(2014) 07 P&H CK 0203

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18003 of 2013 (O&M)

Rajinder Singh APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2014) 07 P&H CK 0203

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Sanjay Kaushal, Senior Advocate and Arjun Shukla, Advocate for the Appellant; Vandana Malhotra, Addl. A.G., Amit Rawal, Senior Advocate, A.B.S. Sidhu and Karan Gupta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ritu Bahri, J.—The petitioner is seeking a writ in the nature of mandamus directing respondent No. 2 not to interfere in the milling of paddy.

2. Vide allotment letter dated 23.11.2012 (Annexure P-1), M/s. Gill Rice Mill, Batala-petitioner was to be allotted 35000 quintals of paddy for the season 2012-2013. Accordingly, an agreement was entered into between PUNGRAIN agency and the petitioner for allotment of paddy for the purposes of storing and custom milling for the season 2012-13. Thereafter, the petitioner deposited a cheque to the tune of Rs. 3 lacs on 28.12.2012 towards security. However, this security was deficient and therefore, the PUNGRAIN allotted only 5000 bags of paddy to the mill of the petitioner. On 22.01.2013, Lakhwinder Singh, DFSO, Gurdaspur conducted physical verification of the premises of the petitioner in his absence and thereafter, an FIR (annexure P-3) was got registered on the allegation that there was shortage of paddy in the godown of the petitioner.

3. The petitioner''s case is that the paddy, lying in the godown at the time of physical verification, had been purchased by the petitioner and the same did not

belong to PUNGRAIN. The petitioner has taken loan from Punjab & Sind Bank-respondent No. 3 and hypothecated the entire stock with the bank. Security of land to the tune of Rs. 3.96 crores is also with the bank. As per the audit report (Annexure P-6) of the bank, stock of Rs. 5.60 crores is lying in the premises of the petitioner. The bank-respondent No. 3 has given a notice dated 04.03.2013 (Annexure P-8) to the petitioner as well as PUNGRAIN-respondent No. 4 stating that the it (the bank) has got the first lien and charge over the stock lying in the godown of the petitioner and before initiating any action against the stock lying in the premises of the petitioner, necessary information should be given to the bank. Similar notice dated 20.07.2013 (Annexure P-9) has also been sent by respondent No. 3-bank, reiterating that the bank has got the first lien and charge over the stock lying in the premises and godowns of M/s. Gill Rice Mills and the FIR (Annexure P-3) was registered without informing the bank.

4. The petitioner, in the present petition, is seeking direction that he be allowed to mill the paddy, lying in his premises and thereafter, sell the rice, which belongs to him. It has been further pleaded that since the investigation in the FIR (Annexure P-3) will take a long time, therefore, the paddy should be saved from getting destroyed.

5. Upon notice, written statement on behalf of respondent Nos. 1 and 2 has been filed, wherein preliminary objection has been taken that Rajinder Singh-petitioner has filed this petition in his personal capacity, whereas paddy was allotted to M/s. Gill Rice Mills, Batala. It has been further stated that pursuant to the agreement dated 26.11.2012 (Annexure P-2), total 78,033.90 quintals of paddy, comprised in 2,22,954 bags, was entrusted to the petitioner being proprietor of M/s. Gill Rice Mills, Batala. As per bank statement (Annexure R-2/1 Colly.), 13,589.80 quintals of paddy was transferred by the petitioner from his own commission agent shop and 14,486.85 quintals was transferred from his other commission agent shop in Batala Mandi. Paddy weighing 28,076.65 quintals was transferred by the petitioner from his commission agent shop to his mill premises for milling. Out of the remaining 49,957.25 quintals of paddy, the petitioner miller issued receipts for 15,860.60 quintals. Moreover, as per the information given by the petitioner on the website (Annexure R-2/2), this fact stands duly proved. In the website, the petitioner himself has entered that total 78,033.90 quintals of paddy stocks have been entrusted to him by the corporation. Moreover, as per the letter dated 10.01.2013 (Annexure R-2/3), the petitioner was informed by the Food & Supply Officer, Batala-respondent No. 2 that total 222954 bags of paddy had been received by him, however, till 10.01.2013 he did not deliver the resultant rice to the Food Corporation of India (FCI). Reference has been made to the physical verification report (Annexure R-2/4), which shows that 1,78,470 bags of paddy were found short from the mill premises. Thereafter, FIR u/s 420 and 406 IPC (Annexure P-3) was registered against the petitioner. In view of the verification report (Annexure R-2/4), the assertion of the petitioner that he had received only 5000 bags of paddy, is liable to be rejected. It has been further stated that the claim of the petitioner that the

