

(1995) 01 P&H CK 0154
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2918 of 1994

Devinder Singh

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 10A
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 9

Citation : (1995) 110 PLR 288

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : Ravinder Chopra and R.S. Chauhan, for the Appellant; Sanjeev Manrai, A.A. General for Respondent Nos. 1 and 2 and S.K. Goyal, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—This writ petition under Article 226 of the Constitution of India has been preferred by the petitioner for issuance of a writ in the nature of certiorari for quashing the impugned orders dated 24th December, 1992 (Annexure P-I) passed by the Assistant Collector, 1st Grade, Yamuna Nagar, and dated 7th July, 1993 (Annexure P/2) passed by Collector, Yamuna Nagar whereby lease given in auction to the petitioner has been upheld for three years but the area of land has been reduced from 18 acres to 10 acres and auction money has been increased from Rs. 6200/- to Rs. 10,000/-.

2. In brief, the facts are that panchayat land of village Bangar, Block Chhauchhrauli, Tehsil and District Yamuna Nagar, was put to auction by the Administrator on 1st September, 1992. Petitioner along with others gave bid in the said auction. As his bid of Rs. 6200/- was highest, he was given on lease land measuring 18 acres for a period of three years. Land in question was Banjar in nature. Respondent No. 3 who neither had participated, nor was present at the time of auction, filed a complaint before the District Development and Panchayat

Officer (in short the D.D.P.O.), Yamuna Nagar, for cancellation of lease granted in favour of the petitioner. In the complaint, he stated that land has been given to the petitioner at a lower rate, whereas he is willing to pay more. On the basis of the complaint, the D.D.P.O. exercising the powers of Assistant Collector vide order dated 24th December, 1992 accepted the complaint in part and increased the lease money from Rs. 6200/- to Rs. 10,000/- per year and reduced the duration of lease from three years to one year. Feeling aggrieved against the order of Assistant Collector, respondent No. 3 as well as the petitioner filed an appeal before the Collector, who vide order dated 7th July, 1992 increased the duration of lease from one year to three years, but decreased the area of land from 18 acres to 10 acres, and increased the auction money from Rs. 6200/- to Rs. 10,000/-.

3. The orders of the Assistant Collector and Collector are being impugned in this petition on the ground that the same are without jurisdiction, having been passed on the basis of complaint of respondent No. 3 who had no right to impugn the auction in which the petitioner was held to be highest bidder. The orders are also being impugned on the ground that once the auction was held in accordance with rules and regulations and following proper procedure, the Assistant Collector and the Collector had no jurisdiction to modify or vary the terms of lease. Learned counsel for the petitioner has contended that on variation of terms of lease, petitioner was entitled to be compensated for the loss and damage caused to him and this having not been done, the orders impugned in this petition cannot be sustained. Official respondents No. 1 and 2 and also respondent No. 3 (on whose complaint, terms of lease have been modified) have filed separate written statements. Respondents No. 1 and 2 in their written statement have stated that under law, land measuring 10 acres belonging to the Panchayat, could be leased out to a person at one time and that the lease money has rightly been increased from Rs. 6200/- to Rs. 10,000/-. Respondent No. 3, apart from stating that the Administrator was not competent to give land measuring 10 acres on lease, has also stated that proper publicity for holding the auction was not done.

4. In order to appreciate the argument of learned counsel for the petitioner that the orders of Assistant Collector and the Collector are without jurisdiction having been passed on complaint filed by respondent No. 3, Section 10-A of the Punjab Village Common Lands (Regulation) Act, 1961 (in short, 1961 Act) requires to be noticed:-

"10-A. Power of Assistant Collector of first grade to cancel or vary (sales or lease) etc. of the lands vested in Panchayats (1). Notwithstanding anything contained in this Act or the Shamlat Law or any other law for the time being in force, the Assistant Collector of first grade may call for from any Panchayat in the area of his jurisdiction, the record of any (sale, lease) contract or agreement entered into by the Panchayat in respect of any land vested or deemed to be vested in it, whether such (sale, lease) contract or agreement is entered into

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 (sale, 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 Assistant Collector of the first grade) is satisfied that such (sale, lease) contract or agreement:-

(i) has been entered into in contravention of any of the provisions of this Act or the rules made thereunder; or

(ii) has been entered into as a result of fraud or concealment of facts; or

(iii) is detrimental to the interests of the Panchayat as prescribed (the Assistant Collector of the first grade) may notwithstanding anything as aforesaid, cancel the (sale, 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 Assistant Collector of the First Grade) without affording reasonable opportunity of being heard to the parties to the (sale, lease) contract or agreement.

