

CWP No. 9375-1994

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

CWP No. 9375-1994

Judgment reserved on :25.02.2015

Date of Decision: 03.03.2015

Ujjagar Singh (since deceased) through his LRs

... Petitioner(s)

Versus

The Director of Panchayats and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Argued by: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Gurmeet Singh Guri, Advocate,
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 22.04.1994 (Annexure P-8) passed by respondent no.3-Block Development and Panchayat Officer, Mahilpur.

Brief facts of the case are to the effect that in the year 1982, Sant Ram was the Sarpanch of Gram Panchayat, Maili. On 09.09.1982, auction of Khair trees belonging to the Gram Panchayat was held in which 4486 trees were auctioned @ ₹ 125.56 per square feet and the

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highest bid was given by M/s Shakti Katha Udyog Association which was accepted. An amount of ₹ 13,29,671/- became payable by the said firm. The firm deposited ₹ 10,29,671/- and ₹ 3 lacs remained due. Subsequently, fresh elections of Gram Panchayat were held in the year 1983 and Sant Ram was again elected as Sarpanch. On 04.01.1984, the Gram Panchayat passed a resolution that if the Contractor paid the balance amount of ₹ 3 lacs, permit be got issued from the Forest Department to cut the remaining trees. The Contractor claimed that 1632 trees of his earlier auction were yet to be cut and the Gram Panchayat admitted the said claim. On 06.01.1985, in the panchayat meeting held under the Chairmanship of Kabal Singh, recommendations were sent to the Forest Department to issue permit for 1632 trees to the contractor. Sant Ram did not attend the meeting. The District Forest Officer renewed the earlier permit upto 31.03.1984 and the Contractor started working of Katha extraction in the forest but later on, the Block Development and Panchayat Officer-respondent no.3 stayed the cutting of trees as well as operation of the renewed permit. The contractor served a notice dated 06.08.1984 under Section 80 CPC upon the Collector, Hoshiarpur, District Forest Officer, Garhshankar and Block Development and Panchayat Officer, Mahilpur against the said stoppage of the work and the matter remained under correspondence between the contractor and the concerned officers. In December, 1986, Sant Ram resigned as Sarpanch and the petitioner was elected as

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Sarpanch of Gram Panchayat Maili. The petitioner also received some notices from the contractor and the petitioner consulted the then Block Development and Panchayat Officer as well as the District Development and Panchayat Officer about the notices and he was advised that it would be better to avoid prolonged litigation, therefore, the matter was then referred to the Forest Department. The matter was sent to the Chief Conservator of Forests, who directed the department to intimate as to how many trees were due towards the lessee-firm. Ultimately, after consultation with the department, it was resolved that the Panchayat may write to the forest department by passing a resolution that actually 1632 trees were due to the lessee firm and the lessee-firm will pay the balance amount of ₹ 3 lacs for cutting of 1332 trees instead of 1632 trees, as claimed by it earlier. Accordingly, resolution dated 03.10.1990 (Annexure P-1/T) was passed and sent to the Forest Department through the Block Development and Panchayat Officer and District Development and Panchayat Officer, Hoshiarpur. Subsequently, on the basis of complaint made by Rattan Chand, Amrit Bhushan etc., respondent no.1 ordered an inquiry against the petitioner under Section 102 (1) of the Gram Panchayat Act, 1952, vide order dated 11.09.1991 (Annexure P-2/T). The enquiry was entrusted to respondent no.2-Divisional Deputy Director, Rural Development and Panchayats, Jalandhar Division, Jalandhar. Seven charges were levelled against the petitioner to which he submitted reply. In the enquiry, none of the charges were found to be

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proved against the petitioner and vide letter dated 31.03.1992 (Annexure P-7/T), report was submitted to respondent no.1. The petitioner again received letter dated 29.05.1992 from respondent no.1 whereby the enquiry was transferred, vide letter dated 14.05.1992 (Annexure P-3/T), from respondent no.2-Divisional Deputy Director Rural Development and Panchayats, Jalandhar Division, Jalandhar to the Divisional Deputy Director Rural Development and Panchayats, Ferozepur Division, Ferozepur. Thereafter, the petitioner sent letter dated 06.06.1992 (Annexure P-4) requesting respondent no.1 not to re-open the enquiry. The petitioner also submitted affidavit dated 12.06.1992 (Annexure P-5) to the effect that he had never submitted any application for transfer of the inquiry and he had never apprehended injustice from the previous enquiry officer. The petitioner had also got recorded his statement (Annexure P-6/T) to respondent no.4-Deputy Director, Rural Development and Panchayats, Ferozepur Division, Ferozepur. Later on, the petitioner came to know that Sh. B.K.Dhir, Divisional Deputy Director, Rural Development and Panchayats, Jalandhar Division, Jalandhar had exonerated the petitioner of all the charges, vide report (Annexure P-7/T). However, respondent no.1 again directed respondent no.4- Divisional Deputy Director, Rural Development and Panchayats, Ferozepur Division, Ferozepur to hold the enquiry afresh into the same charges. In the subsequent enquiry dated 11.12.1992, it was held that allegation nos.1, 3 and 6 stood proved against the petitioner. On the

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basis of enquiry report dated 11.12.1992, impugned notice/order dated 22.04.1994 (Annexure P-8/T) has been issued under Sections 102 and 105 of the Gram Panchayats Act, 1952 for recovery. Hence, this writ petition.

