
(2002) 08 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 669 of 2001

Gurmukh Singh and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 12-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 10(1), 6(2), 9

Citation : (2002) 4 RCR(Civil) 199

Hon'ble Judges : V.K. Bali, J; Satish Kumar Mittal, J

Bench : Division Bench

Advocate : Anand Chhibbar, for the Appellant; Sanjay Vashisht, Jitendra Chauhan and R.K. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—By this common order, we propose to dispose of two connected Civil Writ Petitions bearing Nos. 669 of 2001 (Gurmukh Singh and Ors. v. State of Haryana and Ors.) and 13565 of 2001 (Kishore Upadhyay and Ors. v. State of Haryana and Ors.), as identical questions of law and facts are involved in both these petitions, but for the difference that whereas in CWP No. 669 of 2001, the petitioners were granted lease for a period of 5 years, in CWP No. 13565 of 2001, the petitioners were granted lease for a period of 10 years. Bare minimum facts that however, need a necessary mention have been extracted from CWP No. 669 of 2001.

2. Auction of the land measuring 98 acres culminated in favour of the petitioners on 21.11.1997 (Annexure P-1). As projected in the petition, the auction took place in presence of more than 80 persons of the village. Block Development Officer, Sonapat, was also present. All legal formalities under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as "the Act of 1961") were duly taken care of and the terms and conditions of the lease were set out and signed by the parties as would be evident from the lease agreement

(Annexure P-2) of the even date. The petitioners are said to have accepted the terms and conditions and deposited the rent of the land along with 25% advance. It is also the case of the petitioners that they have also paid the lease money upto date. They spent a huge amount to get the land in a suitable condition for the purpose of growing poplar trees. It is further their case that more than 30000 poplar trees have been planted by them on the land, some of which, of course, died due to the soil being degraded and there being no canal water or electricity provided as per the terms and conditions of the agreement by the Gram Panchayat. Costs incurred by the petitioners are stated to be roughly to the tune of Rs. 70 lacs. Preceding the auction on 4.11.1997, the IInd respondent herein passed resolution that the land which was leased out to the petitioners needs to be auctioned. On 20.10.1999, however, the IIIrd and IVth respondents made a representation/complaint in the Court of Assistant Collector 1st Grade, Sonapat u/s 10-A of the Act of 1961 pointing out illegalities in the lease granted in favour of the petitioners. It is the case of the petitioners that the Assistant Collector without issuing any notice to them cancelled the lease by an ex parte order. The said order was challenged before the Collector, Sonapat, who after hearing the parties, remanded the case to the Assistant Collector to re-adjudicate the matter after issuing notice to all concerned and giving an opportunity to produce proof and to decide the case within a period of one month. The Collector also directed that the petitioners would enhance the rate of lease at the rate of Rs.6000/- per acre, which was initially fixed at the rate of Rs.5000/- per acre, even though he had no jurisdiction to pass such an order. Vide order dated 13.7.2000, Assistant Collector cancelled the lease granted in favour of the petitioners. Constrained, the petitioners preferred an appeal before the Court of Collector, Sonapat, which, too, has since been dismissed, vide order dated 14.12.2000. The petitioners, in the present petition have called in question the order passed by Assistant Collector (Annexure P-11) dated 13.7.2000 and order passed by the Collector (Annexure P-13) dated 14.12.2000.

3. Before we might proceed to take note of the pleadings made in the written statement, it is relevant to mention that the petitioners themselves pleaded that they filed suit for injunction restraining respondents 4 to 6 from interfering in the peaceful possession of the petitioners over the land in question except in due course of law. Civil Court vide order dated 14.1.2000 directed the parties to maintain status quo and the same was confirmed vide order dated 13.11.2000. However, the suit was dismissed in default and an application for restoration of the suit is pending disposal.

