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

**CWP-11366-2021 (O&M).
Decided on: February 15, 2023.**

Balbir and others

.. Petitioners

VERSUS

State of Haryana and others

.. Respondents

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

**PRESENT Dr. Anmol Rattan Sidhu, Sr. Advocate, with
Mr. Shiv Kumar Sharma, Advocate, for the petitioners.**

Mr. Vivek Chauhan, Addl. A.G. Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition has been filed for seeking issuance of directions to the respondents to complete the pending construction work of the Government Medical College on the land measuring 179 bighas 12 biswas (37 acres, 3 kanals and 6 Marlas) of the village Prem Nagar, District Bhiwani. A further direction was sought for restraining the raising of construction and other related works regarding the Government Medical College at the new place in Bhiwani. Further an alternative prayer for handing over the symbolic and physical possession of the land to the villagers/Gram Panchayat and to also make good the monetary loss caused to the Gram Panchayat due to the respondents having retained actual physical possession of the land in question and having thus deprived the

Gram Panchayat of revenue, has also been made.

Breifly summarised, the facts of the present case are that the petitioners are residents of the village Prem Nagar. The then Chief Minister of Haryana had announced construction of a Government Medical College and one University at District Bhiwani in the year 2014. Pursuant to the above said annoucement, Civil Surgeon, Bhiwani sent an application to the Deputy Commissioner, Bhiwani to provide or suggest land for Medical College in Bhiwani as per the Medical Council of India (MCI) Norms.

Three different lands were identified by the Deputy Commissioner, Bhiwani for constructions of a Medical College. A Committee was then constituted to recommend the best suitable land and to study the feasibility as per the norms of the Medical Council of India along with all appurtenant factors. The said Committee thereafter recommended the suitable land for constrction of Medical College at village Prem Nagar. It is submitted that the Gram Panchayat also passed a resolution No.2 for execution of a concessional lease deed in favour of the Department of Medical Education and Research, Haryana for a period of 33 years @ Re.1/- per acre per annum for the above said land. The lease deed was thereafter also registered and actual physical possession of the said parcel of land was handed over to the respondent-Department for establishing the Medical College.

Learned Senior counsel appearing on behalf of the petitioners contends that on account of administrative reasons and intervening circumstances, the site idenified for the constuction of Medical College was

changed and the construction thereof has already been commenced by the respondents-Authorities at the alternative site. He further submits that about 60% - 70% work of the construction of Medical College has already been executed. He, therefore, does not press his two prayers i.e. the prayer for issuance of mandamus to the respondents-Authorities to raise the construction of Medical College in village Prem Nagar and secondly to restrain the raising of construction at the other alternative site. He, however, contends that since actual physical possession of the site had been handed over to the respondents-Authorities at a concessional lease price of Re.1/- per acre per annum, the respondents ought to be directed to compute the loss caused to the Gram Panchayat for deprivation of revenue and such loss ought to be compensated by the concerned Department. He makes a reference to the reply filed by the Director, Department of Medical Education and Research, Haryana, to contend that they have already sent an application to the Authorities for cancellation of the lease deed and as such the land is no more required at all by the above said Department.

Learned State counsel has not been able to controvert the fact that the Medical College is now being constructed at an alternative place and that substantive construction has already been undertaken. He has also not been able to controvert the fact that the respondent-Director, Department of Medical Education and Research, Haryana, has already written to the Collector, Bhiwani, for cancellation of the lease deed executed in favour of the Department and thereafter to hand over actual physical possession of the site to the Gram Panchayat.

Learned State counsel, however, contends that a delegation/members of the Gram Panchayat had met the Chief Minister and in the said meeting, the delegation/members of the Gram Panchayat were requested to send any other proposal so as to put the above said land to a better utilisation. However, no such proposal has been forwarded/mooted by the Gram Panchayat. The land thus has to be reverted to the Gram Panchayat.

It thus remains uncontroverted that actual physical possession of the land is still with the Director, Department of Medical Education and Research, Haryana, and that the land has not been used in any manner or for the purpose for which the Gram Panchayat had passed the resolution to lease out the aforesaid land at a highly concessional rate of Re.1/- per acre per annum. It is also not the case that the respondents were unable to establish the Medical College on the land due to any act or omission on the part of the Gram Panchayat.

