
(2002) 08 P&H CK 0083
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9666 of 1995

Gram Panchayat Lalwan

APPELLANT

Vs

Joint Development Commissioner and Others

RESPONDENT

Date of Decision : 01-08-2002

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 5

Citation : (2002) 08 P&H CK 0083

Hon'ble Judges : Amar Dutt, J

Bench : Single Bench

Advocate : Sarwan Singh and N.S. Rapri, for the Appellant; H.P.S. Gill, A.A.G. and M.S. Bedi, for the Respondent

Judgement

Amar Dutt, J.—The Gram Panchayat of village Lalwan, District Hoshiarpur, has filed the present petition for the issuance of a writ of certiorari, quashing orders dated 27th December, 1990 and 25th January, 1995, passed by respondent No. 2 and respondent No. 1 respectively as also a writ of mandamus for declaring that the petitioner is entitled to re-auction the trees afresh.

2. Briefly stated, the facts leading to the filing of the present petition, are that on 20th June, 1976, land measuring 25342 Kanals 14 marlas belonging to the petitioner was auctioned in favour of Devi Singh respondent No. 3 entitling him to cut the trees standing thereon, according to the following conditions:-

"Today on 20th June, the bidders are present to give auction for Khair trees situated in forest of village Lalwan as per Section 5 regarding which the proclamation in the Panchayat Deh has already been done. The bid is being started and the following are the terms of the auction:-

(i) Rs. 500/- would be recovered from the contractor as security. In case the contractor would not cut the trees in time then his security would be forfeited.

(ii) The auction would be at the rate of per foot.

(iii) The Khair trees could be cut upto 31st March, 1977. The contractor would be responsible to cut the Khair trees in every respect. He will himself obtain the permit.

(iv) The contractor could get the fuel wood from the forest for the furnace (Bhathi).

(v) 1/4 of the auction money would be received at the time of the numeration of the trees and out of the remaining half would be recovered at the time of starting of the furnace and remaining 1/2 at the time of closing of Bhathi."

3. The Trees had to be cut by respondent No. 3 by 31st March, 1977 and since the time schedule was not adhered to, the auction was cancelled vide Gram Panchayat resolution dated 14th January, 1978. Respondent No. 3 had, on 28th July, 1978, filed a suit against the Gram Panchayat claiming that he was the purchaser of the Khair trees standing in the jungle measuring 25342 kanals 14 marlas belonging to Gram Panchayat, Lalwan, and further prayed for an order restraining the Gram Panchayat from re-auctioning the Khair trees on 29th July, 1978. The suit was dismissed by the trial Court on 26th July, 1980 and so the appeal before the Additional District Judge, Hoshiarpur, on 19th August, 1982. After the dismissal of the appeal, the trees were again put to auction on 17th September, 1982 but this auction was cancelled by the Collector on a complaint being received from the villagers. On 10th December, 1982, these trees were auctioned in favour of Kabul Singh and Dharam Pal, respondent Nos. 4 and 5, but on an application moved by respondent No. 3, before the Director of Panchayats, Punjab, Chandigarh, who forwarded the same to the Collector, this auction too was quashed and the earlier auction held on 20th of June, 1976 in favour of respondent No. 3 was restored by the Collector. On coming to know of this ex parte order, the Gram Panchayat moved an application for setting aside the order passed in favour of respondent No. 3. Respondent No. 3 of his own accord filed an appeal u/s 10 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act") before the Commissioner for challenging the order entertaining the review application filed by the petitioner. This appeal was dismissed by the Commissioner on 3rd of February, 1987, who directed respondent No. 3 to appear before the Collector on 9th of March, 1987. The Collector, however, while dismissing the review petition ignored the observations made by the Commissioner. The petitioner thereafter filed an appeal before the Joint Director, Panchayats, exercising the powers of Commissioner under the Act. This appeal was accepted and the case remanded to the District Development and Panchayat Officer, Hoshiarpur, for a fresh decision. The District Development and Panchayat Officer (Collector), vide order date 27th December, 1990, cancelled the auction, which was held on 10th of December, 1982 in favour of respondent Nos. 4 and 5 and upheld the auction dated 20th June, 1976, in favour of respondent No. 3 but varied the terms and conditions of the auction, whereby rate of Rs. 90/- per foot was fixed for the trees and after payment of the above rate, respondent No. 3 was allowed to cut and remove the Khair trees,

on the basis of the auction held on 20th of June, 1976. The petitioner-Gram Panchayat again filed an appeal against the order of Collector and the Joint Development Commissioner, exercising the appellate powers dismissed the appeal. He, however, observed that before cutting the trees the rate per foot would be got assessed from the Divisional Forest Officer, Garhshandar and after this was done, respondent No. 3 would deposit 1/4th of the total amount with the Gram Panchayat within 15 days of the issuance of the demand notice. It was further clarified that the Gram Panchayat would procure the permit for cutting the trees from the Divisional Forest Officer. The Gram Panchayat, which was still not satisfied with the decision, has chosen to file the present writ petition.

4. The grounds, on which the Gram Panchayat seeks to assail the impugned order as also the position taken by the respondents in the pleadings filed by them in response to the notice of a writ that was served upon them, need not be adverted to by me for the simple reason that during the course of arguments, Shri M.S. Bedi, appearing on behalf of contesting respondent i.e., respondent No. 3 has made a statement to the effect that his client is prepared to pay the price of the trees as assessed by the Divisional Forest Officer, Garhshankar, according to the rates prevalent on this date. The offer was so just that Shri N.S. Rapri, appearing on behalf of the petitioner, accepted the same without any hesitation.

5. In view of the stand taken by the parties, it no longer remains necessary for me to go into the velocity of the orders dated 27th December, 1990, Annexures P.4 and 25th January, 1995, Annexures P.5, which were initially sought to be challenged before me by the petitioner. In view of this, the writ petition is allowed and the order dated 25th January, 1995, Annexure P.5 is modified to the extent that respondent No. 3 would pay the price of the wood to be cut by him, from land measuring 25342 kanals 14 marlas, at the rate assessed by the Divisional Forest Officer, Garhshankar, on the basis of the rates prevalent at Garhshankar as of today. This would be completed within a stipulated time preferably within three months and respondent No. 3 will deposit the amount so assessed within a period of 15 days thereafter.