
(2001) 07 P&H CK 0083

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6695 of 2001 (O and M) and Civil Miscellaneous No"s. 12292, 12806, 13810, 13811, 15710 and 15711 of 2001

Sohan Lal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 17-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5
Constitution of India, 1950 — Article 226
Punjab Village Common Lands (Regulation) Act, 1961 — Section 10
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 6, 8, 9

Citation : AIR 2002 P&H 96 : (2001) 4 RCR(Civil) 483

Hon'ble Judges : Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : D.S. Bali and Ramesh Kumar, for the Appellant; Palika Monga, AAG, Munish Jolly and C.B. Goel, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioners in these two petitions pray that the auction for lease of Panchayat land held on April 3, 2001 be quashed. The respondents claim that they have paid an amount of Rupees One Crore and twenty lacs. The lease of 1 year in favour of the petitioners has already expired. Thus, they have no case for grievance. They are bound to hand over possession to the respondents whose bid had been accepted. The facts are given in C.W.P. No. 6695 of 2001 may be briefly noticed.

2. The petitioners and some of the private respondents are residents of village Mohanpur. They claim to be lessees on the agricultural land measuring 582 acres 1 kanal and 2 marlas "since decades". The Panchayat is the owner of the land. The petitioners allege that they have committed no default in paying the lease money. They are in possession of the latest receipts issued by the official respondents. A true copy of one of the receipts has been produced as Annexure P-1 with the writ petition. The land was never put to auction as the petitioners

and respondent Nos/47 to 111 "were considered to be best pay masters as lessees". Certain persons, "who were not at all concerned with the land in dispute filed a Civil Writ Petition No. 7270 of 2000 titled as Balwant Singh and Ors. v. The State of Haryana and Ors. seeking a mandamus to forthwith conduct the open auction for leasing out the lands, which were either owned by the Gram Panchayat Mohanpur or under their management/control and to start the auction @ Rs. 6,000/- per acre per annum, minimum". This writ petition was decided vide judgment dated December 11, 2000. The authorities were directed to give publicity regarding the auction of land for lease in accordance with the rules. The reserve rate of annual lease was ordered to be not less than Rs. 8,000/- per acre. A copy of the judgment has been produced as Annexure P-2 with the writ petition.

3. In pursuance to the directions given in the judgment, the Gram Panchayat passed a resolution on March 16, 2001 to auction the lease rights in the land measuring 582 acres 1 kanal 2 marlas. A notice was issued that land shall be auctioned on April 3, 2001 at 9.00 A.M. in Primary School, Mohanpur. It was further mentioned that the initial bid in the auction would start at Rs. 8,000/- per acre. A copy of the notice has been produced as Annexure P-3. The petitioners allege that they were not informed about the auction conducted on April 3, 2001. They were deprived of the opportunity to participate. The auction held on April 3, 2001 was in contravention of the mandatory provisions of Rules 6, 8 and 9. Charan Singh, petitioner No. 3, had filed a suit. The Panchayat had been impleaded as a party. An interim stay had been granted by the civil Court. Despite that, the auction was held. The petitioners having become tenants by the efflux of time, the land in dispute could not be auctioned. They were not even parties in C.W.P. No. 7270 of 2001. The petitioners had sent a telegram against the auction fixed for April 3, 2001. No action was taken. The petitioners had moved a petition u/s 10-A of the Punjab Village Common Lands (Regulation) Act, 1961 for the cancellation of the land in favour of the private respondents. Since the Collector had not proceeded in the matter, they have approached this Court through the present writ petition.

4. A written statement has been filed on behalf of the State of Haryana etc. by Mr. K.C. Ashri, Block Development and Panchayat Officer, Pehowa. It has been averred by way of preliminary objection that the total shamilat land measuring 582 acres 1 kanal 2 marlas was divided into 157 plots. Out of these, 45 plots were reserved for the members of the Scheduled Castes, fifteen plots were reserved for the members of the Backward Classes and 15 for War-widows. Four plots were taken by the members of the Scheduled Castes and the Backward Classes. Since there was no offer for the other reserved plots, they were converted into plots available to the General Category and auctioned. The auction was held in conformity with the directions given by the High Court vide its order dated December 11, 2000. The reserve rate was fixed at Rs. 8,000/- per acre. Wide publicity had been given in the Gram Sabha area. The auction was "done in accordance with the Rules and Regulations as mentioned in the

Punjab Village Common Lands (Regulation) Act, 1961. The auction was supervised by the Additional Deputy Commissioner/Sub Divisional Magistrate, Pehowa on 3.4.2001". The petitioners as well as the proforma respondent Nos. 47 to 111 are not the lessees of the land in dispute. The receipt, a copy of which is at Annexure P-1 with the writ petition, is for the year 2000-2001. The land has been auctioned on April 3, 2001 for the year 2001-2002. It has been admitted that some of the persons of village Mohanpur had filed an application u/s 10-A of the Punjab Village Common Lands (Regulation) Act, 1961 for cancellation of the lease in the Court of Assistant Collector, 1st Grade, Pehowa. Since the Sub Divisional Magistrate, Pehowa, had supervised the auction held on April 3, 2001 the application was forwarded to the Deputy Commissioner. On these premises, the respondents pray that the writ petition be dismissed.

5. A separate written statement has been filed on behalf of the private respondents. It is alleged that the petitioners have not come to the Court with clean hands. It has been pointed out that the land had been initially given on lease for a period of 20 years to different societies. This period had expired in the year 1972. The land was not vacated. Litigation had ensued. It had gone up to the Apex Court. These writ petitions were dismissed and directions were given to the Deputy Commissioner to ensure that the possession was delivered to the persons who were entitled to it. While accepting the prayer of the petitioners in C.W.P. No. 8829 of 1997 to withdraw the writ petition, it was observed by the Bench (G.C. Garg and Iqbal Singh, JJ. that the land in Kurukshetra is very fertile and annual lease money of such land is more than Rs. 8,000/- per acre per year. The authorities were directed to conduct the auction. The respondents allege that despite the directions the Gram Panchayat and the officials had been colluding with the petitioners and others. Thus, Co. Balwant Singh and others had filed C.W.P. No. 7270 of 2000 for direction to the respondents to give the land on lease.

6. At the hearing of this petition, it was projected that the Panchayat had given the land on lease. The statement of the Sub Divisional Magistrate, the Sarpanch of the Gram Panchayat and the Gram Sachiv of village Bodhni were recorded. Thereafter, the petitioners were allowed to amend the writ petition so as to implead the persons in whose favour the Gram Panchayat had allegedly given the land on lease. Thus, persons were impleaded as respondents. Finally, the order dated December 11, 2000 was passed.

7. On merits, it has been submitted that the petitioners have no locus- standi. The Panchayat is the owner of the land. The allegation that the petitioners and proforma respondents were the lessees has been described as factually wrong. The petitioners in C.W.P. No. 7270 of 2000 had brought the "misdeeds of the officials and the Sarpanch of the Gram Panchayat" to the notice of the Court as they were "usurping the public money for their personal gains". Under the orders of this Court, auction was held on April 3, 2001. A sum of Rupees 1 crore 20 lacs has been deposited with the Gram Panchayat of village Bodhni and Mohanpur. It

is suggested that the officials used to usurp substantial amount of money in collusion with the Sarpanch. The allegation that the auction was not in accordance with the rules has been denied. In fact, wide publicity had been given by beat of drum, publication of hand bills and publication in the news-papers having circulation in the locality. The public notices were also displayed on the Boards at the Bus-Stand, Block Development and Panchayat Officer's office etc. Even a video films was prepared. It is alleged that number of persons including the petitioners were present. However, "they never came forward to give the bid and it is only afterthought that the present petition has been filed when the possession was to be delivered to the persons who have given the bid and deposited the lease money for the year 2001-2002".

8. It has been further alleged that at the time of auction bid was given on behalf of some of the persons who were not physically present. Affidavits in this behalf have already been filed with the authorities. With regard to the suit filed by petitioner No. 3, it has been stated that the private respondents are not parties. The interim order passed by the Court has been vacated. The lease period for which the petitioner had filed this suit has admittedly expired. Thus, the order, a copy of which has been produced as Annexure P-5, has no relevance. The allegations in paragraph 8 with regard to some of the irregularities pointed out by the petitioners have been controverted. It has been stated that since the petitioners have filed a petition u/s 10-A of the Act, the writ petition deserves to be dismissed.

9. The position in C.W.P. No. 7065 of 2001 is similar. The basic difference is that it relates to the land in village Bodhni. The area of land is 1035 acres 5 kanals 8 marlas. Otherwise, the basic allegations and pleas are identical.

10. On behalf of the petitioners in both the cases, the arguments were addressed by Mr. D.S. Bali, Senior Advocate. The only contention raised is that there was violation of the regulations inasmuch as certain persons had been given land in excess of the permissible limit of 10 acres. Even relatives of panches and defaulters in payment of lease money had been given land. The policy of reservation of land was overlooked. On these premises, the entire auction has been challenged.

11. The claim made on behalf of the petitioners has been controverted by the learned counsel for the respondents. Ms. Palika Monga contended mat the, auction was held in conformity with the rules. Mr. C.B. Goel, who appeared for the private contesting respondents, contended that the petitioners had never given any bid. The auction had been held in accordance with the orders of the High Court. The petitioners have approached this Court only to deprive the auction bidders who had deposited a substantial amount of Rupees 1 crore 20 lacs from getting possession of the land. The Panchayat and the official respondents were in fact bound to hand over possession to the persons whose bid had been accepted and that they had failed to perform their duty.