It is not in dispute that the Gram Panchayat had agreed to lease out the aforesaid property in favour of the Department of Medical Education and Research, Haryana, in larger public interest and by taking into consideration the employment opportunities for the residents, the future prospects of the village and the development activities that come along the aforesaid project. It is also not in dispute that the resolution No.2 passed by the Gram Panchayat specifically noticed the said fact as well as the reservation in jobs for the residents in the Medical College. Hence, the concessional lease of land was in larger interest of the residents. The actual

physical possession of land was also delivered to the respondents who, however, unilaterally decided to not construct the Medical College in village Prem Nagar and shifted its location. Once decision in this regard had been taken, the physical possession of land ought to have been restored without any delay so as to enable the Gram Panchayat to deploy the land for beneficial use of the residents. The Gram Panchayat thus not only lost out on the project but also suffered a revenue loss for its other welfare and development activities. The respondents have not assigned any reason as to why the possession of land was not restored immediately by them to the Gram Panchayat, thus compounding their loss. The lease being concessional and for a specific purpose, it would come to an end the moment it is to be not utilized for the said purpose.

The grant of lease for a defined project was part of an oral agreement. The understanding being mutual benefit, the Gram Panchayat cannot be put to a receiving end merely because the respondents later found it to be commercially beneficial to shift the location of the Medical College.

Even though possession of land had been handed over to respondents under a valid registered lease deed and the possession may not seem illegal or unauthorised but it is a case of concessional lease, where the Gram Panchayat agreed to lease it @ ₹ 1 per acre per annum under an understanding of larger benefits for the Gram Panchayat. The above understanding was not unilateral mistake but was cordial and fundamental to the Gram Panchayat agreeing to lease the land. Had it not been for the proposal of Medical College, the Gram Panchayat would have never agreed

to lease land at this rate. This fact was well known to both the parties. The bargain cannot be made less than what one had bid for by any unconscionable unilateral decision. It would be unjust for the respondents to claim an absolute administrative discretion to implement a project at a place of their choice and also to claim immunity from liability to compensate the one who prejudicially suffered from the same.

It is well settled principle of equity and justice that there must be a restitution so that one party does not suffer the consequences of breach of a mutual decision taken in good faith on account of the default by the other. The respondent-Department would thus balance the equities and compensate the residents of the village for the deprivation of revenue towards the developmental activities of the village. The Hon'ble Supreme Court applied the said principle in the case of **Indian Council for Enviro-Legal Action Vs. Union of India, reported as 2011 (8) SCC 161**. Relevant extract of the same reads as under:-

*“114. In **Triveniben v. State of Gujarat, 1989(1) RCR (Criminal) 512 : (1989)1 SCC 678** speaking for himself and other three learned Judges of the Constitution Bench through Oza, J., reiterated the same principle. The court observed: (SCC p. 697, para 22) "...*

It is well settled now that a judgment of court can never be challenged under Articles 14 or 21 and therefore the judgment of the court awarding the sentence of death is not open to challenge as violating Article 14 or Article 21 as has been laid down by this Court in Naresh Shridhar Mirajkar (supra) and also in A.R. Antulay v. R.S. Nayak, the only jurisdiction which could be sought to be exercised

by a prisoner for infringement of his rights can be to challenge the subsequent events after the final judicial verdict is pronounced and it is because of this that on the ground of long or inordinate delay a condemned prisoner could approach this Court and that is what has consistently been held by this Court. But it will not be open to this Court in exercise of jurisdiction under Article 32 to go behind or to examine the final verdict reached by a competent court convicting and sentencing the condemned prisoner and even while considering the circumstances in order to reach a conclusion as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the sentence of death will not be just and proper...."

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169. In the point under consideration, which does not arise from a suit for recovery under the Civil Procedure Code, the inherent powers in the court and the principles of justice and equity are each sufficient to enable an order directing payment of compound interest. The power to order compound interest as part of restitution cannot be disputed, otherwise there can never be restitution.

***PRECEDENTS ON EXERCISE OF POWERS BY THE COURT
TOMAKE THE BENEFICIARY WHOLE - RESTITUTION***

170. This court in Grindlays Bank Limited v. Income Tax Officer, Calcutta, (1980)2 SCC 191 observed as under :-

"...When passing such orders the High Court draws on its inherent power to make all such orders as are necessary for doing complete justice between the parties. The interests of justice require that any undeserved or unfair

advantage gained by a party invoking the jurisdiction of the court, by the mere circumstance that it has initiated a proceeding in the court, must be neutralised. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it. ..."

171. In Ram Krishna Verma and Others v. State of U.P. and Others, (1992)2 SCC 620 this court observed as under :-

"The 50 operators including the appellants/ private operators have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in Jeevan Nath Bahl's case and the High Court earlier thereto. As a fact, on the expiry of the initial period of grant after Sept. 29, 1959 they lost the right to obtain renewal or to ply their vehicles, as this Court declared the scheme to be operative. However, by sheer abuse of the process of law they are continuing to ply their vehicles pending hearing of the objections. This Court in Grindlays Bank Ltd. v. Income-tax Officer, (1990)2 SCC 191 held that the High Court while exercising its power under Article 226 the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law and in view of the power under Article 142(1) of the Constitution this Court, while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellants in dragging the

litigation to run the stage carriages on the approved route or area or portion thereof and forfeited their right to hearing of the objections filed by them to the draft scheme dated Feb. 26, 1959. ..." 55 / 63 LAW FINDER Submitted By: Justice Vinod S. Bhardwaj PDF downloaded from the online archives of Chawla Publications(P) Ltd.

