

(2013) 05 P&H CK 0212
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 19663 of 2008 (O and M)

Bimal Singh

APPELLANT

Vs

Financial Commissioner and Secretary, Rural Development
and Panchayat Department and Others

RESPONDENT

Date of Decision : 23-05-2013

Acts Referred:

Citation : (2013) 05 P&H CK 0212

Hon'ble Judges : Rekha Mittal, J;Rajive Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rekha Mittal, J.—The petitioner prays for issuance of writ of certiorari quashing orders dated 19.12.2006 passed by the District Development and Panchayat Officer, Gurdaspur (exercising the powers of "Collector") (Annexure P-15) and dated 25.8.2004 passed by the Director, Rural Development and Panchayat Department, Punjab (exercising the powers of "Commissioner") (Annexure P-17) thereby setting aside the auction of the land in dispute which was approved by the State Government vide order dated 25.2.2002 (Annexure P-7) and was auctioned after following due procedure for sale of Gram Panchayat land. Counsel for the petitioner submits that Gram Panchayat, village Attari, Tehsil and District Gurdaspur, passed resolution on 19.6.2001 whereby it was decided to sell 16 kanals of land in dispute as the land is uneven, sandy and is not a source of income for the Gram Panchayat. The resolution passed by the Gram Panchayat was duly forwarded to the State Government with a recommendation by the District Development and Panchayat Officer, Gurdaspur after the price of the land was assessed at the rate of Rs. 2,50,000/- per acre by the Collector, Gurdaspur. The State Government on due consideration of the resolution dated 19.6.2001 passed by the Gram Panchayat and the assessment of its value by the Collector, accorded sanction under Rule 12 of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter referred to as "the 1964 Rules) on

25.2.2002, as the Gram Panchayat needed funds for repair of primary school and for making the village phirni pucca. After approval by the State Government, an auction notice by way of public notice was issued inviting people to participate in the open auction scheduled to be held on 12.7.2002. The Gram Panchayat conduct education on 12.7.2002 and the petitioner being the highest bidder was held successful in the auction proceedings recorded by the panchayat (Annexure P-10).

2. Counsel for the petitioner further submits that the District Development and Panchayat Officer cancelled the sale of land in favour of the petitioner in exercise of power u/s 10A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the 1961 Act"). It is argued that u/s 10-A of the 1961 Act, the Collector is empowered to examine the record of any lease, contractor agreement entered into by the panchayat in respect of any land vested or deemed to be vested in it, in order to satisfy himself as to the legality or propriety of such lease, contract or agreement. This provision does not empower the Collector to examine the legality or propriety of sale of land belonging to the panchayat. It is further argued that the panchayat is empowered to utilize or dispose of land vested or deemed to be vested in the panchayat u/s 5 of the 1961 Act. Any person who is aggrieved by an act or decision of a panchayat u/s 5 of the 1961 Act may file an appeal before the Collector u/s 6 of the 1961 Act. It is argued that as the Collector is not competent to examine the legality or propriety of the sale u/s 10-A of the 1961 Act particularly when a specific remedy is provided u/s 6 of the 1961 Act, the order passed by the Collector cancelling the sale is liable to be set aside.

3. Another argument raised by counsel is that the Collector has set aside the sale by holding that the sale is in violation of Rule 6(1)(b) of the 1964 Rules but the said rule relate to lease of land belonging to the Gram Panchayat. It is further argued that the Collector wrongly applied Rule 6(1)(b) of the 1964 Rules to nullify the sale of land and even wrongly held that there was no sanction accorded by the State Government for the sale of land which depicts that the order passed by the Collector is based on non-application of mind and is the result of and prejudged biased mind.

4. Counsel for the Gram Panchayat submits that the shamlat land of the Gram Panchayat has been sold in favour of the petitioner, who is, admittedly, the father-in-law of the then Sarpanch of the Gram Panchayat. The resolution passed by the Gram Panchayat does not refer to the purpose for which the Gram Panchayat needed money creating a necessity to alienate Gram Panchayat property, to procure money. Even the recommendation made by the Block Development and Panchayat officer, Kalanaur and the District Development and Panchayat Officer, Gurdaspur do not make reference to the purpose for which the Gram Panchayat requires to sell its land. It is argued with vehemence that surprisingly the State Government while according sanction has mentioned the purpose by stating that money is needed for repair of primary school and for making village phirni pucca.

