with the Panchayat, in such manner as may be prescribed].

(2) The area of Shamilat deh to be utilized for the purposes of the third proviso to sub-section (1) shall be demarcated by such officer in consultations with the Panchayat and in such manner as may be prescribed.

(3) The State Government or any officer authorized by it in this behalf may, from time to time, with a view to ensuring compliance with the provision of the second proviso to sub-section (1) or sub-section (2) issue to any panchayat such directions as may be deemed necessary.

(4) Nothing contained in the third proviso to sub section (1) and in sub-section (2) and sub-section (3) shall apply to the "Hilly area".

(5) Notwithstanding anything contained in the prereceding sub-sections, on land vested or deemed to have been vested in the panchayat under this Act, shall be disposed of by way of sale, gift or exchange, so as to have with the Panchayat, cultivable area which is less than fifty percent of the total cultivable area vested or deemed to have been vested in the Panchayat.”

13. A perusal of Rule 12(1)(i) of the Rules of 1964 clearly reveals, that it is within the competence of the panchayat concerned, and, thereafter within the competence of the approving authority to accord approval for the establishment of an industrial unit. The proposal for selling the petition land(s) by way of public auction was initiated by a resolution by the Gram

Panchayat of village Dholran on 12.2.2018, and, by the Gram Panchayat of

village Bassi Gujran. The said resolutions of the above panchayats were ratified by the panchayat samiti vide Annexure P-1. Subsequently, the above proposals were transmitted to the BDPO concerned, who vide Annexure P-2, for the reasons, as assigned therein, granted the asked for approval to the resolutions concerned. Moreover, the BDPO concerned, after making well informed, and, tenable reasons, in his concurring with the resolutions, and, when Annexure P-2, forwarded the file to the District Development and Panchayat Officer concerned, who after concurring with the proposal in Annexure P-3, forwarded the said file to the Divisional Deputy Director concerned, who after concurring with the above proposals, forwarded, vide Annexure P-4, the file to the Director concerned. The Director concerned, after examining the said proposal, sent the file to the Government for approval. Thereafter the Government vide Annexure P-5, drawn on 5.7.2018, granted approval for the sale of petition land(s) by public auction. The public notice was issued in the newspapers initially on 20.10.2018 (Annexure P-6), and, thereafter on 16.4.2020 (Annexure R-1). Subsequently the third public notice was published in two newspapers on 3.2.2021 (Annexure R-7/2 and Annexure R-7/3). The reserve price for the bid was fixed as Rs. 24.00 lacs per acre, despite the fact that the lands adjoining to the petition land, carried a value of 11.8 lac per acre. However, co-respondent No. 7 made a bid for purchasing the petition land(s) in a sum of Rs. 26.34 lacs. The said bid, as made by respondent No. 7, being the highest bid, was accepted, and, which led to the petition land(s), being sold in favour of respondent No. 7. Therefore, the averment made in the petition, that the petition land was sold at a throwaway price to respondent No. 7, is a frivolously made averment, and, to which no credence can be assigned.

unfolds that all the requisite formalities have been completely complied with in the appropriate Government ratifying the proposal of the Gram Panchayat concerned, for issuance of a public notice in the newspapers for sale of public land in auction, rather to enable the establishment of an industrial unit, on the petition lands. Moreover, when the grant of approvals for the public auction of the petition land, is for the establishment of an industrial unit, thus, reiteratedly when the said approval is within the four corners of the above extracted rules. Therefore, it cannot be said, that the issuance of a public notice, inviting the bidders to purchase the petition land for establishing an industrial unit thereons, is in breach of the relevant norms or rules, nor it can be concluded, that the issuance of public notice in the newspapers, was done arbitrarily or surreptitiously but only to favour co-respondent No. 7.

The auction sale of the public lands is not rigged

15. The further effect of the above discussion, is that, the auction bid was not made lower than the fixed reserve price, nor the bid money was lower than the price of lands, adjoining to the petition land, rather the above offered, and, accepted highest bid by co-respondent No. 7, which evidently was much higher than the market values of the lands occurring in the neighbourhood of the petition lands. Therefore, it can be candidly stated that the sum of money, as would be derived by the Gram Panchayat concerned, from the sale of the petition land, would definitely augment income of the panchayat, besides would obviously augment the various developmental activities, carried in the panchayat concerned. Moreover, the preparation of utilization plan qua the auction moneys, has also been detailed in the reply on affidavit, as becomes furnished by the Gram Panchayat concerned. Therefore, a reading of the said reply on affidavit,

when brings-forth the manner of utilization of the auction moneys, and, when utilizations thereof are but for the developmental activities. Resultantly, the said utilization plan qua the user of auction moneys, would assuredly, curb the menace of misutilizations or misappropriations thereof. Even otherwise, for curbing the above menace, it is directed, that the Collector of the revenue district concerned, shall appoint an Auditor for auditing the utilizations of the auction moneys, by the Panchayat concerned, and, shall ensure that a quarterly audit report, is prepared, and, is also sent to him, for his appreciation.

Final order

16. In the wake of the above discussion, this Court finds no merit in the petition, and, is constrained to dismiss it. Consequently, the petition is dismissed.

17. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

April 20th, 2023
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No