Upon notice of motion, respondents put in appearance. Respondent no.3 filed reply without explaining the circumstances as to what order has been passed upon the enquiry report dated 31.03.1992 (Annexure P-7/T) and as to why subsequent enquiry has been ordered to be held much later and as to why the transfer of enquiry was ordered when it had become final.

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

Learned senior counsel for the petitioner vehemently contended that reply filed by respondent no.3 is totally silent about the enquiry dated 31.03.1992 (Annexure P-3/T). The order of transfer of enquiry was passed, when it had become final. Learned senior counsel further contended that once the earlier enquiry is subsisting, second enquiry cannot be held unless the same is rejected by the competent authority. Besides this, in the enquiry dated 31.03.1992 (Annexure P-7/T), it is held that the petitioner was not at fault and the auction was carried out by Sant Ram, who remained Sarpanch for two terms and resigned in December, 1986. Learned senior counsel further contended that the petitioner was not at all liable for the payment, as he had only

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passed the resolution recommending the reduction in the number of trees to be cut. The petitioner was not at all liable for the alleged lapses.

Per contra, learned State counsel vehemently opposed the contentions of learned senior counsel for the petitioner and contended that in the enquiry dated 11.12.1992, the petitioner was found to be guilty with regard to allegation nos.1, 3 and 6 and, therefore, liable to make the amount.

I have considered the rival contentions of learned counsel for the parties.

The reply filed by respondent no.3 is candidly silent about the first enquiry. Even opportunity was given to the Director Panchayats, Punjab to file additional affidavit. However, the additional affidavit dated 20.11.1994 filed by Sh. C. Sibin, Director, Rural Development and Panchayats, Punjab does not say anything about the enquiry report dated 31.03.1992. There is no disclosure as to what decision was taken by the competent authority upon the enquiry report dated 31.03.1992 before ordering for subsequent enquiry.

Admittedly, resolution for auctioning 4486 trees was passed in the year 1982. At that time, Sant Ram was holding the post of Sarpanch. Thereafter, again in the year 1983, Sant Ram was elected as Sarpanch and resolution was passed after getting the assessment from the forest department. Sant Ram resigned from the post of Sarpanch in December, 1986. Since the Contractor claimed that 1632 trees of earlier auction

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were yet to be cut, resolution for cutting the same was sent to the authorities by the Sant Ram, Sarpanch. The Block Development and Panchayat Officer-respondent no.3 stayed the cutting of trees as well as the operation of the renewed permit. Thereafter, the petitioner was elected as Sarpanch and during his tenure, resolution (Annexure P-1/T) was passed. In the resolution (Annexure P-1/T), it is specifically mentioned that permit was issued in the year 1982-83, however, instead of 1632 trees, 1332 trees remained to be cut, therefore, permit be renewed by the authorities accordingly. Admittedly, the resolution (Annexure P-1/T) was signed by the members of the Gram Panchayat, and not by the petitioner alone. Otherwise also, in the enquiry report dated 31.03.1992, the petitioner was not found to be liable for any of the allegations and the amount had been recovered from the Contractor in the presence of villagers. No decision was taken by the authorities on the enquiry report dated 31.03.1992 (Annexure P-7/T). However, the enquiry was transferred, vide letter dated 14.05.1992 (Annexure P-3/T), from respondent no.2-Divisional Deputy Director Rural Development and Panchayats, Jalandhar Division, Jalandhar to respondent no.4-Divisional Deputy Director Rural Development and Panchayats, Ferozepur Division, Ferozepur on the ground that the petitioner requested for transfer of the enquiry to another enquiry officer because he did not expect justice from the said enquiry officer. However, the petitioner has claimed that he had not moved any application for

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transferring the enquiry.

In order to separate the wheat from the chaff, Director Panchayats, Punjab was directed to file additional affidavit along with the original record. In compliance of the directions issued by this Court, the Director Panhayats, Punjab appeared before the Court and filed additional affidavit dated 20.11.2014 in which it was mentioned that original record of the case is not available. A query was also put up to learned State counsel that when the original record was lost and when it came to the notice of the department, he was not in a position to answer the same in spite of availability of Law Officer and other officials of the department in the Court to assist him. In these circumstances, inference is drawn against the department for withholding the best evidence specifically original record of the case. Moreover, the petitioner has expired and now his legal heirs are contesting.

Keeping in view the fact that two enquiries are in existence and resolution for auctioning the trees was not passed by the petitioner-Ujjagar Singh, the impugned order/notice dated 22.04.1994 (Annexure P-8) is set aside.

It is made clear that the department should hold an enquiry as to how the record has been lost and as to why action has not been taken against the person responsible for the same. Needful shall be done within three months from the date of receipt of certified copy of this Court. The compliance report shall be submitted to the Court.

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Registry is directed to put up the file on 07.07.2015.

03.03.2015

parveen kumar

(Paramjeet Singh)
Judge