

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-36032-2019

Reserved on: 25.04.2023

Pronounced on: 02.05.2023

M/S Vikas Gram Udyog Samiti

.....Petitioner

Versus

State of Punjab and others

....Respondents

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

Argued by: Mr. Gaurav Chopra, Senior Advocate with
Mr. Vardaan Seth, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. J.S.Bhandohal, Advocate
for respondent No. 6.

Mr. Rakesh Chopra, Advocate
for respondent No. 7.

Mr. Mohit Kalyan, BDPO in person.

SURESHWAR THAKUR, J.

Factual Background.

1. The petitioner was the highest bidder in respect of auction which became held on 31.10.2019, in respect of *shamlat deh* lands. However, since in terms of clause 4 (6) of the Gram Panchayat Lands Lease Policy dated 09.05.2014 (hereinafter for short called as 'the lease policy', as formulated in terms of Rule 6(3) of the Punjab Village Common Lands (Regulation) Rules, 1964, hereinafter in short refer to

by the Government concerned. However, since no approval thereto became granted, thus, the petitioner has accessed this Court, rather for a mandamus being made, upon the respondents concerned, to grant the requisite approval, to the auction, as became held on 31.10.2019, whereby the petitioner's highest bid became accepted.

2. Apart from the above mandamus, being asked for by the petitioner in the instant petition, a further prayer/relief, as asked for in the petition, relates to the quashing of the auction, as became conducted on 08.11.2019, in respect of the *shamlat deh* lands, whereby the co-respondent No.7, was declared as the highest bidder.

Submissions of the learned counsel for the petitioner.

3. i) The learned counsel for the petitioner, has argued that, since the auction of the petition lands, as became conducted on 31.10.2019, whereby he was declared as the successful auction bidder, was then conducted in terms of the Rule 6(3) of 'the 1964 Rules', provisions whereof are extracted hereinafter.

6. Leases to be by auction. (1) xxxxxxxxxxxx

(2) xxxxxxxxxxxx

[(3) The land vested in a Gram Panchayat, may be leased out up to a period of thirty-three years with the prior approval of the State Government for industrial, commercial, educational or such other professional purpose in terms of the policy framed by the State Government from time to time for giving the aforesaid land on lease. The lease of the said land may further be renewed keeping in view the public interest, for a period not exceeding the aforesaid period of thirty-three years or for a lesser period, as may be agreed upon between the parties.

Provided that,-

(i) the lease shall not create encumbrance on the leased land either by mortgaging or in any other mode; and
(ii) a lease deed signed under this rule, may be cancelled in it is found that the lease is,-

(a) misusing the land;

[(b) does not start the work on the said land within a period of one year of the date of taking over the possession and thereafter does not complete the project within a period of three years or the time period as may be specified by the Government Departments, Boards, Corporations or the Punjab Energy Development Agency, while sanctioning the project or scheme, whichever is later.]

(c) violating the terms and conditions of the lease deed or the sanction accorded by the Government, as the case may be and

(d) the private persons or private institutions or project implementers (given in serial numbers 1,2,3 and 6 of the Table, respectively, in sub-rule 3-A), to whom the land is given on lease, further sub-leases the land to a third person.]

Provided further that in the cases of solar and energy power projects which are approved by the Power or by the Punjab Energy Development Agency, the competent to accord prior approval, shall be the Commissioner of the district concerned.]

(3-A)xxxxxxx..”

Therefore, the approving authority was bound to, in terms of the rules (supra), and thereafter, in terms of clause 4(6) of 'the lease policy', appended as Annexure P-11, to the petition, thus, imperatively endorse or grant approval to the said auction bid. The relevant clause of 'the lease policy', is extracted hereinafter with underlining(s).

4. Lease to private persons or private institutions:-

Shamlat land to private persons or private institutions shall be given through open auction only by a panchayat by giving advertisement in two leading daily newspapers i.e. one in English and one in Punjabi language, as specified by the Government in consultation with the Director Public Relations, Punjab. While giving advertisement by the panchayats the following procedure shall be followed :-

(1) The concerned Block Development and Panchayat Officer shall get the reserve price determined by the district price fixation committee headed by the Deputy Commissioner and while fixing the lease rate, the Committee shall consider the nature and market price of the land, its proximity to the highways and urban areas and all other relevant factors, as the case may be.

Provided that every year an increase of 10% of the lease money will be charged on the last year's payable lease amount.

(2) The size of such advertisement will be at least 8 cm x 4 cm, where complete details of land, to be given on lease, purpose of lease, period of lease, date, place and time of auction etc. will be clearly mentioned.

(3) The advertisement shall be given at least 15 days prior to the date of auction.

(4) Where the area of land which is to be given on lease is not exceeding 10 acres, process of giving shamlat land on lease will be completed under the personal supervision of the concerned Block Development & Panchayat Officer. In case the area of the shamlat land exceeds 10 acres, the process of giving land on lease will be completed under the personal supervision of the concerned District Development & Panchayat Officer

(5) The entire process of auction shall be video graphed in order to ensure transparency.

