

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3684 of 2018

Date of Decision: 20.09.2018

Amrinder Singh and others

.....
Petitioners

Vs.

Gram Panchayat Village Salani

.....
Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. S.D. Bansal, Advocate,
for the petitioners.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioners (plaintiffs in a suit), challenge the orders of the learned trial Court [Additional Civil Judge (Senior Division), Fatehgarh Sahib], dated 07.07.2017, as also the order of the learned appellate Court (District Judge, Fatehgarh Sahib), dated 15.09.2017 (Annexures P-7 and P-8 respectively with this petition), declining to grant them *ad interim* injunction on the application filed under Order XXXIX Rules 1 and 2 of the CPC.

The petitioners, in their plaint, (a copy of which is annexed as Annexure P-1 with the petition), have stated in the head note as follows:-

“Suit for permanent injunction restraining the defendant, itself through its agent, servants or assignee from auctioning the suit property to any person as the same is already with the plaintiffs from last more than thirty years on lease comprised in Khewat no. 190, Khatouni No. 332, Khasra

No. 381, Min (5-10), i.e. Bighas 10 Biswas & Khatouni No. 320, Khasra No. 347 Min (3-0), i.e. 3 Bighas 0 Biswas situated in Village Salani, Tehsil Amloh, District Fatehgarh Sahib, as per Jamabandi for the year 2011-12 & Khatouni No. 324, Khasra No. 323 Min (20-18), 347 Min (11-1), i.e. 31 Bighas 19 Biswas situated in Village Salani, Tehsil Amloh, District Fatehgarh Sahib, as per Jamabandi for the year 2011-12 forcibly and illegally otherwise than through process of law.”

Thereafter, in the prayer clause, it is stated as follows:-

“It is therefore, prayed that suit may please be decreed, passing a decree for permanent injunction restraining the defendant itself through its agent, servant or assignee from interfering or to interfere in the possession of the plaintiff over the plot and from forcibly and illegally dispossessing the plaintiffs from the property mentioned in the heading of the plaint with cost.

Or any other relief to which the plaintiffs in the alternative or in addition to the relief claim is found entitled or the Hon'ble Court deem fit and property may be awarded to the plaintiffs.”

The learned trial Court after noticing the facts in detail, came to a finding that the petitioner had indeed been in occupation of the suit property for 30 years as lessees of the respondent- Gram Panchayat, with the lease renewed from time to time. However, the Gram Panchayat not wanting to renew the lease again, without inviting bids for such lease, had decided to auction the suit property (for the purpose of leasing it out to the highest bidder) and consequently, that being so, the balance of convenience for the purpose of granting an *ad interim* injunction, staying auction proceedings was not in favour of the petitioners-plaintiffs, especially as the suit property was being put to auction as per the policy of the Government dated May 09, 2014,

which did not differentiate between a vacant property of the Gram Panchayat or that which had been constructed upon.

It was further held by the learned Civil Judge that in any case the petitioners would have every right to participate in the open auction to make a successful bid for taking the suit land on lease.

Consequently, the application was dismissed.

Upon an appeal being filed by the petitioners (plaintiffs), the learned appellate Court held that the trial Court had not made any error in holding that as regards the auction of the suit property, the respondent Gram Panchayat cannot be restrained from auctioning it, the lease in favour of the plaintiffs being for a period of 05 years (though it may have been renewed from time to time over a long period of time), with Clause 8 of the lease document specifically providing that after the expiry of the lease period, it was necessary for the lessee to lift his material and building etc.

Thus, as regards auctioning of the suit property by the respondent-defendant Gram Panchayat, it was held that it cannot be restrained from auctioning it.

As regards the possession of the appellants-plaintiffs of the suit property, the appellate Court has further held that the trial Court also did not err in holding that the suit was also qua dispossession of the appellants-plaintiffs and as regards any such dispossession, the appellants-plaintiffs would have “every right under the Punjab Village Common Lands (Regulation) Act, 1961.”

Consequently, the appeal was also dismissed.

Before this Court, learned counsel for the petitioners has drawn attention of this Court to the prayer clause in the suit (as has been reproduced

hereinabove), to submit that actually the petitioners-plaintiffs are also seeking permanent injunction qua dispossession from the suit land, on the ground that they have built a rolling mill, a residential premises etc. on it and therefore, cannot be dispossessed.

Having considered the argument of learned counsel, though he is absolutely correct that despite the prayer contained in the head note of the plaint (as reproduced in Annexure P-1), wherein the suit is made out to be one seeking permanent injunction qua auctioning the suit property, however, the eventual prayer clause undoubtedly does seek permanent injunction against the respondent-defendant (Gram Panchayat) from interfering even in the possession of the petitioners-plaintiffs over the plot and from forcibly and illegally dispossessing them.

However, I see no reason to interfere with the impugned orders in any manner whatsoever, it already having been clarified by the learned courts below that as regards auctioning the suit property, the lease in favour of the plaintiffs, no matter for how ever long it may have been existing by way of renewal from time to time, the last lease was also for a period of 05 years, after which the property is being put to open auction by the Gram Panchayat, with the petitioners-plaintiffs having every right to participate in such auction proceedings.

It has also been specifically noticed by both courts that lease of Panchayat properties by way of auction is in terms of Government policy.

As regards dispossession, again it has been correctly observed by those Courts that the petitioners-plaintiffs would have all rights as are available to both sides as per law, in terms of the Punjab Village Common Lands (Regulation) Act, 1961, the suit land indisputably being in the

ownership of the Gram Panchayat (and therefore being village common land), which had only been leased out to the petitioners-plaintiffs.

Obviously, dispossession of the petitioners-plaintiffs (if they do not succeed in the auction to be held by the respondent Gram Panchayat), could only be in terms of the provisions of the aforesaid Act, i.e. as per due process of law under the said Act and the rules framed thereunder, etc.

With the aforesaid observations, this petition is dismissed.

September 20, 2018
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes