

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 16908 of 2023

Reserved on : 27.2.2024

Date of Decision: 06.3.2024

Bachittar Singh and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Mohit Kumar, Advocate for
Mr. N.P.S.Mann, Advocate
for the petitioners.

Mr. Arun Gupta, Deputy Advocate General, Punjab
for respondents No. 1 to 4.

Ms. Lovepreet Kaur, Advocate for
Mr. A.S.Barwala, Advocate
for respondent No. 5.

Mr. M.S.Bhullar, Advocate
for respondents No. 6 to 12.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners pray for the quashing of the impugned order dated 4.7.2023 (Annexure P-7) passed by respondent No. 3, whereby the auction conducted by respondent No. 5 on 23.6.2023 (Annexure P-5) has been cancelled, whereafter a fresh auction, has been ordered to be conducted, on 10.7.2023. Furthermore, a prayer is also made for the quashing of Annexure P-11, whereby the appellate authority concerned, dismissed the appeal, as became preferred before it, thus against Annexure P-7, thus on the ground that the respondents, and, the other successful auction bidders had deposited the complete lease amount(s).

Facts of the case

The petitioners in pursuance to theirs becoming declared the

successful auction bidders in an open auction, which became held in the presence of respondents No. 3 to 5, thus became granted lease vis-a-vis the disputed lands, on 23.6.2023 (Annexure P-5).

3. However, respondents No. 6 to 12 became aggrieved from the said auction, therebys they moved an application under Section 10-A of Punjab Village Common Lands (Regulation) Act, 1961 (amended 1964) (for short 'the Act of 1961') wherebys they sought cancellation of the said auction. The said application was laid before the District Development and Panchayat Officer, Tarn Taran (exercising the powers of Collector). The Collector concerned, after considering the entire facts, as became laid before him, made a conclusion, that since no evidence became adduced before him, regarding conducting of munadi or announcement of auction, therebys through Annexure P-7, he proceeded to rescind the auction, besides thereafter ordered for the conducting of a fresh auction, given the readiness of the applicants to take the disputed lands on lease, with 10% increase from the earlier lease money, offer whereof became accepted by the competent authority. Therefore, the Collector concerned, through Annexure P-7 concluded, that the said 10% increase from the earlier lease money, thus would work to the benefit of the Gram Panchayat.

4. Against Annexure P-7, the present petitioners instituted CWP No. 14386 of 2023 before this Court. Through an order made thereons on 17.7.2023 (Annexure P-9), order whereof becomes extracted hereinafter, the petition (supra) became ordered to be withdrawn, but with liberty to the petitioners to impugn Annexure P-7, before the competent appellate authority concerned.

“1. Learned counsel for the petitioners seeks, and, is granted permission to withdraw the present petition.

2. *Dismissed as withdrawn, but with liberty to forthwith institute an appeal against the impugned Annexure P-7 before the Competent Appellate Authority concerned. On such an appeal being filed, the same shall be promptly decided through a lawful speaking decision being made thereon. It is also open to the present petitioners to, within the said appeal file an application for staying the operation of the impugned Annexure P-7, and, on such an application being filed, the same shall also be promptly decided through a valid speaking order being made thereon."*

5. In pursuance to the decision (supra) made by this Court, upon the petition (supra), the competent appellate authority concerned, has rendered Annexure P-11, whereby it has proceeded to affirm Annexure P-7.

6. The legality of the order embodied in Annexure P-7, thus is to be tested on the touchstone of the statutory mandate, encapsulated in Section 10-A of the Act of 1961, whereby jurisdiction becomes vested in the Collector concerned, to cancel or vary the lease of the shamlat land, which becomes vested in the Panchayat. The provisions of Section 10-A of the Act become extracted hereinafter.

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

(1) Notwithstanding anything contained in this Act, or the Shamlat 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 ;

(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.”

7. Be that as it may, the jurisdiction (supra), as becomes vested in the Collector concerned, whereby it becomes bestowed with an empowerment to rescind or cancel the lease deed, as becomes executed in

pursuance to a public auction of panchayat land, thus is to be exercised in terms of the mandate encapsulated in Rule 6 of the Punjab Village Common Lands Rules (Regulation) Rules, 1964 (for short 'the Rules of 1964'). However, there is no wrangle amongst the contesting litigants in respect of any breach in entirety being caused to the said Rule. Contrarily, the contest which has emerged qua the contesting litigants relates to breach being caused to the mandate carried in Sub Rule 10(1)(a) of the Rules of 1964, Rule whereof becomes extracted hereinafter.

“(10)(1)-The publicity, to lease auction programme, shall be given 15 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 more minor mineral etc., is to be held also through English newspaper with wide circulation as approved by the Government;

(b) by pasting a copy of the auction notice on a outer door of Panchayat ghar, village Patwar Khana, offices of Panchayat Samiti and Zila Parishad and at some other conspicuous places of the shamlat deh or of the estate in which the shamlat 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.”

8. Therefore, it has to be determined whether the variation or the rescinding of the lease, as became earlier granted to the present petitioners, thus in pursuance to the earlier held public auction, rather through the concurrently made orders, respectively enclosed in Annexure P-7, and, Anneuxre P-11, hence has been so done, on a well appreciation of the import of the Rule (supra), besides has been done on a virtuous application of the said Rule to the evidence, as became adduced before the statutory authority concerned.

9. Though, there is ample evidence existing on record, suggestive that compliance became meted to both clause (a) and clause (b) of Rule

10(1) of the Rules of 1964.

10. Be that as it may, since both the clauses (supra) carried in Rule 10(1) of the Rules of 1964, do require conjoint application, and, though conjoint application theretos became evidently meted, but yet when both the clauses (supra) are succeeded by the coinage “and”, thereby the succeeding thereto clause (c) thus with a mandatory statutory necessity qua the lease auction programme, apart from strict adherence being made to clauses (a) and (b) of Rule 10(1) of the Rules of 1964, qua further strict adherence being meted qua the lease auction programme also being declared by beat of drum within the Sabha area. Consequently, when the mandatory statutory provision (supra) remained evidently uncomplied with, thereby the earlier auction in pursuance whereby the present petitioners were rather declared the successful auction bidders, and, were granted lease in respect of the disputed lands, thus became validly rescinded.

11. Be that as it may, since it is concurrently declared in the impugned order (supra), that the applicants had deposited 10% more amount than the total amount of auction money before the District Development and Panchayat Officer concerned, thereby too, when the said deposit is in enhancement of the previously deposited lease moneys, wherefrom but necessarily the panchayat income would be increased, besides thereby it would become utilizable for the benefit of the entire village proprietary body concerned. Therefore, this Court finds no merit in the instant petition, and, is constrained to dismiss it.

Final order

12. Consequently, finding no merit in the instant petition, the same is hereby dismissed. Accordingly, the impugned orders are maintained, and,

affirmed.

13. If the subsequent auction is already conducted, and, on account of any interim order passed by any Court of law, the possession of the disputed land has remained unhanded over to the higher bidder, thereupon, the respondents concerned, are directed to forthwith hand over the encumbrance free possession of the disputed land to the successful auction bidder(s).
14. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

March 06, 2024
Gurpreet

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