(6) After following the aforesaid procedure, necessary approval may be accorded by the Government as required under rule 6(3) of the Punjab Village Common Lands (Regulation) Rules, 1964...”

ii) That the auction which became subsequently conducted on 08.11.2019, whereby the co-respondent No. 7 was declared as the highest bidder, was made in breach of the imperative requirement, as carried in Rule 6 (10) of 'the 1964 Rules', provisions whereof are extracted hereinafter, inasmuch as, the said sub rule, wherein, there became cast an imperative requirement, that publicity to the lease auction programme, being mandatorily given 15 days, before the date of auction, besides the stipulation therein, that such publicity is to be made, through the publication of the auction programme, in the vernacular newspaper holding a wide circulation in the area concerned, thus, rather becoming evidently breached. Therefore, he argues that the auction which was held on 08.11.2019, is stained, with a vice of it breaching the mandatory provisions, as becomes carried in the above alluded sub rule (10) of Rule 6 of 'the 1964 Rules'. Consequently, he argues that not only a mandamus, be made upon the respondent concerned, to grant approval to the auction bid, as became held on 31.10.2019, but also that on the above ground, the subsequent auction held on 08.11.2019, be declared to be null and void.

(10)(1) The publicity to lease auction programme shall be given fifteen days before the date of auction, by specifying the description of land, the date, time and place fixed for auction of lease :-

a) through any vernacular newspaper [with wide circulation as approved by the Government and where the auction of stone quarries, bajri or other minor mineral etc.

is to be held, also through an English newspaper with wide circulation, as approved by the Government],

b) by pasting a copy of the auction notice on outer door of the Panchayat ghar, village Patwar khana offices of Panchayat Samiti and Zila Parishad at some other conspicuous places of Shamilat Deh or of the estate in which the Shamilat Deh is situated, and

(c) by beat of drum within the Sabha area.

(2) The terms and conditions of auction shall be announced at the time of auction.”

Reasons for rejecting the above argument.

4. Both co-respondent No. 6, and, co-respondent No. 7 filed replies on affidavit to the writ petition. A perusal of the replies furnished to the writ petition, on behalf of the said respondents, discloses that the instant petition is mis-constituted, as the petitioner, has an efficacious alternative remedy, inasmuch as, the one envisaged in Section 10 A of the Punjab Village Common Lands (Regulation) Act, 1961, provisions whereof are extracted hereinafter, thus, to challenge the auction proceedings before the Collector concerned. Moreover, it has also been categorically spelt therein, that the averments (supra), as made in the writ petition, whereons, becomes founded the relief, for a mandamus being passed, upon, the authorities concerned, to grant approval to the auction bid, held on 31.10.2019, besides to quash the subsequent auction held on 08.11.2019, whereby the co-respondent No.7, was declared as the highest bidder, rather are completely false and misleading. Thus, they contend that the writ petition be dismissed.

[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 may call for from any Panchayat in his district the record of any lease contract or agreement entered into by the Panchayat in respect of any 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 ;

(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 varied 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 his 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, the 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 Sabha 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.”

5. Moreover, the prime reason for this Court, declining the relief (supra), as claimed in the writ petition, becomes rested upon the hereinafter counts.

1) A reading of the reply furnished to the writ petition on behalf of the Gram Panchayat concerned, thus, making candid speakings therein, that the auction bid, as held on 31.10.2019, was not

amenable to become accepted by the Gram Panchayat concerned, as the auction bid, as became accepted by the auction officer, rather was in a sum of money which was abysmally low. Therefore, obviously since the said offered auction bid amount by the petitioner, in respect of the *shamlat deh* lands, was detrimental to the financial interests of the Gram Panchayat concerned. Thus, for avoidance to the financial interests of the Panchayat. Resultantly there was an imperative necessity for putting the petition lands to re-auction.

2) Secondly, it is also clear from a reading of the reply furnished to the petition by the Gram Panchayat concerned, that on the above score, out of the six members of the panchayat concerned, three members not endorsing their signatures, on the auction proceedings, thus, resulting in deferment of the auction proceedings, through all the members of the Gram Panchayat concerned, putting their signatures on the apposite deferment resolution. Copies of the said proceedings are appended as Annexure R6/1, and, Annexure R6/2, to the reply furnished to the writ petition by co-respondent No. 6.

