

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

201-1

**CWP-1221-2001 (O&M)
Date of Decision: 24.11.2022**

SANT RAM AND OTHERS

... Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sant Kashyap, Advocate for
Mr. Sher Singh Rathore, Advocate
for the petitioners.

Ms. Niharika Sharma, AAG, Punjab.

Mr. Vipin Mahajan, Advocate
for respondent No.7.

Mr. Ramneek, Advocate
for respondent No.9.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed under Articles 226/227 of the Constitution of India, 1950 for seeking issuance of writ in the nature of Mandamus directing the respondents No.1 to 4 to take action against respondents No.5 and 6 for conducting auction of 9736 trees standing in the *shamlat* land of the Gram Panchayat by alleging that the auction had been carried out at a very low/meager price in favour of respondent No.7- Surinder Kumar, Contractor. A further prayer is made for quashing of the auction held on 18.12.2000.

Briefly summarized, the facts of the present case are that petitioners who are Panches and inhabitants of village Nurpur Khurd in Tehsil

Anandpur Sahib, District Ropar have approached this Court against the auction of standing trees/timber over 900 acres of land owned by the Gram Panchayat that was finalized in favour of respondent No.7. It is averred that the Gram Panchayat Nurpur Khurd and Gram Panchayat Jatpur had earlier conducted auction proceedings on 22.01.1994 for a total of 1350 trees in accordance with the Forest Rules. The highest bid of Rs.46,62,500/- had been received from respondent No.7 in the above open auction. The respondent No.7, however, did not fulfill the conditions or make the deposit and hence did not cut the said trees. The Gram Panchayats of Jatpur and Nurpur Khurd thus notified fresh auction to be conducted on 30.11.2000 for 9736 trees including the above 1350 trees that were subject matter of auction held on 22.01.1994. In the above fresh auction proceedings, respondent No.7 again submitted the highest bid but of Rs.51,09,000/- only.

It was alleged that once the 1350 trees had been earlier put to auction and fetched a bid of Rs.46,62,000/- approximately, the bid for 9736 trees (including the said 1350 trees) for a meager amount of Rs.51,09,000/- was all stage managed and was an attempt to allow the respondent No.7 to remove much more trees for a meager price and to enable him to draw wind-fall gains. The challenge to the auction proceedings was also made on the ground that the valuation of the trees was not got done by the respondents No.5 and 6 from the Forest Department as required under the applicable rules and further that the trees have been grossly undervalued for giving premium to the respondent No.7. It was also alleged that the auction proceedings were not properly publicized and interested members from general public could not participate in the auction proceedings and as a result thereof, the optimum

valuation of the timber could not be obtained. The same has thus deprived the Gram Panchayat of the revenue which it could have earned.

Written statement on behalf of respondents No.1 to 4 by way of affidavit of Darshan Singh, Block Development and Panchayat Officer had been filed wherein it was averred that the trees in question were not standing on forest land and further that the valuation of the trees was got done by the Gram Panchayat, Nurpur Khurd from the office of Divisional Forest Officer. It has further referred to letter no.5430 dated 13.11.2000 sent by the Regional Forest Officer to the Block Development and Panchayat Officer as per which the valuation of trees has been fixed at Rs.42,47,381/-. It has also been averred that the auction was carried out as per rules and wide publicity was got done. It was duly published in the newspaper 'Desh Sewak' on 02.12.2000. Auction pamphlets were also distributed in the said area. A permit was also issued by the Forest Department vide letter No.7439-41 dated 18.01.2000 (Annexure R-9), whereby the Gram Panchayat had been granted permission by the Forest Department to cut and sell the said trees/timber situated over 853 acres of land much prior to the commencement of the proceedings. The auction was held as per the applicable rules and the proceedings of the same have also been appended with reply to emphasize that people were free to participate. The successful bidder offered a higher bid of Rs.51,09,000/- and made the deposit as per the terms and conditions of the bid document. It is further averred that there is no evidence to suggest that any person, who was a willing bidder, had not been allowed to participate and/or that the petitioners of any other person were at any point of time ready and willing to offer any higher price than what has been offered by the highest bidder. Further, an objection has also been raised that the resolution of the Gram Panchayat to auction the aforesaid trees

and confirming the highest bid submitted by respondent No.7 has also not been challenged by the petitioners or any other person before the Departmental Authorities. The respondent department had, infact, in response to the complaint submitted by the petitioners, asked them to appear before the District Development and Panchayat Officer and to file an affidavit and to make a statement with regard to the illegality/irregularity, if any, in the conduct of the auction proceedings. The petitioners, however, refused to appear before the District Development and Panchayat Officer and to make any such statement and/or to file an affidavit in that regard. Hence, it is apparent that they never had any real grievance. The allegations were also denied on merits.