172. This court in Kavita Trehan v. Balsara Hygiene Products, 1994(3) R.R.R. 361 : (1994)5 SCC 380 observed as under :-

"The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words "Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, ...". The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court."

173. This court in Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. and Another, 1999(1) RCR (Rent) 251 : (1999)2 SCC 325 observed as under :-

"From the narration of the facts, though it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed

by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Because of the delay unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also known fact that after obtaining a decree for possession of immovable property, its execution takes long time. In such a situation for protecting the interest of judgment creditor, it is necessary to pass appropriate order so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, Court may appoint Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour decree is passed and to protect the property including further alienation."

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177. This court in Alok Shanker Pandey v. Union of India & Others, 2007(2) RCR (Civil) 783 : 2007(3) R.A.J. 78 : (2007)3 SCC 545 observed as under :-

"We are of the opinion that there is no hard and fast rule about how much interest should be granted and it all depends on the facts and circumstances of the each case. We are of the opinion that the grant of interest of 12% per

annum is appropriate in the facts of this particular case. However, we are also of the opinion that since interest was not granted to the appellant along with the principal amount the respondent should then in addition to the interest at the rate of 12% per annum also pay to appellant interest at the same rate on the aforesaid interest from the date of payment of instalments by the appellant to the respondent till the date of refund on this amount, and the entire amount mentioned above must be paid to the appellant within two months from the date of this judgment. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital."

The Hon'ble Supreme Court examined the distinction between "reimbursement" and "compensation" in the matter of **M.S.K. Projects India (JV) Ltd. Vs State of Rajasthan and another, reported as (2011) 10 SCC 573**. Relevant extract of the judgment reads thus:-

*38. In common parlance, "reimbursement" means and implies restoration of an equivalent for something paid or expended. Similarly, "Compensation" means anything given to make the equivalent. (See: **State of Gujarat v. Shantilal Mangaldas & Ors., AIR 1969 Supreme Court 634; Tata Iron & Steel Co. Ltd. v. Union of India & Ors., AIR 2000 Supreme Court 3706; Ghaziabad Development Authority (Supra); and H.U.D.A v. Raj Singh Rana, (Supra)**). However, in **Dwaraka Das v. State of Madhya Pradesh & Anr., AIR 1999 Supreme Court 1031**, it was held that a claim by a contractor for recovery of amount as damages as expected profit out of contract cannot be disallowed on ground that there was no proof that he suffered actual loss to the extent of amount*

claimed on account of breach of contract.

39. In M/s. A.T. Brij Paul Singh & Ors. v. State of Gujarat, AIR 1984 Supreme Court 1703, while interpreting the provisions of Section 73 of the Indian Contract Act, 1972, this Court held that damages can be claimed by a contractor where the Government is proved to have committed breach by improperly rescinding the contract and for estimating the amount of damages, court should make a broad evaluation instead of going into minute details. It was specifically held that where in the works contract, the party entrusting the work committed breach of contract, the contractor is entitled to claim the damages for loss of profit which he expected to earn by undertaking the works contract Claim of expected profits is legally admissible on proof of the breach of contract by the erring party. It was further observed that

10.what would be the measure of profit would depend upon facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract cannot be gainsaid.”

(Emphasis supplied)

The principles of Contract Act were applied for assessing and disbursing compensation as against damages. Hence, considered from any perspective, it would only be in furtherance of justice that Gram Panchayat be restituted for the loss suffered by it.

The present petition is accordingly disposed of with a direction to the Deputy Commissioner, Bhiwani, to ascertain as to whether any other

project qua the aforesaid land has been recommended by the Gram Panchayat and the land is sought to be transferred to such use and also as to whether the Gram Panchayat agrees to transfer the above land for such project. In the absence of any such pending proposal/project with the Government, the monetary loss caused to the Gram Panchayat for the period during which the actual physical possession of the land remained with the respondent- Department till its delivery to Gram Panchayat be assessed by the Assistant Collector, Bhiwani, within a period of 03 months of receipt of a copy of this order.

The amount so assessed by the Assistant Collector shall thereafter be directed to be released by the respondent-Department in favour of the Gram Panchayat along with interest @ 6% per annum within a period of four months thereafter. The respondent i.e. The Department of Medical Education and Research, Haryana, shall be at liberty to remove any such infrastructure that may have been created at the site before delivery of possession and the Gram Panchayat would not be burdened with the cost of such infrastructure or its removal.

The writ petition is disposed of accordingly.

February 15, 2023.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No