

LPA No.202 of 2022 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.202 of 2022 (O&M)

Date of decision : 14.03.2022

Gram Panchayat Labbar

.....Appellant

VERSUS

M/s The Chess Empire and others

....Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. K.S. Dadwal, Advocate, for the appellant.

Mr. Umesh Aggarwal, Advocate, for the caveator.

AUGUSTINE GEORGE MASIH, J.

CM-503-LPA-2022

Prayer in this application is for exemption from filing certified copies of the writ petition along with annexures and the impugned order as well as reply/additional affidavit.

For the reasons stated in the application, the same is allowed. Exemption is granted from filing certified copies of the documents referred to above, subject to all just exceptions.

CM-504-LPA-2022

Prayer in this application is for placing on record Chapter V of Management Plan and copy of permit dated 31.12.2014 by way of additional evidence as Annexure A-1 and A-2. It has been stated that these documents are necessary for the proper and just adjudication of the appeal.

For the reasons stated in the application, the same is allowed. Chapter V of Management Plan and copy of permit dated 31.12.2014 are taken on record as Annexure A-1 and A-2, subject to all just exceptions.

LPA No.202 of 2022 (O&M)

LPA No.202 of 2022

This intra-court appeal has been preferred by the appellant – Gram Panchayat Labbar, Village Labbar, Block Talwara, District Hoshiarpur (hereinafter referred to as 'Gram Panchayat') challenging the order passed by the learned Single Judge, dated 21.12.2021, allowing the writ petition preferred by respondent No.1 – M/s The Chess Empire with a direction to the Gram Panchayat to refund the payment of Rs.6,40,000/- along with interest from the date of deposit i.e. 10.03.2015 along with interest at the rate of 9% per annum from the said date till the date of its final realization.

2. Two basic grounds have been pressed into service by the learned counsel for the appellant – Gram Panchayat for challenging the impugned order dated 21.12.2021 passed by the learned Single Judge, one of which is that the writ petition could not have been entertained by this Court as the same was preferred beyond the period of limitation as provided under the provisions of Indian Limitation Act, 1963. This, he asserts on the basis of the fact that the amount was deposited on 10.03.2015 by respondent No.1 on the acceptance of his auction for cutting of trees numbering 192 and had approached this Court by filing the writ petition on 17.01.2020 i.e. after a period of almost five years. That apart, it is asserted that the claim, if any, submitted by respondent No.1 to the appellant – Gram Panchayat for return of the amount along with interest is by way of representations dated 04.07.2019 (Annexure P-4) and 02.09.2019 (Annexure P-5) and prior thereto, there was no claim whatsoever made by respondent No.1. In any case, the interest which has been granted by the learned Single Judge upon the principal amount is on higher side, rather no interest is required to be

LPA No.202 of 2022 (O&M)

contract entered into between the appellant – Gram Panchayat and respondent No.1 having not been given effect to by respondent No.1, the amount deposited by it, was liable to be forfeited as per the terms and conditions of the contract as there was a time fixed for cutting down the trees i.e. upto 31.05.2015.

3. Briefly, the facts of the case are that a tender was floated by appellant – Gram Panchayat. Respondent No.1 and some other persons had filed their tenders. Tender of respondent No.1 was accepted by the appellant – Gram Panchayat and it was allotted the work of cutting down of 192 trees on 10.03.2015 leading to respondent No.1 depositing the amount of Rs.6,40,000/- on the same day. Assurance was given by the Gram Panchayat that the official respondents would pass an appropriate order permitting cutting of the trees by the month of August 2015 but no such order was received by respondent No.1 and it was informed that there is a stay order passed by the High Court with regard to cutting of the trees and thus, the order cannot be passed by the official respondents giving permission to respondent No.1 to carry out the work. All efforts made by respondent No.1 by approaching the official respondents as well as appellant – Gram Panchayat failed leading to submission of his representations dated 04.07.2019 (Annexure P-4) and 02.09.2019(Annexure P-5). When no response was received from the official respondents nor was the money refunded, respondent No.1 had proceeded to file the writ petition in the month of January, 2020.