paddy stored in his premises, was purchased by him from open market, is liable to be rejected, as he has not placed on record any document to substantiate his claim.

6. If a miller purchases paddy stocks from the open market, then he is governed by the provisions of the Punjab Rice Procurement (Levy) Order, 1983. As per Clause 15 of the said order, every licenced rice miller, who procures paddy from the open market, is required to maintain a record of the quantity of paddy stocks milled by him and rice delivered under levy. He is further required to submit fortnightly returns pertaining to the abstract of the said accounts. However, the petitioner has not placed on record any such document. Hence, plea of the petitioner is falsified. Finally, as per Clauses 21 and 26 of the Custom Milling Policy, the petitioner-rice miller could not pledge the paddy of the State agencies with the commercial banks for availing cash credit limit. In case he indulges in this malpractice, his mill will be blacklisted and the stocks of paddy/rice shall be lifted from his mill to other mills at his risk and cost.

7. Punjab and Sind Bank-respondent No. 3, in its written statement, has taken a stand that it has the first and prior lien/charge over the stocks lying in the premises/godown of M/s. Gill Rice Mills. As per sanction letter dated 01.12.2011 (Annexure R-1), hypothecation agreement dated 09.12.2011 (Annexure R-2) and Form No. 84-A (R) dated 10.12.2011 (Annexure R-3), the entire stock, land and building/machinery lying in the premises of the petitioner were hypothecated in favour of respondent No. 3-bank for taking a loan. The respondent-bank is inspecting the hypothecated stocks periodically, as is evident from the stock statement dated 31.07.2013 (Annexure R-4). The petitioner, vide letter dated 13.08.2013 (Annexure R-5), has informed the bank that the stock lying in the premises of M/s. Gill Rice Mills, Batala, belongs to him. The premises of the petitioner has now locked by respondent No. 2 and the respondent-bank is being restrained from selling the hypothecated stocks to recover its loan. In this regard, necessary letters dated 15.05.2013 and 05.09.2013 (Annexures R-6 and R-7), have been written to the Deputy Commissioner, Gurdaspur and Commissioner, Food, Civil Supplies and Consumer Affairs, Punjab.

8. During the pendency of this petition, vide order dated 28.01.2014, a direction was given to the respondent-bank to sell the paddy and rice lying in the premises of the petitioner and adjust the amount against his loan account. The petitioner agreed to deposit the cost of 5000 bags of paddy, entrusted to him i.e. Rs. 22 lacs with the PUNGRAIN within a week. This order was challenged by the PUNGRAIN by filing LPA No. 250 of 214. Learned Division Bench of this Court, vide order dated 13.02.2014, disposed of the said LPA by giving liberty to the PUNGRAIN to make an appropriate application for being impleaded as a party and make submissions before the Single Bench. Pursuant to the said order passed by the Division Bench, the PUNGRAIN was impleaded as respondent No. 4 in this petition vide order dated 28.04.2014 passed in CM No. 2253 of 2014. Thereafter, written statement on behalf of PUNGRAIN-respondent No. 4 was filed,