4. In response to the notice issued by this Court, the IVth respondent, namely, Gram Panchayat, which is the only contesting respondent, has filed written statement, wherein it has, inter-alia, been pleaded that the petitioners are residents of New Delhi and had taken land on lease for a period of 5 years and none of the petitioners resides at Sonapat. It requires to be mentioned here that the petitioners themselves have pleaded that they are residing at Delhi and Sonapat. It has further been pleaded that as per the terms and conditions of the

lease deed, if plants were not to grow up within 5 years, then the Gram Panchayat was bound to extend the lease. In this way, the lease period will be more than 5 years as per the terms and conditions of the lease deed. The land was leased out for the purpose of sampling only and was not leased out for agricultural purpose. Averment made in the petition that the auction had taken place in presence of more than 80 persons or that 15 persons have participated in the auction has been emphatically denied. On the other hand, it has been pleaded that the land was leased out to the petitioners by the Gram Panchayat contrary to the terms and conditions and contrary to Rule 6(1)(2) of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter to be referred as "the Rules of 1964"), wherein it has been mentioned that the land which is fit for cultivation cannot be leased out for a period exceeding two years and in any case the land cannot be leased out for the period exceeding 5 years. According to Rule 9 of the Rules of 1964, the Gram Panchayat cannot lease out cultivable land to a person exceeding 10 acres or more. Rules 6(2) and 9 of the Rules of 1964, read thus:-

6. Lease to be by auction:

(2) Lease of land in shamlat deh already under plough shall not be given for a period exceeding three years while that of land, not under plough and infested with trees, bushes etc. may be given for a period not exceeding seven years to the highest bidder. The auction shall be subject to the approval of:

(a) The Panchayat Samiti (i) Where the area does not exceed 100 acres and the highest bid of the lease at the auction is less than the average lease rate of the similar shamlat lands in the preceding year of (ii) Where the area exceed 100 acres, but does not exceed 500.

XX XX

9. Maximum area to be leased out:

The Panchayat shall not lease cultivable land in shamlat deh to a person

a. xx xx xx xx

b. already holding lease under any other panchayat. Provided that the maximum area of land in shamlat deh to be leased to a person shall not exceed ten acres at any time.

(2) Except with the prior permission of Panchayat Samiti, the Panchayat shall not lease more than one acre of land in Shamlat deh for residential, industrial or commercial purposes near the village abadi to any one person."

5. In the present case, the land was leased out to the petitioners contrary to the rules and terms and conditions of the lease. Averment made in the petition that the petitioners have spent money on the land in dispute has also been denied. It is then pleaded that the land was already cultivable and earlier also the land was being leased out to various persons for the purpose of cultivation. The total land

in dispute is stated to be 98 acres and only a small portion of land is Banjar Quadim and major portion of the land is cultivable. Orders passed by the Assistant Collector and Collector are being defended on number of grounds inclusive of which were taken into consideration by the concerned authorities, i.e., Assistant Collector and Collector. Before we might notice the contention raised by Mr. Chhibbar, learned counsel representing the petitioners, in support of this petition, we would like to mention that the petitioners have themselves placed on record register of lease of Shamlat Deh land (annexure P-1) which depicts auction proceedings as also the resolution passed by the Gram Panchayat (Annexure P-8) for the auction of the land in question. Perusal of Annexure P-1 would reveal that only 4 persons participated in the auction. Resolution of the Gram Panchayat (Annexure P-8) dated 4.11.1997 clearly reveals that decision to lease out the land for plantation of trees for a period of 5 years had been taken vide resolution dated 21.10.1997. Promulgation with regard to auction was made by village Watchman (Chowkidar) on 20.11.1997 and the auction took place on the very next day, i.e., 21.11.1997. We would further like to mention that proceedings u/s 10-A of the Act of 1961 were brought about by one Pawan Kumar vide application dated 20.10.1999, wherein it has been pleaded that Sarpanch of the Gram Panchayat has leased out Shamlat land of the Gram Panchayat with the connivance of Divisional Officer and Social Education and Panchayat Officer for a period of 10 years and further that the land was agricultural and thus could not be leased out for a period of 10 years under the law. It is further mentioned in the application aforesaid that no promulgation has been made in the village nor any pamphlet was published and the bidding was illegal. The lessees were residing in Delhi, Panipat, Punjab and Simla. It was also stated that no lease has been reserved for Harijans and Backward Classes and the bidding is also shown at the distance of about 1-1/2 kilometers in the fields from the village.