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

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

(5) Where under this section any (sale, lease) contract or agreement is cancelled or deemed to be cancelled or its terms are varied, the (vendee, 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 Assistant Collector of the first grade) 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 and 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 or compensation awarded by (the Assistant Collector of first grade) under this section shall be payable by the Panchayat in the prescribed manner

and shall be a valid charge on the Sabha fund.

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

Sub-section (1) of Section 10-A gives power to the Assistant Collector 1st Grade to cancel or vary, sale or lease, vested in Panchayat, if on enquiry he is satisfied that such contract or agreement (i) has been entered into in contravention of any of the provisions of 1961 Act (as applicable to Haryana) or the rules made thereunder; (ii) has been entered into as a result of fraud or concealment of facts, or (iii) is detrimental to the interest of the Panchayat as prescribed. Sub-section (5) provides that where under the Section, any sale, lease, contract or agreement is cancelled or deemed to be cancelled or its terms are varied, the vendee, 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 Assistant Collector 1st grade 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. Proviso to sub-section (5) provides that no such compensation shall be given for any remote and indirect loss or damage, sustained by reason of such cancellation or variation.

5. Learned counsel for the petitioner is not right in contending that the order (Annexure P-I) passed by the Assistant Collector is without jurisdiction because the same has been passed on the complaint filed by respondent No. 3. A reading of the section makes it abundantly clear that u/s 10-A, the Assistant Collector is competent to examine the legality of leases and sales. This he can do either by taking suo-motu notice or if any illegality in this regard is brought to his notice. The only requirement is that he must call for the record, make an enquiry and after giving an opportunity of hearing to the person aggrieved, must be satisfied that such sale, lease, contract or agreement has been entered into in contravention of any of the provisions of the Act or the rules made thereunder, or has been entered into as a result of fraud or concealment of facts, or is detrimental to the interest of the Panchayat. However, learned counsel for the "petitioner on the strength of judgment of Division Bench of this Court in *Sohan Singh and Ors. v. Surjit Singh Sodhi*, Commissioner, Patiala Division, Patiala and Ors. 1991 PL.R. 788, is right in contending that only that person is entitled to file an appeal before the Collector who is party to sale, lease, contract or agreement, and is aggrieved by the order of the Assistant Collector. A person can be said to be aggrieved by an order if that order worsens his position from the one he held before the order was passed. In this case, order of the Collector too cannot be said to be without jurisdiction because the same has been passed on the appeal filed by the petitioner who was certainly a person aggrieved because the terms of the lease had been varied to his detriment.

6. Now coming to the merits of the case, I am of the view that the impugned

orders cannot be sustained. The Collector has varied the lease in favour of the petitioner in two respects, i.e. (1) lease money has been increased from Rs. 6200/- to Rs. 10,000/-, and (2) area of land has been reduced from 18 acres to 10 acres. Rule 9 of the Punjab Village Common Lands (Regulation) Rules, 1964, provides that Panchayat shall not lease more than 10 acres of Cultivable land in Shamlat deh to any person. It has been observed by the Assistant Collector and the Collector that the petitioner has been given more than 10 acres of land and the same is in contravention of Rule 9 of the Rules. This finding cannot be upheld for the reason that Rule 9 relates to the leases of Cultivable land. It does not relate to the land which are not capable of being cultivated. Both the Authorities have given the findings that the land in dispute is Banjar and was given for the first time on lease. Until a finding had been given that the land is cultivable, there was no justification to apply Rule 9 to the lease in question. Lease money has been increased from Rs. 6200/- to Rs. 10,000/- for the same land. This ground too cannot be sustained. Both the authorities have found that the auction was held in accordance with rules and regulations. Respondent No. 3 had an opportunity to give bid. Petitioner along with others gave bid and his bid was found to be highest. It is not the case of the official respondents that the lease given to the petitioner was as a result of fraud or concealment of facts or is detrimental to the interest of the Panchayat. In absence of any such finding, the Assistant Collector and the Collector were not right in varying or modifying the terms of the lease. Accordingly, orders, Annexures P-1 and P-2, being contrary to the provisions of the Act and the Rules, are liable to be quashed.

7. Consequently, the writ petition is allowed and orders, Annexures P-1 and P- 2 are quashed. However, there shall be order as to costs.