It is submitted that it is not borne out from the record as to on what basis, and at what stage the purpose of sale was incorporated in the order of sanction passed by the State Government. It is further argued that as the Sarpanch of the village happened to be daughter-in-law of the petitioner, it can safely be gathered that she played an active role rather colluded with the petitioner to facilitate the sale of the panchayat land in his favour.

5. Counsel for the respondent further argues that no proper publication or munadi was made to give proper notice of auction to the publication large and thereby conducted the auction in a closed manner to sell the land in favour of the petitioner. It is submitted that the Sarpanch of the Gram Panchayat colluded with the petitioner and committed a fraud by selling the panchayat land in favour of the petitioner. The Collector and the Appellate Authority have rightly set aside the sale/auction.

6. We have heard counsel for the parties and perused the records.

7. Indisputably, the petitioner is the father-in-law of the then Sarpanch of Gram Panchayat, Attari, in whose tenure the land was sold. A perusal of the resolution passed by the Gram Panchayat proposing to sell its land does not make reference to the purpose, for which the Gram Panchayat has decided to sell its land. Rule 12 of the 1964 Rules deals with the purposes for which land may be sold by a Gram Panchayat, with previous approval of the Government. Sub-rule V of Rule 12 of the 1964 Rules provides for sale of shamlat land for the purpose of financing the construction of building for school and for veterinary and civil dispensaries in the Sabha area. The letters written by the Block Development and Panchayat Officer, Kalanaur and District Development and Panchayat Officer, Gurdaspur forwarding the proposal for approval by the government do not contain the purpose for which the Gram Panchayat has decided to sell its land. To our utter surprise, in the absence of any purpose of sale incorporated in the resolution of the Gram Panchayat or the letters of revenue officers, the Government incorporated a purpose in the sanction that money is required for repair of primary school and making the village phirni pucca.

8. As has already been mentioned, the resolution passed by the panchayat does not make reference to the purpose for which the panchayat proposed to sell the land and forwarded the proposal to the government for seeking necessary approval. The very fact that the resolution passed by the Gram Panchayat does not mention the purpose for which the Gram Panchayat's land was proposed to be sold, the decision taken by the Gram Panchayat to sell the land in question is contrary to the provisions of rules and lacks in foundation. It further appears to us that the Sarpanch of the Gram Panchayat in order to give undue benefit to her family sold the panchayat land in the benami name of her father-in-law. We stand fortified in our observations from the fact that the Block Development and Panchayat Officer, Kalanaur and the District Development and Panchayat Officer, Gurdaspur conducted proceedings in such a haste and ignored that the resolution passed by the Gram Panchayat is bereft of any purpose for which the Gram

Panchayat could propose to sell its land. We are mystified by the manner in which the matter was dealt with at the level of the government. It is still not clear as to from where the delegate of the government imported the purpose of sale in the order of approval which was otherwise conspicuously absent from the entire set of documents sent to the government for according sanction.

9. Rule 12 of the 1964 Rules has another facet to be taken note of Sub-rule (2) thereof provides that where the Gram Panchayat is proposing to sell the land in Shamlat Deh, the Panchayat shall forward to Government a copy of its resolution passed by a majority of the three forth of its members proposing to sell the land through the panchayat Samiti and Divisional Deputy Director, Panchayati Raj stating (a) the area and location of the land proposed for sale; (b) the estimated income from the sale and whether the income would increase, if the land is sold after some years; (c) the reasons as to why the Panchayat wants to sell the land and the plans for utilization of the income from the sale. It is obvious therefrom that the sale of Gram Panchayat's land and that too by public auction has to be conducted after a decision to sell the land authenticated by 75% of its members and thereafter subject to approval by State government. This rule, obviously, has been enacted to protect the interests of the panchayat and provide safe guards against passing over the panchayat properties to the favorites of the office bearers of panchayat by under hand means, thus causing loss to the revenue of the panchayat, which is meant to be spent for the welfare of the residents of the village. So, a sale in contravention of rule 12 is no sale in the eyes of law and the panchayat can, in such circumstances resort to appropriate proceedings to avoid such sale.

10. Much stress has been laid by counsel for the petitioner that the Collector does not have jurisdiction to examine the legality or propriety of sale u/s 10-A of the 1961 Act and the decision of the panchayat to sell its shamlat land is amenable to challenge by way of an appeal u/s 6 of the 1961 Act only. The petitioner may be right that in the presence of a special provision u/s 6 of the 1961 Act, challenge to a sale of land vested or deemed to be vested in a Gram Panchayat, cannot be made u/s 10-A, but in view of the peculiar facts of this case, we are not inclined to accept this objection.

