
(2005) 12 P&H CK 0079
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8107 of 2003

Jarnail Singh

APPELLANT

Vs

Director Rural Development and Others

RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1 , Order 39 Rule 2
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Punjab Village Common Lands (Regulation) (Amendment) Act, 1964 — Section 10A , 10A(2)
Punjab Village Common Lands (Regulation) Act, 1961 — Section 10(7)
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 6 , 6(10)

Citation : (2006) 142 PLR 795 : (2006) 1 RCR(Civil) 821

Hon'ble Judges : M.M. Kumar, J;Kiran Anand Lall, J

Bench : Division Bench

Advocate : Jatinder Singla, for the Appellant; Ashok Aggarwal, Additional A.G., for the Respondent

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution is directed against the Order 11.3.2003 (Annexure P-6) passed by the Commissioner exercising the powers u/s 10(7) of the Punjab Village Common Lands (Regulations) Act, 1961 (for brevity, "the Act"). The Commissioner has allowed the appeal which was filed by respondent Nos. 3 to 5 and has held that the lease of land was illegally granted to the petitioner and respondent Nos. 3 to 5, who were prepared to deposit 8 times more the lease amount in the accounts of the Panchayat, were directed to do the needful. Accordingly, the lease was to be given to respondent Nos. 3 to 5. There is further condition imposed for enhancement of the lease amount by 5% every year and the recovery of loss caused to the Gram Panchayat has been ordered to be recovered from the petitioner, which was to be determined. Feeling aggrieved the petitioner has approached this Court challenging the aforementioned order by invoking the provisions of Article 226 of the Constitution.

2. Brief facts of the case are that on 5.5.2001 the land measuring 21 kanal 6 marlas belonging to Gram Panchayat (respondent No. 2) was auctioned in favour of the petitioner being the highest bidder. A resolution of the Gram Panchayat dated 5.5.2001 (Annexure P-1) recorded the petitioner to be the highest bidder. The lease amount is alleged to have been deposited which was Rs. 2700/- per year and it is claimed that the payment has been made till date and the copies of the receipt have been placed on record as Annexures P-7 and P-8. Respondent No. 3 to 5 filed an application before the District Development and Panchayat Officer for cancellation of the auction of the land by invoking Section 10-A of the Act. The main ground to challenge the auction is that no due publicity was given and respondent No. 3 to 5 were ready to take the land at much higher rate. It is claimed that the application was filed after 6 months with the object of harassing the petitioner as the auction was held after full publicity, public notice and publication. The District Development and Panchayat Officer dismissed the application on 3.7.2002 (Annexure P-3), which resulted in filing of an appeal before the Commissioner u/s 10(7) of the Act. As there was some delay in filing the appeal, an application u/s 5 of the Limitation Act, 1963 was also filed. The Commissioner allowed the appeal vide the impugned order dated 11.3.2003 and the relevant part of order reads as under:-

...After hearing the arguments of both the parties and after perusing the record, I came to the conclusion that the order dated 3.7.2002 passed by the respondent No. 1 is not speaking. The appellants are ready to deposit 8 times of the amount of lease. Accepting the appeal of the appellants, it is directed that 8 times of respondent's lease amount be deposited by the appellants in the A/c of the Panchayat. The appellants/lessee will increase by 5% per year. The appellants will deposit the said amount in the A/c of Panchayat by 15th of April, 2003 and they will submit the compliance report by 30th April, 2003. The loss caused by the respondent to the Panchayat be determined and the said amount of loss be recovered from the Sarpanch and the same be deposited in the Panchayat A/c Distt. Development and Panchayat Officer-cum-Collector be censured and the disciplinary action be initiated against him for passing wrong order. The period of lease of the appellants for the remaining period will commence from next crop/ June, 2003.

3. Two separate replies have been filed, one by the Gram Panchayat (respondent No. 2) and the other by respondent Nos. 3 to 5. The Gram Panchayat in its reply supported the finding recorded by the Commissioner. It has been asserted that Panchayat land was given to the petitioner in connivance with Sarpanch on a cheaper rate on lease and proper auction was not conducted. It has further been claimed that no publicity with regard to the auction was given either in the newspaper or by issuing hand bills, pasting them at specified places. The failure to follow the procedure aforementioned has been admitted by the Gram Panchayat (respondent No. 2).

4. The stand taken by respondent No. 3 to 5 in their reply is that the petitioner

had filed a civil suit before the learned Civil Judge, Dhuri and had applied for an interim injunction, which was declined. It has been asserted that in the face of the suit and failure of the petitioner to disclose that fact should result into dismissal of the petition. However, it has been admitted that the nature of the land in the revenue record is "banjar" and the land was given for a period of 5 years @ Rs. 130 per bigha whereas the rate was more than Rs. 1000 per bigha. They have further claimed that they are still ready and willing to obtain the lease of land on the aforementioned rate and have deposited Rs. 21,600/- on 17.4.2003 (Annexure R-1).

5. Mr. Jitender Singla, learned Counsel for the petitioner has argued that Section 10-A of the Act does not vest any power with the Commissioner to auction the land in favour of respondent Nos. 3 to 6. According to the learned Counsel, the Commissioner could have set aside the auction and directed re-auction. He has also controverted the plea that no interim order was granted by the Civil Court and has submitted that the suit was filed along with an application under Order 39 Rules 1 and 2 of Civil Procedure Code, 1908. The application was declined by the learned Trial Court and on appeal the interim order was issued. Learned Counsel has drawn our attention to the averments made in para No. 13 of the writ petition and has further submitted that the suit has now been withdrawn, during the pendency of the writ petition. He has further submitted that the order dated 11.3.2002 (Annexure P-6) is liable to set aside to the extent it directs the grant of lease in favour of respondent Nos. 3 to 5.