Where, upon notice having been issued, the stand taken by the appellant – Gram Panchayat was that the amount was liable to be forfeited as he had not carried out the work within the time stipulated as the said

LPA No.202 of 2022 (O&M)

by the appellant – Gram Panchayat that respondent No.1 was duly informed that if the trees are not cut down upto 31.05.2015, as fixed by the Department of Forest, then the contractor will have to take approval from the Department at his own level. Since respondent No.1 did not do the needful within the time as granted by the Forest Department, it was his responsibility to get the permission from the concerned Department and therefore, no fault can be found on the part of the appellant – Gram Panchayat or the official respondents.

4. The other plea which has also been taken is that with the amount having been forfeited, respondent No.1 is not entitled to any refund of amount, what to say along with interest.

It would not be out of way to mention here that during the pendency of the writ petition, on a communication received from the Block Development and Panchayat Officer, Talwara, seeking instructions from the Gram Panchayat, where the Gram Panchayat referred to its resolution dated 15.11.2021 (Annexure A-2) passed in pursuance to the said letter received from the Block Development and Panchayat Officer, Talwara, stating therein that respondent No.1 was orally asked to cut down the trees upto 31.05.2015 as per the conditions of the Department of Forest and therefore, no fault can be said to be of the Gram Panchayat. It has further been stated that it was also informed orally that it would be the responsibility of respondent No.1 to take approval from the Department at his own level, failing which respondent No.1 shall be responsible. Nothing has been said with regard to the forfeiture of the amount in case of not carrying out the said work within the time stipulated nor has it been brought on record that any order has been passed by the Competent Authority forfeiting the said

LPA No.202 of 2022 (O&M)

5. Learned Single Judge, in pursuance to the these factual aspects, had proceeded to accept the claim of respondent No.1 by concluding that there was no fault on the part of the respondent, rather there is no communication on record which would indicate that after the acceptance of the tender on 10.03.2015 and deposit of the amount, the period for cutting the trees was ever conveyed to respondent No.1. Even subsequent thereto, there is nothing in the record which would indicate so. The stand of respondent No.1 also does not project that there was any written communication/order passed or conveyed to the private respondents stipulating therein the time frame within which the cutting down of the trees and removal thereof had to be carried out. Receipt of the amount of Rs.6,40,000/- by the appellant – Gram Panchayat is not in dispute, rather it is so admitted and therefore, the refund as granted by the learned Single Judge cannot be faulted with nor can it be said that the writ petition is delayed especially when all through, respondent No.1 had been pursuing the official respondents for granting him the requisite permission for cutting down the trees and thereafter to remove the same. The acknowledgment with regard to the receipt of the written representations by the appellant and official respondents further fortifies the fact that respondent No.1 had been making efforts and was very much interested in carrying out the work which was assigned to it as per the allotted tender.

6. The inaction on the part of the appellant/official respondents is apparent on the record as no decision was taken on the said representations by them forcing respondent No.1 to approach this Court by way of a writ petition. The delay in approaching the Court has been explained by respondent No.1 which is just and reasonable, rather the inaction on the part

LPA No.202 of 2022 (O&M)

established on the basis of the pleadings. Therefore, none of the grounds which have been pressed into serviced by the learned counsel for the appellant – Gram Panchayat assailing the judgment passed by the learned Single Judge to this extent is devoid of merit.

7. The only aspect which requires to be taken note of is the interest which has been granted by the learned Single Judge vide the impugned judgment, where the same has been assessed at the rate of 9% per annum from the date of deposit till the date of realization thereof. It appears to be on the higher side as the interest rates as of now have been reduced by the banks and therefore, in our considered view, the said interest rate needs to be reduced to 6% per annum from 9% per annum. Rest of the terms and conditions of the order passed by the learned Single Judge shall remain unchanged.

8. The present appeal stands partly accepted and disposed of in above terms. Caveat discharged.

CM-503-LPA-2022

In the light of the disposal of the main Letters Patent Appeal, no order is required to be passed in the present application for staying the operation of the impugned order as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

14.03.2022
Harish

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No