

CWP Nos.8719 & 17660 of 2014

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

(1) CWP No.8719 of 2014
Date of decision:29.09.2016

Lilu Ram ...Petitioner

Versus

State of Haryana and another ...Respondents

(2) CWP No.17660 of 2014
Date of decision:29.09.2016

Ram Rattan ...Petitioner

Versus

Commissioner & Secretary to Govt. of Haryana and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Gaurav Mohunta, Advocate, and
Mr. Gaurav Gogna, Advocate, for the petitioner(s).

Mr. P.P.Chahar, DAG, Haryana.

Mr. Balraj Singh Dhull, Advocate,
for the Gram Panchayat.

Rakesh Kumar Jain, J. (Oral)

This order shall disposed of two petitions bearings CWP Nos.8719 and 17660 of 2014 as the issue involved in both the writ petitions is the same. However, for the sake of convenience, facts are being extracted from CWP No.8719 of 2014.

The facts, as narrated in the Court by counsel for the petitioner, are that a resolution was passed by respondent No.2 on 03.10.2004 to auction the land measuring 147 Kanal 04 Marlas. Advertisement was issued on 12.11.2004 for the purpose of holding the auction on 28.11.2004. However, for some reason or the other, the auction could not take place,

which was ultimately held on 16.02.2005, in which the petitioner was the highest bidder and deposited ₹5,20,000/- with the Gram Panchayat. Simultaneously, lease deed was executed in which it is provided in Clause (1) that the lease period would be for five years from the date of offer of possession and it is provided in Clause (4) that in case the Gram Panchayat fails to offer possession, the amount deposited by the petitioner shall be returned to him with interest @ 21% per annum. The petitioner kept on waiting for the offer of possession and ultimately served a legal notice upon the respondents on 21.10.2008. The Gram Panchayat filed reply to the legal notice on 30.12.2008, in which the receipt of auction money was not denied but inability was shown to deliver the possession. The petitioner served legal notice again which was replied by the respondents but neither the possession was offered nor the money deposited by the petitioner was returned and ultimately, the petitioner filed the present writ petition on 21.04.2014 in which two prayers are made; (i) either to deliver possession in terms of the lease deed or (ii) in the alternative, the amount deposited be returned with interest @ 21% per annum.

During the pendency of the present writ petition, the Panchayat passed a resolution to plant trees on the land in question, as a result thereof, the petitioner filed an application for stay, in which parties were directed to maintain *status quo*.

The respondents filed their reply and took a somersault, denying that the petitioner had deposited the amount, as stated, and also alleged that the petitioner has acted in connivance with the then Sarpanch in taking the land on auction.

Counsel for the petitioner has submitted that the payment made by the petitioner is not denied by the respondents in the first paragraph of the reply to the legal notice dated 30.12.2008 and also referred to Annexure P-25, which is the receipt issued by the Gram Panchayat of ₹5,20,000/- to the petitioner on 16.02.2005 at the time when the land was auctioned in his favour and has also referred to the entries in the cash book maintained by the Gram Panchayat showing the receipt of ₹5,20,000/- against receipt No.65 dated 16.02.2005. The petitioner has prayed that either the possession may be delivered or in case the respondent-Gram Panchayat is not able to deliver possession for some reason or the other, they may be directed to return his money with interest @ 21% per annum, as agreed.

Counsel for the respondent-Gram Panchayat at the first instance challenged the maintainability of the writ petition on the ground that the petitioner has the remedy to approach the Assistant Collector 1st Grade in terms of Section 10-A of the Punjab Village Common Lands (Regulation) Act, 1961 and also submitted that the claim set up by the petitioner is stale. However, off the record, it is sought to be argued by counsel for the respondent-Gram Panchayat that the money paid by the petitioner was misappropriated by the then Sarpanch followed by the another Sarpanch.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the prayer made by the petitioner has to be allowed. In view of the evidence brought on record and especially the admission made by the respondent-Gram Panchayat in their reply to the legal notice dated 30.12.2008 that the petitioner had deposited ₹5,20,000/- at the time of auction, they are liable to return the said amount

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to the petitioner along with interest @ 21% per annum in terms of the lease deed, to which both the parties are bound.

Counsel for the respondent-Gram Panchayat has also argued that the possession of the land, in any case, cannot be delivered, as it is under the pond.

The Court, at this stage, is not concerned with the delivery of possession as the petitioner has already made an alternative prayer that in case the respondents are unable to deliver possession, they may be directed to return the amount deposited by him along with interest @ 21% per annum.

Thus, in view of the admitted facts and circumstances, borne out from the record, in favour of the petitioner, both the writ petitions are hereby allowed and direction is issued to the respondent-Gram Panchayat to return the money of the petitioners, in both the petitions, deposited at the time of auction of i.e. ₹5,20,000/- in CWP No.8719 of 2014 and ₹3,80,000/- in CWP No.17660 of 2014 along with interest @ 21% per annum to be calculated from the date of deposit till its actual realization. The needful shall be done by the respondent-Gram Panchayat within a period of one month from the date of passing of this order.

September 29, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No