wherein reference has been made to the statements/entries made by the petitioner on the website (Annexure R-4/5 and R-4/6). It has been further stated that in compliance of the order dated 29.10.2013 (Annexure R-4/7) passed by this Court in CWP No. 22957 of 2013, the Deputy Commissioner, Gurdaspur, conducted a detailed fact finding enquiry and gave his report dated 21.01.2014 (Annexure R-4/8). The Deputy Commissioner, Gurdaspur, came to a conclusion that there was shortage of 169589 bags (i.e. 59354.05 quintals) of paddy, for which, FIR No. 73 dated 01.03.2013, under Sections 420 and 406 IPC was registered against the petitioner at Police Station Civil Lines, Batala. With regard to misplacing the vital Government record, a direction has already been given to the District Food and Supply Officer, Batala, to file a police complaint in the case. The godown of the petitioner was sealed by the department while exercising the powers under the Punjab Rice Procurement (Levy) Order, 1983. In the enquiry, it was held that the petitioner had embezzled the Government stock of paddy to the extent of 169583 bags (59354.05 quintals) of paddy. Statements of many commission agents working within the district, have been recorded, from where the said paddy was shifted to the mill premises of the petitioner. Their statements, supported by the documents, had proved the entrustment of aforesaid paddy stocks to the petitioner. The paddy was entrusted to him after he had taken loan from respondent No. 3-bank.

9. As per Clause 26 of the Custom Milling Policy, no miller to whom paddy was entrusted by the State Procurement Agency, could pledge the same with any commercial bank. The petitioner had obtained a loan from the bank on 09.12.2011 vide hypothecation agreement (Annexure R-2). Now, he is seeking to sell the paddy, which was entrusted to him by the PUNGRAIN. The petitioner cannot sell the paddy, entrusted to him for custom milling for the year 2012-13 to discharge his liability of loan, which he took on 09.12.2011. Moreover, as per Clause 26 of the Custom Milling Policy, he cannot pledge this stock with any commercial bank, else he would be blacklisted. Moreover, the petitioner has endorsed the physical verification report (Annexure R-2/4), which has been placed on record along with the written statement of respondent No. 2. Therefore, he admits entrustment of 222954 bags of paddy.

10. Respondent No. 4-PUNGRAIN, while filing CM No. 2253 for impleadment as respondent along with Review Application No. 106 of 2014, has made certain more clarifications with regard to agreement dated 26.11.2012 (Annexure P-2), which was entered into between the District Food and Supplies Controller/District Manager and the petitioner. As per the terms and conditions of the said agreement, paddy for the year 2012-13 to the tune of 78,033.90 quintals, comprised in 2,22,954 bags, was entrusted to the petitioner for milling. As per physical verification report (Annexure R-2/4), shortage of 1,69,583 bags, weighing 59,354.05 quintals, was found and thereafter, FIR (Annexure P-3) was registered. The entrustment of paddy is proved by the statements/entries (Annexure R-2/2) made on the website of the department pursuant to Clause 19 of the agreement (Annexure P-2). The PUNGRAIN has placed on record

statement (Annexure A-3) revealing that the corporation has entrusted 222954 (78033.90 quintals) bags of paddy to the petitioner for custom milling. The petitioner, after accepting the paddy from commission agent, was bound to explain, where he had stored this paddy, which he has not done and the assertion that he was entrusted only 5000 bags of paddy, is liable to be rejected. Moreover, vide public notice dated 19.12.2013 (Annexure A-4), proceedings to auction the stock of paddy/rice lying in the premises of the petitioner, were initiated. However, the successful bidders of the auction were not allowed to enter in the mill of the petitioner. On 03.01.2014, a request was made to the Deputy Commissioner, Gurdaspur, to provide police protection to the successful bidders to enter in the premises. The Deputy Commissioner, Gurdaspur, vide letter dated 27.01.2014, provided police force to respondent No. 2. The relevant letters in this regard, have been placed on record as Annexures A-4 to A-7.

