

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.18058 of 2020
Date of Decision:03.03.2021

Malkeet Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. K.S. Brar, Advocate for the petitioners.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. V. K.Sandhir, Advocate
for respondent No.4-Gram Panchayat.

Mr. Ashish Pal Kaushal, Advocate
for respondents No. 5 to 9.

SANT PARKASH, J.

The present writ petition is directed against the order dated 13.10.2020 (**P-4**) passed by the Court of Special Secretary, Panchayat and Rural Development, Punjab-respondent No.2 (in exercising the powers of Commissioner), vide which the status quo granted by the same court on 8.10.2020 (**P-3**) has been vacated as well as the impugned order dated 21.07.2020 (**P-2**) passed by respondent No.3, vide which the auction conducted on 30.06.2020 has been cancelled. Further prayer has been made in the petition for staying operation and implementation of the orders dated 13.10.2020 (**P-4**) and 21.07.2020 (**P-2**).

Brief facts of the case are that 44 acres of land of Gram Panchayat of village Abhun, Tehsil and District Fazilka was put to auction

on 30.06.2020 and the petitioners succeeded therein, being the highest bidders. The said auction was approved by Chairperson Panchayati Samiti Block, Fazilka. However, on the application dated 21.07.2020 moved by the private respondents, the District Development and Panchayat Officer, Fazilka, cancelled the auction conducted on 30.06.2020 vide order dated 21.07.2020 **(P-2)** on the ground that the said auction was got conducted by the Gram Panchayat in a secret manner and caused financial loss to the Gram Panchayat

Feeling aggrieved from the said order dated 21.07.2020 **(P-2)**, the petitioners filed an appeal before the Court of Special Secretary, Rural Development and Panchayat Department, Punjab-respondent No.2, wherein status quo regarding the disputed property was granted vide order dated 08.10.2020 **(P-3)**. However, on 13.10.2020, respondent No.2 set aside the said status quo order and issued notice to the Gram Panchayat.

Hence the present writ petition.

The grievance of the petitioners is that firstly the District Development and Panchayat Officer, Fazilka, has wrongly cancelled the auction conducted on 30.06.2020 and thereafter a fresh auction of the same land was conducted by the Panchayat Secretary on 07.09.2020, wherein private respondents No.5 to 9 succeeded. Secondly, in the said auction, the Panchayat Secretary has also included the crop sown by the petitioners.

In compliance of the order dated 12.11.2020 passed by this Court, status report by way of affidavit dated 11.01.2021 of Arvind Pal Singh Sandhu, Deputy Commissioner, Fazilka, has been filed. The relevant para 5 thereof reads as under:-

“5. That is is further submitted that the allegations of the petitioners that no notice has been issued to the petitioners and Gram Panchayat while cancelling the alleged auction dated 30.06.2020 are vehemently denied being false, wrong and incorrect besides being misleading. Suffice it to submit that on 02/07/2020 the DDPO, Fazilka had written to Gram Panchayat i.e. respondent no.4 to conduct the auction of the land in question on 06.07.2020 and the same has been noted by the Sarpanch and Panches of the Gram Panchayat, Abhun. It is pertinent to mention here that at that time they did not disclose the fact that auction of the land in question has already been done vide the alleged auction dated 30.06.2020, whereas the BDPO, Fazilka who is in hand in glove with the petitioners informed the respondents vide letter No.1751 dated 09.07.2020 that auction of the land in question has been done on 30.06.2020. The copies of the letter dated 02/07/2020 and letter dated 09/07/2020 are annexed herewith as Annexure R/1 and Annexure R/2 respectively. On the asking of the DDPO, Fazilka on 10/07/2020 four panches of Gram Panchayat, Abhun namely Ramkishan, Devi Lal, Ritu Bala, Jasbir Kaur submitted a joint affidavit that they had seen that Sarpanch is cultivating the land in dispute without any auction. It is further submitted that in the meantime vide application dated 14.07.2020 Sh. Gurbinder Singh s/o Bharpur Singh resident of Village Abhun submitted that the Sarpanch of Gram Panchayat has illegally given the land in question to the petitioners on lesser rate than the lease money already paid by the inhabitants of the village and caused financial loss to the Gram Panchayat and prayed for cancellation of the alleged auction dated 30.06.2020. Besides this, he further stated that he is ready to pay 20% more than the alleged bid of Rs.11,08,900/-. When this fraud came to the knowledge of the DDPO, Fazilka, he forthwith wrote to the concerned BDPO, Fazilka vide letter No.1055 dated 14.07.2020 and letter No.1070 dated