6. Mr. Chhibbar, learned counsel representing the petitioners, vehemently contends that Rules 6(2) and 9 of the Rules of 1964, on the basis of which, primarily, the lease in favour of the petitioners has been cancelled, were wholly inapplicable in the facts and circumstances of the present case inasmuch as, land in dispute was not cultivable and the petitioners alone by the dint of their hard work and by spending a huge amount had planted poplar trees thereon. Rule 6 of the Rules of 1964 pertains to Shamlat Deh land, which is also under plough. If, therefore, the land may be Banjar Kadim, i.e., not cultivable and, therefore, not under plough, the said Rule fixing period of lease for a period of three years shall not apply. The same would also be true with regard to the maximum extent of the land that may be put to lease. In other words, embargo of maximum period for leasing out of the land pertains to cultivable land. After examining the records of the case, we are, however, of the view that contention of learned counsel, as noted above, has no merits whatsoever. A firm finding of fact has been recorded in the impugned order that the disputed land was given on lease for cultivation during the years 1982-83, 1983-84, 3.5.1987, 30.4.1987, 1986-87, 1987-88,

1989-90 and 1990-91. The land was given on lease for number of years prior to the lease in dispute. It cannot be said that the same was Banjar Kadim. The factum of land having been leased out has not been seriously challenged before us. In any case, it is not shown that the finding to the effect aforesaid is not based upon the evidence that was led before the concerned authorities. It is interesting to note that learned Assistant Collector in the impugned order (Annexure P-11) dated 13.7.2000 has also recorded a finding that the petitioner himself admitted that on an area of 60 areas of land, there was rice crop. This admission made by the petitioner has also not been seriously challenged during the course of arguments. This finding of learned Assistant Collector has since been confirmed in an appeal by learned Collector.

7. Mr. Chhibbar then contends that the entire proceedings culminating into the present order were not initiated by the Gram Panchayat and those, who have made a complaint, i.e., Pawan Kumar and others, have no locus standi to move an application u/s 10-A of the Rules of 1964. Learned counsel is, however, unable to support his contention on the basis of any statutory provision contained in the Act or the Rules or on the basis of any judicial precedent. It is relevant to mention here that one of the allegations contained in the complaint was that land had been leased out by the Gram Panchayat against rules and even the officers were mixed up with the petitioners. Otherwise too, when a patent illegality or a fraud might come to the notice of the concerned authorities, they, in our view, are duty bound to take such allegations to their logical end. We are satisfied that in the present case, the petitioner could have not obtained the lease beyond the statutory period if the Gram Panchayat or, for the matter, officers responsible for conducting the same had not been mixed up with the petitioners. It is interesting to note that one of the clauses incorporated in the lease deed is that in case the petitioners may not grow trees on the land within five years, the Gram Panchayat shall have no choice but for to extend the lease. It is being strenuously urged before us that there was no question of such clause coming into being if the officers conducting the auction" were not mixed up with the petitioners. The petitioners, taking advantage of clause aforesaid, would not grow trees, as in fact and reality they are not growing any trees on the land and yet keep on insisting for extending the period of lease and meanwhile carrying on enjoying the cash crops that they are in fact growing on the land in dispute. This argument in the fact and circumstance of this case appears to be correct. That apart, lease in the present case seems to have been obtained by the petitioners in a most cloistered manner. As mentioned above, there is a difference of only one day between the proclamation and the auction. Further, only handful people came to bid at the time of auction. In our view, no proper proclamation or publication was conducted by the Gram Panchayat. Proceedings for auction were also not conducted in the village but about 4 Kms. away from the village wherein only three persons had participated. The petitioners, so far as we are told, have paid lease money for one year only and thereafter sitting tight over the land without making any payment. The writ also deserves to be dismissed on the added

ground that the petitioners have not been able to vindicate their cause before the civil Court. As mentioned above, a suit for injunction has since been filed by the petitioners, which even though was dismissed in default, an application for restoration is still pending. Even if it is assumed that the impugned orders have not been challenged in the civil suit aforesaid, the petitioners could still amend the plaint and challenge the said orders as well. It does not appears to us, as is the case of the petitioners, that the petitioners have spent a lot of money for planting the trees. Even if in an area of 60 acres paddy crop was in existence, on the relevant date how it could possibly be said that in the entire land the petitioners have planted poplar trees. Photographs attached to the petition as Annexure P-6 do not in any way advance the cause of the petitioners.

Finding no merit in this petition, we dismiss the same in limine.