11. All these facts were not disclosed by the petitioner to this Court at the time when the order dated 28.01.2014 was passed enabling respondent No. 3-bank to sell the stocks of paddy/rice lying in the premises of the petitioner. Thereafter, LPA No. 250 of 2014 was filed, wherein liberty was granted to the PUNGRAIN to move an appropriate application to be impleaded as party respondent in this petition. Hence, as of today neither the proceedings conducted by the PUNGRAIN vide notice dated 19.12.2013 could be completed nor respondent No. 3-bank was able to sell the stocks lying in the premises of the petitioner.

12. The PUNGRAIN, in its written statement, also made reference to the letter dated 07.10.2012 (Annexure A-8) sent by the petitioner to the Manager, PUNGRAIN, Gurdaspur, wherein the petitioner has made a request for supply of additional paddy stocks in addition to the allotment made to him. Since the storage capacity in his godown, as per allotment (Annexure P-1) was 35000 quintals, therefore, he sought permission to store additional paddy in Padda Complex, Aliwal Road, Batala. Therefore, on the basis of this letter, additional stocks were allotted to the petitioner and the same were stored in the aforesaid godown for milling on behalf of the corporation.

13. After going through the entire facts, placed on record by the petitioner as well as the contesting respondents, the following facts are not disputed between the parties:-

(i) Clause 26 of the agreement dated 26.11.2012 (Annexure P-2) entered into between the petitioner and respondent No. 2 with regard to allotment of paddy for the custom milling season 2012-13, is very clear that the stock entrusted to the petitioner cannot be pledged by him with any commercial bank. Clause 26 is reproduced as under:-

26. The rice miller will not pledge the paddy of the State Agencies with the commercial banks for availing cash credit limit. If he indulges in the malpractice, he will be immediately blacklisted and the stocks and paddy/rice shall be lifted from his mill to other mills at his risk and cost.

Therefore, the paddy, which was entrusted to him, after he took loan from the bank, in no circumstances, could be pledged with the bank for recovery of the aforesaid loan. The loan was taken by the petitioner from the bank as per sanction letter dated 01.12.2011 (Annexure R-I) and hypothecation agreement dated 09.12.2011 (Annexure R-2). A perusal of sanction letter (Annexure R-1) and hypothecation agreement (Annexure R-2) further shows that there was no condition in the agreement to hypothecate the paddy, lying in the premises of the petitioner, even at the time of grant of loan. Therefore, the plea of respondent No. 3-bank that it has got the first charge on the paddy lying in the godown of the petitioner to recover its loan, is liable to be rejected.

(ii) The physical verification report (Annexure R-2/4), placed on record by respondent No. 2, shows that there was a shortage of 1,78,470 bags of paddy in the godown of the petitioner. The fact that vide his application (Annexure A-8), the petitioner had sought additional allotment of paddy from the respondents, which was allotted, further strengthens the case of the respondents that at the time of registration of the FIR (Annexure P-3), the petitioner had been entrusted custom milling paddy, which he did not mill before 31.03.2013 and return to the Food Corporation of India. Therefore, the assertion of the petitioner that he has only been allotted 5000 bags of paddy, is also liable to be rejected.

(iii) Respondent No. 4-PUNGRAIN has further clarified that a public notice (Annexure A-4) was issued after physical verification report (Annexure R-2/4), whereby it had proceeded to auction the paddy/rice lying in the premises of the petitioner and auction proceedings were initiated on 19.12.2013 (Annexures A-4 to A-7). The successful bidders could not enter the premises of the petitioner and due to that reason, necessary police protection was granted by the Deputy Commissioner, Gurdaspur. It is at this stage, the petitioner approached this Court by way of this petition and sought direction that respondent No. 3-bank be allowed to sell the paddy lying in his premises in order to adjust the loan account.

14. This prayer of the petitioner, after going through the facts and circumstances of the case, cannot be allowed.

15. Resultantly, the writ petition is dismissed.

