

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

LPA No.2419 of 2016 (O&M)

Date of Decision : 16.12.2016

Gram Panchayat Village Ram Rai

....Appellant

Versus

Lilu Ram and another

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN

Present: Mr. Balraj Singh Dhull, Advocate
for the appellant.

MAHESH GROVER, J.

The appellant is aggrieved of the judgment rendered by the learned Single Judge dated 29.09.2016.

A resolution was passed by the Gram Panchayat on 03.10.2004 to auction the land measuring 147 Kanals 4 Marlas for which an advertisement was issued on 12.11.2004. The auction was finally held on 16.02.2005 where the successful bidder deposited Rs.5,20,000/- with the Gram Panchayat. A lease deed was executed providing its period as 5 years from the date of offer of possession. Clause (4) of the deed contained a stipulation that in case the Gram Panchayat fails to offer possession, the amount deposited by the bidder shall be returned to him with interest @ 21% per annum. The writ petitioner waited for the possession to materialise and made efforts in this regard. Ultimately, he served a legal notice on 21.10.2008. The Gram Panchayat filed reply to the legal notice not denying the receipt of auction money but expressing inability to

deliver possession as the land was of forest (in a related case it was pond).

The writ petitioner then after some time filed a writ petition making two prayers either to mandate the Gram Panchayat to deliver the possession in terms of the lease deed or alternatively amount deposited be returned along with interest @ 21% per annum as per the stipulation in the lease deed itself. The Gram Panchayat replied to the petition and denied that the amount had ever been deposited and also alleged that the writ petitioner was acting in connivance with the then Sarpanch to take the land on auction. The learned Single Judge noticed the reply of the Gram Panchayat to the legal notice submitted on 30.12.2008 and a receipt Annexure P-25 issued by the Gram Panchayat indicating acceptance of Rs.5,20,000/- on 16.02.2005. Entries to the cash-book (receipt no.65 dated 16.02.2005) were also noticed. The learned Single Judge then accepted the alternate prayer and directed refund of the amount along with interest @ 21% per annum as per the stipulation of the lease deed.

Aggrieved by the same the Gram Panchayat has now filed the instant appeal where it has been urged that the legal notice itself was issued after three years and CWP filed after long 9 years of the accrual of cause of action. Besides, there would be no jurisdiction with this Court as according to the lease deed the same would vest in the civil court at Jind. It is also contended that the lessee was fully aware that the land is incapable of being auctioned and put to

agricultural use and since he has willfully participated in the auction, no fault can be found with the Gram Panchayat. Apart from this it is contended that the CWP raised disputed questions of fact, as the appellant denied the receipt of money. Lastly, it was contended that the lease was against the provisions of the Punjab Village Common Lands (Regulation) Rules, 1964 which mandate that no lease can be executed for an area beyond 10 acres.

We have heard the learned counsel for the appellant and are of the opinion that the Gram Panchayat is taking shelter behind its own wrongs. If the land was unfit or incapable of being leased out then why had it inserted an advertisement to lease out land in open auction to invite bids. It implies that the Gram Panchayat or the office bearers of the Panchayat were fully aware of these facts and were intending to dupe the prospective bidders. Having received the amount which is prima facie established from the reply to the notice where no denial to the acceptance of money was made fully corroborated by corresponding entries in the cash-books, the appellant cannot plead that amount was never received and thus gave a colour of disputed question of fact to the controversy. It would be naive to believe that first the Gram Panchayat willingly entrapped people from the public into responding to an auction and depositing the amount and then to turn its back on the entire transaction by saying that the land was incapable of being auctioned for lease and the amount was never received. It is clearly evident that the conduct of the Gram Panchayat is not above board. We would not accept the

plea of the appellant that the lessee was aware of the land being incapable of being leased out. The plea of the Gram Panchayat that this Court would have no jurisdiction would also fall flat on its face as the execution of the lease deed is admitted and it is also conceded that the possession of the leased land could not be delivered to the successful bidder who had deposited the amount as well to complete the process. Accepting the plea of the Gram Panchayat in this regard would be sending the respondent into throes of another litigation and deprive him of his amount for endless number of years to confer an undue advantage to the Gram Panchayat which now seeks to bask in its own wrongs. Therefore, the learned Single Judge was right in settling the equities by enforcing the alternative prayer made by the writ petitioner for refund of the amount. Similarly, the plea of the appellant that the land more than 10 acres could not have been auctioned would also have to be rejected as it was their own doing and we are constrained to comment that the Gram Panchayat being a representative body of the village does not have to act in a fraudulent manner as it has done.

For the reasons aforesaid, we do not find any merit in the appeal and the same is hereby dismissed.

(MAHESH GROVER)
JUDGE

16.12.2016
dss

(SHEKHER DHAWAN)
JUDGE

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