12. It deserves notice at the outset that the impugned auction has been conducted in pursuance to the directions of this Court in C.W.P. No. 7270 of 2000. In order to appreciate the factual position, we have examined the record of this petition. This was also necessary as a grievance has been made in C.M.A. No. 16339 of 2001 that the persons whose bid has been accepted are not being given the possession of the land.

13. A perusal of the record shows that this petition had been filed by Col. Balwant Singh and others inter-alia with the allegation that the Gram Panchayats of villages Bodhni and Mohanpur had substantial areas of land. Despite the issue or notice, no auction had, in fact, been conducted. Various persons who were interested in the welfare of the Panchayat had submitted affidavits before the Deputy Commissioner, Kurukshetra, and the other authorities that the land be given on lease by open auction. They had offered to give a minimum bid of Rs. 5,000/- per annum. The authorities were not doing the needful for "extraneous reasons and considerations". The Gram Panchayat, it was alleged, had been giving land on lease secretly "to their own men without conducting auction by showing lease money at the rate of Rs. 700/- to Rs. 1,000/- only" On these premises, the petitioners had prayed that "a writ of Mandamus be issued to the respondents to forthwith conduct the open auction for leasing out the land.

14. This petition was placed for hearing before a Bench of which one of us viz. Jawahar Lal Gupta, J. was a member. The claim made by the petitioners was controverted by the respondents. During the course of hearing, it was requested by the counsel for the petitioners (Mr. C.B. Goel) that the Sarpanch etc. of the village Panchayat were present in Court and that their statements be recorded. The request was accepted.

15. Tara Chand, Gram Sachiv-cum-Secretary of village Bodhini was the first person to be examined. During the course of his statement he had inter-alia stated that the District Administration including the Deputy Commissioner had instructed that the land had to be given to the ex-servicemen. He admitted that there were "about 5 or 7 persons who had given a higher bid. Their bids were not recorded. It was so done because those persons were not ex- servicemen. There was a kind of compromise by which 165 acres of land was given to the villagers. The remaining land viz. 397 acres was exclusively given to the ex-servicemen. The understanding was oral and not in writing. The ex-servicemen who have been given land in auction are the heirs of the persons who had been initially ordered to be evicted".

16. Therefore, the statement of Randhir Singh, Sarpanch, was recorded. He stated that last year the land had been given at the rate of Rs. 1200/- per acre, He further admitted that the receipts were shown to have been issued on June 6, 2000 though these were actually issued as and when the money was received. The claim that the auction had been announced by beat of drum was clearly controverted when the witness admitted that the village Chowkidar did not have any drum. Resultantly, the question of making the announcement by beat of

drum could not have arisen. People had come to know of the auction by the word of mouth.

17. The statement of the Sub Divisional Magistrate was also recorded. He stated that "the land was given in open auction to the highest bidder". He denied that any one was stopped from giving a higher bid. He asserted that the Deputy Commissioner had not given any instructions that the land had to be given to the ex-servicemen. He stated that every thing was done according to the rules.

18. There was an apparent contradiction between the statement of the Sub Divisional Magistrate and that of the village Sarpanch.

19. Since the persons to whom the land was allegedly given on lease were not parties, counsel for the petitioners had made a prayer that the Advocate General should be directed to furnish a list of persons who had been given the land on lease during the pendency of the petition. An undertaking to supply the list was given. Thereafter, the writ petition was amended.

20. It was the admitted position that hitherto the land had been given on lease at the rate of Rs. 1200/- or so per acre. The petitioners had offered Rs. 8,000/- per acre. The difference was substantial. The loss to the exchequer was considerable. In this situation, the Bench had directed that the petitioners shall deposit Rs. 25 lacs by March 2001. The auction shall be conducted. In case there was no higher bidder, the petitioners shall be liable to pay at the rate of Rs. 8,000/- per acre for the entire land. The Deputy Commissioner was directed to supervise the auction. It was also observed that the possession of the land shall be delivered to the highest bidder at the expiry of the lease.

21. It is in pursuance to these directions that the impugned auction has been held. Since the petitioners in C.W.P. No. 7270 of 2000 were under an obligation to pay for the entire land at the rate of Rs. 8,000/- per acre, they have actually made a deposit of Rupees 1 crore 20 lacs. They are, thus, legally and normally justified in claiming the possession of the land.

