

CWP No.16708 of 2021

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

(PROCEEDINGS THROUGH VIDEO CONFERENCING)

CWP No.16708 of 2021

Date of Decision: 27.08.2021

Aggarwal Public School Society (Regd.)

...Petitioner

Versus

State of Punjab & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Sidharath Goyal, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J.

This writ petition has been preferred by the petitioner – Aggarwal Public School Society (Regd.) challenging the conditions contained in paras 'a' and 'c' of the order dated 28.12.2018 (Annexure P-11) passed by the Financial Commissioner, Government of Punjab, Rural Development and Panchayat Department, whereby, approval of lease of *shamlat* land measuring 25 killas (100 bighas) of Gram Panchayat Malakpur, comprised in Khewat No.172, Khatauni No.453, Khasra No.1124 (4-0) to 1129 (4-0) and 1131 (4-0) to 1149 (4-0) has been granted in favour of the petitioner - society subject to (i) the lease period of 33 years commencing retrospectively from 2011 and (ii) lease rent being charged at the rate of Rs.62,000/- per acre per annum with 10% annual increase instead of lease rent at the rate of Rs.35,000/- per acre per annum with 10% annual increase which was finalized in favour of the petitioner in the auction proceedings held on 19.10.2011.

2. The brief facts of the case are that with an intention to replanish the resources from the barren land available with the Gram Panchayat, Malakpur – respondent No.3, a decision was taken to lease out the said land to an educational institution/trust for a period of 33 years. For the said purpose, public notice was issued by the Gram Panchayat, Malakpur in local/vernacular newspapers on 03.10.2011 and 04.10.2011 respectively, for auctioning the 100 bighas (25 killas) of *shamlat* land on 19.10.2011. A special meeting was called by the Gram Panchayat, Malakpur for giving the *shamlat* land on lease to an educational institution/trust for 33 years by way of auction on 19.10.2011 in the presence of the Block Development and Panchayat Officer, Dera Bassi. Detailed terms and conditions with regard to the auction and the lease were conveyed on the spot to all the bidders present there. The reserve price which was fixed for the land was Rs.25,000/- per acre per annum with 10% annual increase of the lease amount. The petitioner – society participated in the said bid and was declared successful with the highest bid of Rs.35,000/- per acre per annum with 10% annual increase and Rs.5,00,000/- was to be deposited as security amount which was adjustable towards the lease rent. Resolution No.1, dated 19.10.2011 (Annexure P-4), was accordingly recorded by the Gram Panchayat, Malakpur, in which the terms and conditions of the auction were also mentioned.

3. As per Rule 6 (3) of the Punjab Village Common Lands (Regulation) Rules, 1964, prior approval of the State Government was required for the lease of the *shamlat* land of the Gram Panchayat. In pursuance thereto the proposal of the Gram Panchayat was dealt with by the Divisional Deputy Director, Rural Development and Panchayat, Patiala and recommended the acceptance of the proposal for the aforesaid lease of *shamlat* land of the Gram Panchayat, Malakpur,

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in favour of the petitioner – society vide letter dated 14.11.2011 (Annexure P-6) to the Director, Rural Development and Panchayat Department.

4. A complaint was filed against the Sarpanch of the village related to the auction of the said land. When no action was taken thereon, the complainant approached the High Court by filing writ petition, which was disposed of vide order dated 08.12.2011 directing the Director, Rural Development and Panchayat Department, to decide his representation/complaint within a period of two months.

The said representation was rejected by the Director, Rural Development and Panchayat Department, Punjab, vide order dated 16.02.2012 (Annexure P-8) upholding the auction of the Gram Panchayat, Malakpur for leasing out the land in favour of the petitioner – society. While deciding the said representation of the villager(s), the Director, Rural Development and Panchayat Department, had held that the auction is in compliance with and in accordance with the applicable rules and laws and the said decision was in the interest and benefit of the Gram Panchayat Malakpur. The decision, however, was not taken by the Competent Authority i.e. Financial Commissioner, Government of Punjab, Rural Development and Panchayat Department, with regard to the proposal sent by the Gram Panchayat through the Competent Authority in accordance with the procedure prescribed.

5. When no decision was conveyed by the Government, Gram Panchayat, Malakpur, filed CWP No.5115 of 2013, titled as 'Gram Panchayat, Malakpur Vs. State of Punjab & others', seeking directions to the authorities for considering the approval and taking decision thereon as the Gram Panchayat was suffering a financial loss because of the pendency of the proposal. The said writ petition was disposed of by this Court vide order dated 12.03.2013 (Annexure P-9)

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directing the Secretary, Rural Development and Panchayat Department, Punjab, to approve or reject the auction dated 19.10.2011 conducted by the Gram Panchayat, Malakpur, within a period of one month from the date of receipt of copy of the order. It was also added that the Secretary shall also consider as to whether the Gram Panchayat, Malakpur, could have granted the land to a private school and whether there is any violation of any rule(s).

