

CWP No.11224 of 2017

[1]

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

**CWP No.11224 of 2017
Date of decision:11.07.2017**

Angrej Singh and others		...Petitioners
	Versus	
State of Punjab and others		..Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Harchand Singh Batth, Advocate,
for the petitioners.

Ms. Suniat Kaur, AAG, Punjab.

Rakesh Kumar Jain, J.

The Gram Panchayat, Manakpura, Block Bhikhiwind, District Tarn Taran, comprises of 7 Panches and a Sarpanch. The District Development and Panchayat Officer (DDPO), Tarn Taran served a notice No.S.P./2017/4336 dated 05.05.2017 upon the Panchayat regarding appointment of Administrator for conducting auction of *shamlat* land for the year 2017-18 due to non-completion of the quorum of the Panchayat. The text of the notice reads as under:-

“Subject:- Regarding the appointment of administrator for conducting the auction of *shamlat* land for the year 2017-18, due to non-completion of the quorum of the Sarpanch of Gram Panchayat, Manakpura.

Regarding the above mentioned subject, the

Block Development and Panchayat Officer, Bhikhiwind, vide its office letter No.1061 dated 05.05.2017, has reported that it recommended to appoint an administrator for conducting the auction of the shamlat land of the Gram Panchayat, Manakpura.

You are being directed through this notice that the auction be held within 15 days from the issuance of this notice. If, you would not conduct the auction, the further appropriate action would be taken against your.”

The Gram Panchayat convened a meeting on 08.05.2017 and decided to conduct the auction on 16.05.2017. In the meantime, it also challenged the notice/order dated 05.05.2017 by CWP No.10531 of 2017 titled as “Angrej Singh and others vs. State of Punjab and others”, which was disposed of on 16.05.2017, with the following order:-

“This court confronted the petitioner as the impugned letter (Annexure P-5) does not envisage of conducting of auction by the office of DDPO/BDPO, tantamounting to impinging the powers of the Gram Panchayat as enshrined under Rule IX of the Constitution of India, inserted vide 73rd Amendment in 1992, as there is clear indication of taking over the auction in case Gram Panchayat does not conduct the auction within a period of 15 days. Notice is dated 05.05.2017 and period of 15 days has not yet expired. In my view, the alleged cause of action in the present writ petition is premature.

At this stage, learned counsel appearing on behalf of the petitioner seeks liberty of this Court for withdrawal of the writ petition.

Ordered accordingly. The writ petition is dismissed as withdrawn.”

On 17.05.2017, another resolution was passed by the Gram Panchayat that on 16.05.2017, the auction could not take place, thus, it decided

to hold the auction on 18.05.2017 at 12.00 O'clock. However, the DDPO, Tarn Taran, vide his order dated 12.05.2017, appointed the BDPO, Valtoha, as the Administrator, who conducted the auction of *shamlat* land on 17.05.2017, even without waiting for the Panchayat to comply with the order dated 05.05.2017, for which the DDPO, Tarn Taran had given 15 days time.

Counsel for the petitioners has submitted that the appointment of the Administrator is governed by Section 200 of the Punjab Panchayati Raj Act, 1994 (Act). Section 200 of the Act is reproduced as under:-

200. Default of duties by the Panchayats. (1) Where a Panchayat makes a default in the performance of any duty other than a judicial function imposed upon it by or under this Act or under any other law for the time being in force, -

- (i) in the case of a Gram Panchayat, District Development and Panchayat Officer; and
- (ii) in the case of a Panchayat Samiti or a Zila Parishad, the Director;

may by an order in writing fix the period, for the performance of the duty and if it is not performed within the period so fixed, he may appoint any other person to perform the duty and direct that the expenses arising from, and incidental to, its performance shall be paid by the Gram Panchayat.

(2) If, in the opinion of the Director a Panchayat has failed or is otherwise incompetent to administer its property, movable or immovable, in the best interests of the Panchayat the Director, after giving an opportunity to the concerned Panchayat of being heard may appoint a person to administer such property for or on behalf of the concerned Panchayat.

