
(2008) 08 P&H CK 0149
In the Punjab And Haryana At Chandigarh

Jaipal Singh and Others

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 10

Citation : (2009) 153 PLR 6 : (2009) 3 RCR(Civil) 688

Hon'ble Judges : Satish Kumar Mittal, J;Daya Chaudhary, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Daya Chaudhary, J.—The order dated April 4, 2006 (Annexure P-3) passed by the Assistant Collector, 1st Grade. Sonapat and order dated February 7, 2008 (Annexure P-4) passed by the Collector are the subject matter of challenge in the present writ petition.

2. Briefly the facts of the case as mentioned in the writ petition are that Director/ Development and Panchayats, Haryana in exercising powers under Rule 8(3) of the Punjab Village Common Lands (Regulation) Rules, 1964 granted approval for the sale of Shamlat land of Gram Panchayat Agwanpar measuring 182 kanals in open auction vide letter dated April 9, 1991. The aforesaid approval was granted in pursuance of resolution No. 13 of the Gram Panchayat Agwanpur dated June 20, 1989 vide which 447 plots were to be given to the residents of the village in open auction and it was clearly stipulated therein that the rate of the land should not be less than the market rate; one family should purchase only one plot price of the plot was to be deposited directly in the office of Panchayat Samiti the entire price of the plot was to be received at the spot the plot was not to be sold by the petitioner for a period of three years from the date of bid an affidavit was to be filed to the effect that there was no plot in the name of any member of his family and the construction was to be raised within six months from the date of allotment of plot. The District Development and Panchayat Officer was to conduct the auction. The respondent-Gram Panchayat allotted about 300 plots to the

eligible persons by way of auctions held on 27.9.1994, 1.10.1994 and 11.11.1994. However, the sale deeds were executed in respect of about 110 plots.

3. An application u/s 10 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act") as filed by the private respondents to set aside the auction and sale deed secured in favour of the petitioners in pursuance of the auction held alleging therein that there have been illegalities and irregularities in conducting the auction. The Assistant Collector, 1st Grade vide order dated October 12, 2004 dismissed the application filed by the contesting respondents. Feeling aggrieved by the aforesaid order, the contesting respondents filed an appeal before the Collector, who while setting aside the order passed by the Assistant Collector, 1st Grade, accepted the appeal and remanded the case for fresh decision on the following issues:

I. Whether the District Development and Panchayat Officer was present at the time of auction as ordered by the Director and if not, what was its effect on the auction and was it not violation of the orders of the Director?

2. Whether decision of auction dated 16.2.2000 was taken after start of the election process, if it is so what was the justification of staking such a decision?

3. Whether in respect of the auction dated 16.2.2000 any persons were specially authorized with what resolution? If not what was its effect on the sale deeds?

4. In case the sale deeds are got done after the election how Panches of the ex-panchayat were authorized?

5. Whether any plot has been sold below the reserve price fixed by the Director/ Panchayats and Development Department Haryana, is it not a violation of the terms and conditions and is not loss to the Gram Panchayat?

6. In case the amount of bids is not deposited in Panchayat Sam it is it not a violation of the terms and conditions set out by the Director? In case, it is violation why the auction was not cancelled.

4. The Assistant Collector, 1st Grade on remand, vide order dated April 4, 2006, allowed the petition and the sale deeds executed in favour of the petitioner on the basis of auction were cancelled and direction was issued to re-auction the plots. It was also directed to take action against the former Sarpanch for violating the terms and conditions imposed by the Director, Panchayats.

5. The petitioners feeling aggrieved by the order of the Assistant Collector 1st Grade dated April 4, 2006, filed an appeal before the Collector, who dismissed the appeal vide order dated February 7, 2008. The orders of the Assistant Collector, 1st Grade as well as the Collector are subject matter of challenge in the present writ petition.

6. Mr. Arun Jain, learned Senior Advocate appearing for the petitioners, has argued that as per Section 10-A of the Act, the sale of plots could be cancelled if

there has been any violation of the provisions of the Act or there was any fraud, but in the present case, neither the contesting respondents have led any evidence to show that any fraud was committed nor there was any basis for the respondent authorities to assume that the auction was not carried out in accordance with the given procedure. The authorities have wrongly cancelled the auction and the sale deeds without any reasonable ground. It has further been argued by the learned Counsel for the petitioners that the authorities without returning any finding that the provisions of Section 10-A of the Act were attracted, proceeded to cancel the said auction as well as the sale deeds in an illegal and arbitrary manner which has caused a substantial loss to the petitioners.

7. We have heard the arguments of the learned Senior Counsel for the petitioners and have perused the orders under challenge and are of the view that the auctions and sale deeds have rightly been cancelled by the authorities on the basis of irregularities committed in the auction. A finding of fact has been recorded by the Assistant Collector, 1st Grade on the issues framed by the Collector at the time of remanding the case that neither any resolution of the Gram Panchayat was passed nor any approval was sought from the District Development and Panchayat Officer for conducting auction of the plots. The Collector has clearly mentioned in his order dated February 7, 2008 that he himself inspected the land along with Sub Divisional Officer (Civil) Gannaur, Tehsildar B.D. & P.O., Girdawar and Patwari Halqa and at the spot the Girdawar Halqa was asked to prepare the details regarding present condition of each plot. The Girdawar Halqa prepared the details of 81 plots and it was found that 23 plot out of 81 plots were lying totally vacant and on 32 plots foundation was laid on 11 plots boundary walls was constructed and on IS plots construction was raised. He observed that the Panchayat in violation of the terms and conditions laid down by the Director/Panchayats, allotted plots to his own men and many irregularities and illegalities have been found in allotment of plots.

8. A finding of fact has been recorded by the Assistant Collector, 1st Grade that auction and sale deeds have been wrongly conducted and the terms and conditions of the auction have been violated by the Gram Panchayat. The Collector has rightly upheld the order of the Assistant Collector.

9. We do not find any justification to interfere in the pure fact finding report made on the basis of spot inspection by the authorities below.

10. The writ petition being devoid of any merit is hereby dismissed in limine.

Sd/- Satish Kumar Mittal, J.