A separate written statement on behalf of respondent No.7 has also been filed, wherein it has been additionally averred that the petitioners had an alternative remedy of filing a petition under Section 10A of the Punjab Village Common Land (Regulation) Act, 1961 to raise a challenge to the auction and since the same had not been done, the writ petition would not be maintainable.

The petitioners in their replication had placed on record the notification dated 19.04.1999 (Annexure P-4) to substantiate that the land in question was notified under the Punjab Land Preservation Act, 1900 and that no cutting of trees/timber was permissible except with the prior permission of the Forest Department.

Learned counsel for the petitioners has reiterated the facts noticed above and has vehemently argued that the land in question was a notified forest land by virtue of the notification of 1999 (*supra*) and any cutting or removal of timber was impermissible except with the prior sanction and valuation granted

by the Department of Forest. He has further argued that valuation of the trees had not been got done and the very fact that nearly 1/7th of the trees put to auction in 1994 had fetched a bid of around Rs.46 lacs when compared to the current bid of Rs.51,09,000/- clearly show that the entire exercise of auction was conducted in a mischievous manner to facilitate wind-fall gains to respondent No.7. He further alleges that the evaluation of the trees was not done as per the Forest Rules and as a result thereof, the auction proceedings were conducted by under-evaluating the standing trees/timber, thus resulting in loss of revenue for the Gram Panchayat.

Per contra, the learned State counsel makes a rebuttal by referring to the evaluation by the Divisional Forest Officer and that the said evaluation was duly conveyed to the District Development and Panchayat Officer before the auction proceedings were conducted. Reference was also made to the permit issued by the Forest Department dated 18.01.2001 (Annexure R-9) whereby the Gram Panchayat had been permitted to cut the trees over the area in question. She thus contends that both the arguments of the petitioner are fallacious and are not substantiated or supported. Further, she has averred that the petitioners chose not to appear in the inquiry proceedings initiated by the District Development and Panchayat Officer on the complaint moved by the petitioner. Additionally, there is no allegation that any person, who was willing to offer any amount higher than the price offered by the respondent No.7 had not been allowed to participate or that the petitioners or any other person were willing to offer any higher price than the price for which the auction had been released at the time of filing of the present petition or any time thereafter.

Counsel for respondent No.7 and 9 reiterated the arguments of the State. The same are, hence, not being repeated.

I have heard learned counsel for the respective parties and have gone through the documents appended alongwith with instant petition with their able assistance.

Although, there is merit in the submission of respondents that writ petition should not be entertained since there is an efficacious alternative remedy under the Punjab Village Common Land (Regulation) Act, 1961, however, considering that the petition has remained pending for a long duration, there is no reason to relegate parties to avail alternative remedies. Ordinarily, though a person must exhaust the statutory remedies available to him.

The pleadings of the case completely demolish the case of the petitioners as the requisite statutory rules and procedures have been ardently followed. The valuation of the trees by the Department of Forest is available on record. There is no document on the basis of whereof it could be held that the evaluation done by the Forest Department was improper or in violation of any regulations. Still further, the issuance of permit prior to conduct of auction stands well established. Besides, the auction proceedings are stated to have been carried out after due publication including in the newspaper. No person ever raised any challenge to the auction proceedings as a willing bidder. Further, merely because the respondent No.7 had earlier offered a higher bid for lesser number of trees cannot be the basis to presume that the evaluation of trees now ought to have been 7 times the value of the bid given by him earlier. As is evident, it is matter of commercial evaluation and apparently the respondent No.7 did not honour the bid submitted by him earlier in point of time. The same cannot ipso-facto be a ground to proceed on an assumption that the entire process of conducting of an auction is illegal.

Illegality is required to be established and reflected from the record and pleadings. Once the procedural requirements of law have been fully adhered to, the presumption is drawn in favour of legality of an act. Insufficiency of consideration, which is not validly established, cannot be presumed. High Court has no material to evaluate the trees or that there was any real mischief. Merely because the very bidder did not honour the bid submitted earlier, can only be a suspicious circumstance at best. However, an exorbitant bid earlier may also be a bad commercial decision. High Court would require much more than just one suspicious circumstance to exercise its power of judicial review in such matters. The petitioners having failed to substantiate any illegality by making reference to the statutory provisions or the procedural requirements for conducting auction under The Punjab Village Common Land (Regulation) Act, 1961, the present petition is devoid of any merit.

The same is accordingly dismissed.

Other misc. application(s), if any, also stand(s) disposed of accordingly.

24.11.2022.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No