6. Having heard the learned Counsel, we are of the view that the arguments raised on behalf of the petitioner deserves to be accepted. Section 10-A of the Act is reproduced for facility of reference and the same reads as under:-

10-A. Power of the Collector to cancel or vary leases etc. of lands vested in Panchayat.- (1) Notwithstanding anything contained in this Act, or the Shamilat law or in any other law for the time being in force the Collector may call for from any Panchayat in his district the record of any lease contract or agreement entered into by the Panchayat in respect of any land vested or deemed to be vested in it, whether such lease, contract or agreement is entered 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 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 Collector is satisfied that such lease, contract or agreement:

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

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

(iii) is detrimental to the interests of the panchayat as prescribed, the Collector

may, notwithstanding anything as aforesaid cancel the 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 Collector without affording an opportunity of being heard to the parties to the lease, contract or agreement.

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

(4) Where the 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 Collector under this section in the terms of lease, contract or agreement, such lease contract or agreement as the case may be, shall be deemed to be cancelled by the Collector under this section with effect from the date of such refusal.

(5) Where, under this section any lease, contract or agreement is cancelled or is deemed to be cancelled or its terms are varied, the 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 Collector 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 of compensation awarded by the Collector under this section shall be payable by the panchayat in the prescribed manner and shall be a valid charge on the Sabha funds.

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

7. A perusal of the aforementioned provision shows that it begins with a non obstante clause. If the Collector (District Development and Panchayat Officer) after examination of the record and after making any enquiry is satisfied that the lease, contract or agreement has been entered into in contravention of the provisions of the Act or the rules or it was result of a fraud or concealment of facts or it is otherwise detrimental to the interest of Gram Panchayat, then the Collector could cancel such lease, contract or agreement, after affording due opportunity to the parties. The Collector could also vary the terms of the lease unconditionally or put additional conditions, which would be binding on the parties to the lease, contract or agreement. If a lessee refuses to accept the

variation, as ordered by the Collector in terms of lease etc. then the lease would be deemed to be cancelled with effect from the date of such refusal. It is, thus, evident that Section 10-A of the Act does not vest the Collector or the Commissioner with the power to grant fresh lease to another person. However, there is ample power to direct cancellation of lease in the cases where interests of the Gram Panchayat have been sacrificed. The aforementioned position is evident from the perusal of Section 10-A(2)(ii)(iii) supra.

8. In the present case, the Punjab Village Common Lands (Regulations) Rules, 1964 have also not been complied with. According to Rule 6 lease could be given by auction which was required to be held in accordance with Sub Rule 10. The aforementioned Rule provides that publicity to lease, auction proclamation must be given 15 days ahead of the date of auction by specifying the description of the land, the date, time and place, fixed for the auction. It has further been provided that publicity should be given through a vernacular newspaper with wide circulation, as approved by the government and by pasting the copy of the auction notice on the outer door of the Panchayat Ghar, Patwarkhana, office of the Panchayat Samiti and Zila Parishad and some other conspicuous places of shamilat deh or the estate in which the shamilat deh is situated. The proclamation is also required to be carried out by beat of drums within the Sabha area. Sub Rule 10 of Rule 6 reads as under: -

Rule 6...

(10) (1) The publicity to lease auction programme shall be given fifteen days before the date of auction, by specifying the description of land the date, time and place fixed for auction of lease:-

(a) through any vernacular newspaper [with wide circulation as approved by the Government and where the auction of stone quarries, bajri or other minor mineral etc. is to be held, also through an English newspaper with wide circulation, as approved by the Government].

(b) by pasting a copy of auction notice on outer door of the panchayat ghar, village patwar khana office of Panchayat Samiti and Zila Parishad at some other conspicuous places of shamilat deh or of the estate in which the shamilat deh is situated and

(c) by beat of drum within the Sabha area.

(2) The terms and conditions of auction shall be announced at the time of auction.

9. The aforementioned provision (as applicable to the State of Haryana) came up for consideration of the Supreme Court in Dhruv Green Fields Ltd. v. Hukam Singh(2002) 132 P.L.R. 472 .

10. It is, thus, evident that no publicity by issuing notices in the newspaper was given, as has been asserted by the Gram Panchayat (respondent No 2) in para

No. 7 of its reply. The aforementioned assertion has not been controverted by filing any replication. Therefore, we hold that the grant of lease in favour of the petitioner was in contravention of Rule 6 Sub Rule 10 of the Rules. It is appropriate to mention that the basic object of enacting Section 10-A by Punjab Act 19 of 1964 was to protect shamilat deh because the Panchayats have given shamilat land on lease in large number of cases, without proper auction and without observing the prescribed rules. We are further of the view that the basic object of the Section 10-A would be defeated if the statutory rules are violated and the land is given on lease at a throw away rent. In the present case, the respondent Nos. 3 to 5 have actually offered rent, which is 8 times more than the one of which the land has been given to the petitioner.

11. We do not wish to express any opinion on the conduct of the petitioner to have filed the suit and withdraw the same. It shall not be construed to mean that such a course was legal, permissible and we have approved the same.

12. For the reasons aforementioned, the order dated 11.3.2003 (Annexure P-6) is modified to the extent that the lease dated 5.5.2001, executed in favour of the petitioner is set aside and it is ordered that Gram Panchayat (Respondent No.) shall hold fresh auction within a period of two months from today, strictly in accordance with law. It is, however, needless to observe that the petitioner would be entitled to participate in the auction and till the time fresh auction is held, the petitioner would continue in possession provided he pays the lease amount till the date of finalization of auction and handing over possession back to the Gram Panchayat (respondent No. 2) The other part of the order is upheld.

13. A copy of the order be given dasti, to the parties, on payment of usual charges.