6. Unfortunately, no decision was taken in pursuance to the said directions forcing the petitioner – society to file CWP No.7485 of 2017, titled as 'Aggarwal Public School Society Vs. State of Punjab & others', praying for direction to the Government authorities to approve/sanction/confirm the auction held on 19.10.2011 by the Gram Panchayat, Malakpur. This Court vide order dated 06.12.2018 (Annexure P-10), directed a decision to be taken by the State within a period of 20 days from the date of the said order in the light of the observations made therein. It would not be out of way to mention here that the Court opined that there was no occasion for the State to insist on the transfer of the land as per the 2014 policy which was by then made effective when the open auction was held in the year 2011 and the Director, Rural Development and Panchayat Department, had, in his order dated 16.02.2012 held that the auction was in accordance with law and for the benefit of the Gram Panchayat, Malakpur.

7. In compliance with the order dated 06.12.2018 (Annexure P-10), the Financial Commissioner, Government of Punjab, Rural Development and Panchayat Department, Punjab – respondent No.1, after considering the matter, granted approval vide order dated 28.12.2018 (Annexure P-11) to give the auctioned 25 acres of *shamlat* land on lease to the petitioner – society subject to certain further terms and conditions. These terms and conditions, which have been

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imposed, have been challenged by the petitioner – society by way of the present writ petition after moving various representations and legal notices to the respondents highlighting its grievances qua these conditions but no response thereto has been received.

8. Counsel for the petitioner asserts that conditions, as contained in paras 'a' and 'c' of the order dated 28.12.2018 (Annexure P-11) are perverse, arbitrary and contrary to the applicable provisions of law, as there is belated approval granted by the Government of Punjab to the auction proceedings for lease of *shamlat* land, which was conducted in 19.10.2011, vide order dated 28.12.2018. The lease period should commence from the date of handing over the possession of the land which still continues with the Gram Panchayat, Malakpur, in the light of the fact that the lease deed has not been executed as yet. In any case, it is asserted that the period of 33 years for which the land was proposed to be leased out in the auction conducted way-back on 19.10.2011 should commence from the date of order dated 28.12.2018. In case, the said paras 'a' and 'c' as contained in terms and conditions of the order dated 28.12.2018 are allowed to sustain, this would cut short the lease period available to the petitioner to 26 years without any fault of the petitioner – society. That apart, it has been asserted that in para 'c', the lease rent has been ordered to be charged at the rate of Rs.62,000/- per acre per annum with 10% annual increase. He contends that the prevalent lease amount for the land in the same area of the Gram Panchayat is much less, rather it should have been leased out at the rate of Rs.35,000/- per acre per annum, which was auctioned amount fixed, when the petitioner – society was successful in bid. Another ground which has been taken is that the petitioner – society cannot be held liable for the delay nor punished for the same by cutting short the lease period for no fault. An

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amount of Rs.5,00,000/- has also been deposited by the petitioner – society with the Gram Panchayat, Malakpur – respondent No.3, for which the petitioner has not been compensated for. Prayer has, thus, been made for setting aside these terms and conditions 'a' and 'c' as imposed and for fixing the term of lease as 33 years at least from the date of the order dated 28.12.2018, if not from the date of taking possession of the land by the petitioner from the Gram Panchayat and the lease money to be fixed at the rate of Rs.35,000/- per acre per annum with 10% annual increase.

9. We have considered the submissions made by the learned counsel for the petitioner – society and with his assistance have gone through the pleadings as well as the impugned order.

10. The terms and conditions which were read over to the interested persons and residents of the village at the time of auction on 19.10.2011 are as follows:-

“1. This auction is being conducted for education purpose for 33 years.

2. Before giving bid, every institute/trust has to deposit security to the amount of Rs.5 lakh, which will be adjusted in the total amount of successful bidder and for rest of them, it will be returned back later.

3. Bid will be started from Rs.25,000/- per killa for per year with the increase of 10%.

4. Educational institute has to complete its work within 3 year after approval.

5. Gram Panchayat and the competent officer will have right to cancel or approve the bid without any reason.

6. Any defaulter of Panchayat and Panch or Sarpanch can't give bid.

7. Auction will be finalized only after getting approval from the

Government and possession of land will be given only after approval.

8. After approval of bid, lease money will be deposited with the Panchayat on 10th of April every year in advance.

9. Successful bidder will enter into a registered agreement with the Panchayat.

10. 15% seats will be reserved for poor and meritorious children of village.

11. Minimum 5% posts will be reserved in educational institute for eligible persons of village.

12. All the children of village will be allowed to use the playground of educational institute free of cost.

13. Educational institute will get arrange marriages of poor girls in the village.

14. Institute will hold camps in village for medical checkups.

15. Educational institute's hall be given free of cost for holding common programmes.

16. Auction will be held as per Rule 6 (3) of Punjab Village Common Lands (Regulation) Rules, 1964.”

These terms and conditions were even incorporated in Resolution No.1 of the proceedings book of Gram Panchayat, Malakpur, on 19.10.2011 (Annexure P-4)

11. It is apparent from the pleadings as well as the terms and conditions of the auction that the same were well-known to the petitioner – society that the Competent Authority, from whom the approval of such an auction for lease of land has to be taken, was from the Government. It was clearly mentioned that the auction will be finalized only after getting approval from the Government and so was the position regarding handing over of the possession of the land i.e. only after the approval, as is apparent from term and condition No.7. Therefore, petitioner – society cannot make a grievance to this effect that there has been delay

on the part of the Competent Authority i.e. the Government in granting approval especially when there is no time fixed in the terms and conditions for granting such approval or in the auction notice nor under the statute.