Provided that the Director may at any time terminate such arrangement and thereupon the administration of the property shall be resumed by the concerned Panchayat.

(3) A person appointed under sub-section (2) shall exercise all such powers of the concerned Panchayat under this Act, other than the judicial powers conferred upon it, or under any other law for the time being in force, as may be necessary for the management of the property and shall be entitled to receive such remuneration as may be fixed by the Director.

(4) The income from the management of the property referred to in sub-section (2) shall be credited to the fund of the concerned Panchayat and all expenses arising from and incidental to the administration of such property, including the remuneration payable to the person appointed under sub-section (2), shall be met out of the concerned Panchayat Fund.

(5) If the expenses referred to in sub-section (1) are not paid-

(i) In the case of a Gram Panchayat the District Development and Panchayat Officer, and

(ii) In the case of a Panchayat Samiti or a Zila Parishad, the Director;

may make an order directing the person having custody of the fund of the Panchayat concerned, to make the payment in whole or in part from such fund and if such a person does not comply with the order, recover the amount from the fund of the Panchayat as arrears of land revenue.”

It is submitted that where the Panchayat is in default of performance of any duty, other than the judicial function under the Act, or any other law for the time being in force, then the DDPO may fix the period for the performance of such duty and if the said duty is not performed within the

period prescribed, then he may appoint any other person to perform the said duty.

It is submitted that the DDPO, Tarn Taran, for the purpose of auctioning the *shamlat* land, asked the Panchayat vide its letter dated 05.05.2017 to do the needful within 15 days and also informed that if it is not done, then the appropriate action will be taken. It is further submitted that the period of 15 days, counted from 05.05.2017, completed on 20.05.2017, but before that date, DDPO appointed the BDPO on 12.05.2017 i.e. within 7 days as the Administrator who conducted the auction before the expiry of 15 days i.e. upto 20.05.2017. It is, thus, submitted that the entire action on the part of the DDPO of appointment of the Administrator on 12.05.2017 and the action of the Administrator dated 17.05.2017 auctioning the land of the Panchayat is illegal and against the provisions of the law.

In reply, the respondents have admitted that notice was given on 05.05.2017 for appointment of the Administrator and the Administrator was appointed on 12.05.2017 and the auction was held by him on 17.05.2017 in a transparent manner, therefore, there is no illegality or impropriety on his part. It is also submitted that the proceedings of the auction were held after proper publication and proclamation.

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

Section 200 of the Act deals with the situation where the DDPO has been empowered to appoint any person to perform the duty, which is required to be performed by the Panchayat, in which it is making default, but

before such appointment, the DDPO has to fix the period in writing for the performance of the duty by the Panchayat and shall have the jurisdiction to appoint any other person to perform the said duty if it is not performed by the Panchayat within the time prescribed.

In the present case, the DDPO, vide its letter dated 05.05.2017, asked the Panchayat to conduct the auction within 15 days i.e. upto 20.05.2017. The Panchayat challenged the notice in the CWP No.10531 of 2017 which was dismissed on the ground that period of 15 days had not expired, therefore, there was no cause of action and the writ petition was premature. This order was passed by the writ Court on 16.05.2017 but the DDPO appointed the BDPO as the Administrator on 12.05.2017, much earlier than the expiry of the period of 15 days granted to the petitioners vide notice dated 05.05.2017. Thus, in my considered opinion, the order dated 12.05.2017, appointing the BDPO as the Administrator by the DDPO is patently illegal. Once the appointment of BDPO as the Administrator is being held as illegal, the auction conducted by him on 17.05.2017 is also non-est.

Consequently, the present petition is hereby allowed and the impugned notice dated 05.05.2017, order dated 12.05.2017 appointing the BDPO as the Administrator and the auction dated 17.05.2017 conducted by the BDPO being the Administrator of the *shamlat* land on are hereby set aside.

July 11, 2017
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(Rakesh Kumar Jain)
Judge

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