3) The effect of the above, is that, when imperatively the financial interests of the Gram Panchayat concerned, are the hallmark or the benchmark, for thereupon the approving authority being led to in terms of the hereinabove extracted clause, as occurs in 'the lease policy' (Annexure P-11), thus, endorse the auction proceedings. Resultantly, when on a perusal of Annexure R6/1, and, Annexure R6/2, as appended to the reply of co-respondent No. 6, but speakings emerge, that the financial interests of the panchayat would become jeopardized, in case, the auction bid of the petitioner was accepted, given it being of

interests of the Gram Panchayat concerned, would possibly result in the approving authority, endorsing the revelations, as made in the above annexures, whereby the members of the Gram Panchayat concerned, rather not only resisting the acceptance of the auction bid, as offered by the petitioner, but also passing a unanimous resolution but for deferring the auction bid. In other words, the said annexures, would result also in an inescapable conclusion, from the approving authority, that the auction bid of 31.10.2019, was not acceptable, nor any valid approval thereto was amenable to become granted thus, by the approving authority. Therefore, in the wake of the above, even if the petitioner was the highest bidder in the auction proceedings, which were conducted on 31.10.2019, but since the bid for the reason (supra), was not accepted by the Gram Panchayat concerned. In sequel, there was no necessity for the said auction bid being forwarded for approval thereto, being granted by the approving authority concerned, nor also the petitioner is entitled to a mandamus being made, upon, the approving authority concerned, to grant approval to the auction proceedings, as became conducted on 31.10.2019, as thereby, the view as taken by the Gram Panchayat concerned, whose financial interests, are of utmost importance, and are to be imperatively endorsed by the approving authority concerned, rather would thereby become untenably prejudiced.

Reasons for declining the relief to the petitioner for quashing and setting aside of the subsequent auction held on 08.11.2019, whereby the co-respondent No. 7 was declared as the highest bidder.

6. Though, the learned counsel appearing for the petitioner has vehemently argued, that the subsequent auction bid, which became

was accepted, the same being the highest bid, is liable to be quashed on the ground, that there is a breach of the mandatory hereinabove extracted provisions, inasmuch as, of the imperative requirement, as carried in Rule 6 (10) of 'the 1964 Rules', but requiring that publicity to the lease auction programme be given, but before 15 days from the date of auction, and, the said publicity being made, through an advertisement being published in a vernacular newspaper, holding a widest circulation in the area concerned, rather is also required to be rejected. The reason for making the above conclusion, is that, there is complete denial on the part of co-respondents No. 6 and 7, about the said breach being made to the mandatory provisions (Supra), as carried in Rule 6(10) of 'the 1964 Rules', as well as, in Rule 4 of 'the lease policy'.

7. Be that as it may, even there is no iota of evidence placed before this Court by the learned counsel for the petitioner, but suggestive, that the above argument does gather support therefrom. Therefore, for want of evidence to support the above contention, renders the above contention, to be ideally or surmisely made, and thus, is liable to be rejected. Moreover, the fact that the auction bid, which was offered in the subsequent bid held on 08.11.2019, by co-respondent No. 7, thus, was monetarily higher, than the sum of money offered earlier thereto, by the petitioner. Further, when the said auction bid of co-respondent No. 7, was unanimously endorsed by the Gram Panchayat concerned. Therefore, when thereby the financial interests of the Gram Panchayat, receive a boost or become enhanced, factum whereof, is the imperative statutory plank thus, for endorsing the said

approving authority, if has not granted sanction to the bid, as offered by co-respondent No. 7, it may proceed to do so. However, if on account of the petitioner, yet holding unauthorized possession of the petition lands, despite the term of its lease over the petition lands, rather expiring, thus, rendering incapacitated, co-respondent No. 6, to enter upon the petition lands. Therefore, in terms of sub rule (1) of Rule 20A of 'the 1964 Rules', rules whereof become extracted hereinafter, the authority concerned, may, assess damages, against the petitioner, on account of its yet holding unauthorized possession of the petition lands.

*“20-A . **Damages** :- (1) If any person who is a lessee of any land vested or deemed to have been vested in a Panchayat does not deliver to the Panchayat vacant possession of the land, immediately after the expiry of the period of lease, he shall for the period he fails to do so, be liable to pay damages to the Panchayat equivalent to twenty times, the amount which would have been payable to the Panchayat had the lease of such land continued during that period.*

(2) xxxxxxxxx.. ”

8. Moreover, if on account of co-respondent No. 7, holding unauthorized possession of the petition lands, thereupon, the co-respondent No. 7 is precluded from assuming possession of the petition lands. Therefore, if in terms of the auction bid, which became offered and accepted by the officer concerned, the apposite tenure of the lease period has expired, thereupon, the respondents concerned, may, in terms of Rule 6 (supra), and or, 'the lease policy', thus, issue a fresh auction notice. Obviously they may not do so, if the apposite tenure of the successful auction bid, as made by the co-respondent No. 7, in

respect of the petition lands, thus, rather is not over. Furthermore, for facilitating the assumption of possession over the petition lands, by co-respondent No. 7, but subject to the apposite lease tenure, thus, not already expiring, the respondent concerned, is directed to forthwith, institute an eviction petition, against the petitioner, before the competent statutory authority, and, thereupon, the latter shall make an expeditious decision thereons, but after hearing all affected parties concerned.

Final Order

9. In view of the above, this Court finds no merit in the writ petition, and, with the above made observations, the same is dismissed. The auction of the petition lands, as held on 08.11.2019, whereby co-respondent No. 7, was declared as the highest bidder, is upheld.
10. No order as to costs.
11. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

02.05.2023

kavneet singh

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