11. The petitioner, earlier filed C.W.P. No. 2194 of 2004 to challenge order passed by the Special Secretary-cum-Director Rural Development and Panchayats, Punjab dated 2.5.2003 whereby the sale of land in favour of the petitioner was cancelled. The writ petition was disposed of by a Division Bench of this Court on 13.7.2006. The operative part of the order dated 13.7.2006 is extracted herein below:--

In view of the above, we set aside the order (Annexure P-14) dated 2.5.2003 and remit the matter to the Collector, Gurdaspur (who is competent authority under the Act) to decide the same afresh after affording opportunity to the parties to put forward their case.

The parties shall appear before the Collector, Gurdaspur on 25.7.2006 and the case be decided by the Collector within a period of one month from the date of receipt of certified copy of the order.

12. A perusal of the order reveals that the Collector, Gurdaspur, was directed to decide the case within a stipulated period after the parties put in appearance before him on 25.7.2006. Admittedly, the parties appeared before the Collector in pursuance of order dated 13.7.2006. The Collector has examined this case in compliance with the direction issued by this Court, the mere fact that the application filed by the Gram Panchayat contains reference to Rule 6(1)(b) of the 1964 Rules or Section 10-A of the 1961 Act is not sufficient to accept the contention of the petitioner that either the Collector examined the legality and correctness of the sale in favour of the petitioner u/s 10-A of the 1961 Act or the impugned order was not passed u/s 6 thereof. As the Collector passed the order thereby complying with the order passed by this Court, the impugned order is not open to challenge on the ground of error of jurisdiction.

13. There is no denial that before conducting auction for the sale of the land, the sanction was obtained from the State Government. The Collector, in our considered opinion, inadvertently stated in the order that no sanction was obtained from the competent authority for sale of the land, in dispute. The Collector in the order made reference to Rule 6(1)(b) of the 1964 Rules. Rule 6(1)(b) of the 1964 Rules prohibits any Sarpanch or Panch or member of his or her family such as father, father-in-law, mother, mother-in-law, grandfather, grandfather-in-law grandmother, grand-mother-in-law, wife, husband, son, grandson or any other relative dependent on him or her to bid for the auction and to take land in shamilat deh on lease. However, Rule 7-A of the 1964 Rules deal with lease, contract and agreement detrimental to the interests of Panchayats. A relevant extract of Rule 7-A of the 1964 Rules is quoted herein below:--

7-A. Lease contract and agreement detrimental to the interests of Panchayat.

Any lease, contract or agreement shall be deemed to be detrimental to the interest of Panchayat if:--

- (i) It has been granted or made as the case may be otherwise than by following the procedure laid down for grant of leases or the making of contracts and agreements by the Panchayat, or
- (ii) It adversely affects any of the development schemes of the Panchayat; or
- (iii) it has resulted or is likely to result in a loss to the Panchayat, or
- (iv) it is Benami

14. Though we could not lay our hands on any statutory provision or rule akin to rule 6(1)(b) of the 1964 rules prohibiting the family member of a sarpanch to bid at an auction for sale of Gram Panchayat property but in view of the fact that the

resolution passed by the Gram Panchayat is devoid of purpose of sale and the sale has been effected in favour of a very close family member of the sarpanch, the instant sale can not stand the test of judicial scrutiny. We would have to add that though the sanction order passed by the government refers to the purpose for which the sale consideration is required by the Gram Panchayat but there is nothing on record suggestive of the fact that actually there was any such obligation in existence, to be discharged by the Gram Panchayat at the relevant time.

15. Keeping in view the various circumstances discussed herein above, we are of the considered opinion that the sale in favour of the petitioner is nothing but an abuse of the process of law and is the result of collusion between the petitioner and the then Sarpanch of the Gram Panchayat. The Collector and the Appellate Authority have rightly held against the petitioner while setting aside the sale in his favour. We do not find any error of law or of jurisdiction in the orders impugned in the writ petition as would call for interference in exercise of power of judicial review under Article 226 of the Constitution of India. In view of what has been discussed here in above, the writ petition is dismissed and the orders dated 19.12.2006 passed by the District Development and Panchayat Officer, Gurdaspur (exercising the powers of "Collector") (Annexure P-15) and dated 25.8.2004 passed by the Director, Rural Development and Panchayat Department, Punjab (exercising the powers of "Commissioner") (Annexure P-17) are affirmed.