12. The terms and conditions make it clear that the lease period was 33 years and the terms and conditions of the auction, which have been mentioned, were obviously subject to the approval by the Government and the Competent Authority, on consideration of the aspect of delay, has proceeded to workout the equitable solution. This is demonstrated from the fact that prior to passing of the impugned order dated 28.12.2018 (Annexure P-11), a Committee of three departmental officers was constituted in pursuance to the order passed by this Court on 06.12.2018, it was mentioned in their report that in District Mohali, rates of lands which are being given on lease for commercial/educational objective are very high. The bid amount of Rs.35,000/- per acre per annum, which was finalized in the auction held on 19.10.2011, would be on the lower side. The Committee, therefore, accepted the said auction amount which was fixed in the year 2011 with a rider that 10% increase on the amount of lease money per acre per annum with effect from the date of auction be accepted as per the basic terms and conditions and by that very parameters having been applied, has come to the conclusion that on 01.01.2019, the lease money per acre per annum would have been Rs.62,000/-.

13. The Competent Authority on consideration of the above report accepted the same and approval was granted by the Government on 28.12.2018 to the resolution of the Gram Panchayat, Malakpur, for lease of the land in question on certain terms and conditions, which read as follows:-

“a. The time of lease is 33 years from the year 2011 i.e. from the year 2011 to 2044. Hence, the approval will be upto the year 2044 only.

b. Since the land was not made available for use to M/s Aggarwal Public School Educational Society R/o No.143-E, Kamla Nagar, New Delhi, from the year 2011 till 2018, therefore, no lease money will be charged for this period.

c. As the departmental committee has explained in above chart that the lease rate for the year 2019 would have become Rs.62,000/- and in 2018-19 rate of Rs.35,000/- per acre is less and it is not in the interest of Gram Panchayat. So, if the lease is done in 2019, then the lease rate will be Rs.62,000/- per acre per year. According to the auction terms and conditions, every year there will be a 10% increase in lease rate as compared to previous year's lease rate.

d. Apart from this, the auction notice, all the terms and conditions conveyed during auction proceedings and all the terms and conditions mentioned in the resolution dated 19.10.2011 will be applicable in toto.”

A perusal of the above terms and conditions makes it apparent that the resolution of the year 2011 as passed by the Gram Panchayat, Malakpur, has been accepted in toto, according to which the lease period of 33 years has been clearly spelt-out to be from the year 2011 to 2044. The amount of lease money payable in the year 2019 has also been specified to remove any kind of doubt or ambiguity and the fairness on the part of the Government while approving the resolution is borne out from Clause 'b' of the said terms and conditions, where it has been mentioned that since the land was not available to the petitioner – society for use from the year 2011 to 2018, no lease money will be charged for this period.

14. Since the terms and conditions at the time of the auction when the petitioner took part therein were very much clear and specific, which have been accepted by the petitioner – society and continue to accept them even today, petitioner – society is bound by the same and thus, cannot take a plea now that the

paras 'a' and 'c' need to be modified.

15. It may be pointed out here that in case the terms and conditions, as have been approved by the Government of Punjab, vide order dated 28.12.2018 (Annexure P-11), are not acceptable to the petitioner – society, it may proceed in accordance with law including withdrawal from the bid, which it had given.

16. Another aspect which requires attention to be given is that as per term and condition No.8 of resolution dated 19.10.2011, the petitioner – Society, after approval of the bid on 28.12.2018 by the Government, was required to be deposited the lease money with the Gram Panchayat, Malakpur, by 10th April, 2019 and thereafter, on the same date in the years 2020 and 2021 respectively but there is not a word mentioned as to when the petitioner – society has done so. Even term and condition No.9, which relates to entering into a registered agreement with the Gram Panchayat by the successful bidder when seen would show that the same has also not been adhered to. Still further, the educational institute was required to complete its work within a period of three years after the approval of the bid, qua which the petitioner – society has not taken any step as it is an admitted position that till date, the possession of the land has not been taken by the petitioner – society.

17. From the above, it emerges that the petitioner – Society has not asserted that there is any violation of statutory rule/regulation nor has any term and condition of the contract/auction been violated by the respondents while passing the impugned order. The conduct of the petitioner – Society do not persuade this Court to exercise its extraordinary writ jurisdiction in its favour as it cannot be said that the State of Punjab has, while passing the impugned order dated 28.12.2018, been unreasonable or unjust.

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18. In view of the above, we find no ground to interfere with the impugned order dated 28.12.2018 (Annexure P-11) passed by the Financial Commissioner, Government of Punjab, Rural Development and Panchayat Department, as the same is not only just and reasonable but in consonance with the terms and conditions of the bid which has been accepted by the petitioner – society.

The writ petition, being devoid of merit, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

27.08.2021

Harish

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