15.07.2020 to produce the record of the alleged auction dated 30.06.2020, but the concerned BDPO, Fazilka did not produce the record. Thereafter, vide letter No.1107 dated 17.07.2020 Sarpanch of Gram Panchayat, Abhun was also asked to produce the record of the alleged auction on 20.07.2020. Besides this the lease holders were also asked to submit their defence. Suffice it to submit that neither Sarpanch nor the lease holder responded to the same and even the BDPO, Fazilka also did not comply with the aforesaid letter. It is further submitted that on 20.07.2020 vide letter No.1117 dated 20.07.2020, which was addressed to BDPO, Fazilka while giving last opportunity, the concerned Panchayat Secretary who has got conducted the auction of the Shamlat Land for the year 2020-21 and concerned lease holder were called on 21.07.2020 at 3.00 PM in the office of DDPO, Fazilka to submit their defence, but none of them appeared nor the alleged lease holders/petitioners came present and submitted their reply. It is further submitted that the DDPO, Fazilka held an inquiry about the fraud committed by the petitioners in connivance with the Sarpanch and the BDPO, Fazilka before the cancelling the alleged auction dated 30.06.2020. It is further submitted that after cancelling the alleged auction dated 30.06.2020, the BDPO, Fazilka and Sarpanch of Gram Panchayat, Abhun were asked many times to conduct the fresh auction but both did not obey the orders of the DDPO, Fazilka and ultimately vide order dated 07.09.2020 a fresh auction of the land in question was conducted through Administrator, Dharam Dass by an open auction and petitioners have duly participated in the same but failed to make highest bid. It is further submitted that alleged auction dated 30.06.2020 has been cancelled after following the due procedure of law and even the compensation has been got assessed as Rs.2,88,000/- vide assessment through Tehsildar, Fazilka as is apparent from letter No.1056 dated 14.10.2020 of the Tehsildar, Fazilka, for

the crop standing on the land in question. Copy of the letter dated 14.10.2020 along with report of concerned Halqa Kanungo is annexed herewith as Annexure R/3. It is further submitted that DDPO, Fazilka has already been recommended action against the erring Sarpanch and Panches of the Gram Panchayat, Abhun for non-cooperation and for intentionally causing financial loss to the Gram Panchayat vide letter 1353 dated 14.09.2020. A copy of the letter dated 14.09.2020 is annexed herewith as Annexure R/4. Suffice it to submit that as per Section 10-A of the Village Common Land Act, 1961, it has been envisaged that if Collector on examination of the record and after making an inquiry is satisfied that the lease, contract or agreement has been entered into in contravention of the provisions of the Act or rules or it was result of a fraud or concealment of facts or it is otherwise detrimental to the interest of Gram Panchayat, then Collector could cancel such lease or contract or agreement. Thus, the action of cancellation of the auction dated 30.06.2020 is in accordance with law.

In view of the specific stand in the above-said affidavit, the power to cancel the lease has been exercised in a legalised manner and in accordance with the provisions of the Act and Rules, because the petitioners, in connivance with the then Sarpanch and BDPO, got the auction conducted at a very lower rate causing loss to the exchequer. During the course of hearing, it is a conceded position that the appeal filed by the petitioners before respondent No.2 has already been dismissed vide order dated 23.02.2021/02.03.2021. As it is clear from the above-said affidavit dated 11.01.2021, the amount of standing crop assessed through Tehsildar, Fazilka shall be disbursed to the persons entitled to receive the same within three months.

At this stage, learned counsel appearing for respondent-Gram Panchayat has submitted that the amount so realised from the second auction held on 07.09.2020 be ordered to be deposited with the Gram Panchayat of village Abhun, Tehsil and District Fazilka so that the same can be disbursed to the persons entitled to receive the same on account of first auction having been cancelled vide order dated 21.07.2020 (P-2).

Ordered accordingly.

In view of the observations made above, the present writ petition stands **disposed of** in the terms as indicated above.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

03.03.2021
mks

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