

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

227

CWP-7519-2022 (O&M)

Date of Decision: 14.09.2023

Mahalon Education and Medical Research Foundation

..... Petitioner

Versus

State of Punjab and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. J.S. Bhandohal, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Shailesh Aggarwal, Advocate
for respondent No.2.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner becomes aggrieved from order dated 10.10.2019 (Annexure P-9), whereby the leasings of lands mentioned therein became made qua it.

2. Learned counsel appearing for the petitioner, has vehemently argued, that the impugned order (Annexure P-9) has been drawn, without any able statutory jurisdiction becoming vested, in the Financial Commissioner and Secretary to Government of Punjab, Department of Rural Development and Panchayat.

3. He also challenges the order (Annexure P-9) on the ground, that it has been summarily drawn, without preceding therewith, any notice

becoming served upon the lessee. Therefore, he argues that breach has been done to the principles of natural justice, inasmuch as, to the rule of *audi alteram partem*.

4. learned State counsel argues that an able jurisdictional empowerment became vested on the author of the order (Annexure P-9) to rescind the lease(s) of the lands as become granted to the present petitioner.

5. For discerning the vigor of the above submissions, it is relevant to refer to Rule 10-A of the Punjab Village Common Lands (Regulation) Act, 1961, provisions whereof become extracted hereinafter :-

“10A.Power of the Collector to cancel or vary leases etc. of lands vested in Panchayats.

(1) *Notwithstanding anything contained in this Act, or the Shamilat law or in any other law for the time being in force, the Collector in the area of his jurisdiction may call for the record of any lease contract or agreement entered into by the Panchayat in respect of land vested or deemed to be vested in it, whether such lease, contract or agreement is entered before or after the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1964 and examine such record for the purpose of satisfying himself as to the legality or propriety of such lease, contract or agreement.*

(2) *Where, on examination of the record under sub-section (1) and after making such inquiry, if any, as he may deem fit, the Collector is satisfied that such lease, contract or agreement :*

(i) *has been entered into in contravention of any of the provisions of this Act or the Rules made there under ; or*

(ii) *has been entered into as result of fraud or concealment of fact ; or*

(iii) is detrimental to the interests of the panchayat as prescribed; the Collector may, notwithstanding anything as aforesaid, cancel the lease, contract or agreement or vary the terms thereof unconditionally or subject to such conditions as he may think fit ;

Provided that no order under this sub-section shall be passed by the collector without affording reasonable opportunity of being heard to the parties to the lease, contract or agreement.

(3) Where the terms of any lease, contract or agreement have been revised by the Collector under sub-section (2), the variation shall, notwithstanding anything contained in this Act or Shamilat law or in any other law for the time being in force be binding on the parties to the lease, contract or agreement as the case may be.

(4) Where the lessee or the person with whom a contract or agreement has entered into by a Panchayat refuses to accept the variation made by the Collector under this section in the terms of lease, contract or agreement, as the case may be, shall be deemed to be cancelled by the Collector under this section with effect the date of such refusal.

(5) Where, under this section, any lease, contract or agreement is cancelled or is deemed to be cancelled or its terms are varied , lessee or the person with whom the contract or agreement has been entered into, who suffers by such cancellation or variation, is entitled to receive compensation to be assessed by the Collector for any loss or damage caused to the lessee or such person, which naturally arose in the usual course of things from such cancellation or variation:

Provided that no such compensation shall be given for any remote or indirect loss or damage sustained by reason of

such cancellation or variation.

(6) Notwithstanding anything contained in any law for the time being in force, the amount of compensation awarded by the Collector under this section shall be payable by the panchayat in the prescribed manner and shall be a valid charge on the Shabha funds.

(7) Any party to a lease , contract or agreement aggrieved by any order of the Collector made under this section may, within a period of thirty days from the date of such order, appeal to the Commissioner whose decision thereon shall be final.”

6. A reading of sub-section (1) of the above extracted provision, clearly underlines and candidly speaks, that the able empowering jurisdiction to rescind or cancel lease as become granted to the lessee concerned, thus becoming solitarily vested in the Collector of the Revenue District concerned. Therefore, irrespective of the approving authority being the Financial Commissioner concerned or any other officer of the Government of Punjab, yet all (supra) except the Collector concerned, thus held no jurisdiction to cancel the leases concerned.

7. If so, when the solitary jurisdiction to cancel or rescind the leases as are made under the statute, is but statutorily vested only in the Collector concerned, thereby the Financial Commissioner concerned, was disabled from drawing the impugned order (Annexure P-9).

8. On the above score of the impugned order being drawn not by a jurisdictionally empowered authority, thereby the writ petition challenging the impugned order, thus on the above ground, is required to be accepted.

9. Furthermore, a reading of the impugned order discloses, that

preceding the drawing of the impugned annexure, no notice was served upon the lessee concerned, thereby but obviously there is breach to the principles of natural justice, inasmuch as, to the principle of *audi alteram partem*.

10. In consequence, there is merit in the writ petition, and the same is allowed and the impugned order is quashed and set aside.

11. However, liberty is reserved to the Gram Panchayat concerned to access the Block Development and Panchayat Officer concerned, to thus make motions on all the permissible grounds, thus before the Collector concerned. On the said motion being drawn forthwith, before the Collector, thereupon the Collector shall make a well speaking decision thereon, but after hearing all affected persons concerned.

12. All pending applications, if any, stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

14.09.2023

Satyawan

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No