22. It is also the admitted position that the petitioners have no right in the land. The receipts produced by them separately as Annexure P-1 in the two cases show that an amount of Rs. 6257- only had been paid by Sucha Singh, petitioner No. 2 in C.W.P. No. 6695 of 2001, in the year 2000-2001. Similarly, one of the petitioners in the second petition had paid an amount of Rs. 40,800/- for the land given to him for the year 2000-2001. The period of lease had expired. Thereafter, the land had to be given on lease for the next year. Thus, a fresh auction was held. It is the categorical case of the respondents that the petitioners have not participated in the auction despite being present. No replication has been filed to control this assertion. In paragraph 5 of the written statement filed on behalf of the private respondents, it has been categorically averred as under :-

"Though number of persons including the petitioners were present, but they

never came forward to give the bid and it is only after-thought that the present writ petition has been filed

23. This statement has not been disputed by filing any replication. Thus, the plea of the petitioners that they did not have notice or that due publicity had not been given cannot be sustained.

24. The only plea raised on behalf of the petitioners is that there has been violation of Rules 6, 8 and 9 in the conduct of the auction.

25. We have considered this matter. On a perusal of Rule 6, it is clear that the Panchayat land had to be given on lease by auction after making publicity etc. On behalf of the respondents, it has been categorically stated that due publicity was given. This averment has not been controverted. Still further, the land had been duly reserved for various categories of persons as mentioned in the rules. However, only a few persons belonging to the category of Scheduled Castes and Scheduled Tribes had made the offer. Resultantly, land was given to them. Since others had chosen not to bid at the auction, they can have no grievance.

26. Mr. Bali contended that some of the persons have got land in excess of 10 acres of land. According to the counsel, this was violative of the provisions of Rule-9.

27. In the circumstances of this case, we are unable to accept this contention. Firstly, it is not the case of the petitioners that their bid for an amount of more than Rs. 8,000/- was not accepted. According to the directions given by the Bench in C.W.P. No. 7270 of 2000, the petitioners were bound to pay the money for the entire land. Thus, if some of the persons have got land in excess of the permissible area, it is only because the petitioners in C.W.P. No. 7270 of 2000 were bound to pay for the entire land. Secondly, it has been averred on behalf of the respondents in these petitions that bids had been given by certain persons on behalf of others. Affidavits to show that the bid was on behalf of another person have already been filed with the authorities. In this situation, it cannot be said that there is any violation of the rules or that the auction is vitiated.

28. Mr. Bali contended that some of the relatives of the Panches etc. have also got the land on lease. This is disputed by the respondents. Consequently, in these petitions no firm finding in this behalf can be given. Resultantly, the contention raised on behalf of the petitioners that the entire auction is vitiated cannot be sustained. In this context, a fact which deserves notice is that the petitioners have admittedly filed petitions u/s 10-A of the Act for the cancellation of the lease. These petitions are pending. If in any particular case, it is found by the authority concerned that there is violation of the rules, appropriate direction in respect of that particular lease can be given. However, no ground for annulling the auction is made out.

29. Faced with this situation, learned counsel for the petitioners contended that they are willing to pay more than Rs. 8,000/- per acre. It was stated that the

petitioners have got drafts ready for payment at a rate of Rs. 8,100/- or so. On this basis, it was claimed that the land should be given to them on lease. The claim was contested by the counsel for the respondents. It was alleged that the petitioners had the opportunity to make the offer at the time of auction. The present offer is not bone fide. It is only being made to remain in possession despite the expiry of the lease.

30. On consideration of the matter, we find that the petitioners had the opportunity to make the offer at the time of the auction. The respondents have already deposited a substantial amount of money. It has been stated on behalf of the respondents at the time of hearing that they have taken loans at substantial rates of interest so as to make the deposit in accordance with the directions of this Court. Taking the facts into consideration, we do not think that it would be in the interest of justice to allow the present petitioners to make the deposit at this stage. It appears that the respondents are making the offer primarily to retain possession and to defeat the rights of the concerned respondents.

31. Civil Miscellaneous Nos. 15708-09, 15710-11 of 2001 had been filed by the petitioners to pray for stay of dispossession. In view of our findings, we find no merit in these applications.

No other point has been raised.

32. Civil Miscellaneous No. 16339 of 2001 has been filed by the petitioners in C.W.P. No. 7270 of 2000 with the prayer that the respondent authorities be directed to deliver possession of the land for which they have already made the deposit. Various allegations alleging collusion and inaction on the part of the authorities have been made. A reply to the application has been filed by the Block Development and Panchayat Officer.

33. In view of the facts as noticed above and also the fact that the possession has not been delivered to the petitioners despite the deposit of an amount of Rupees 1 crore 20 lacs by them, we cannot compliment the authorities on their failure to get the possession delivered to the petitioners.

34. In the circumstances of the case, we allow the application and direct that the possession shall be delivered to the petitioners forthwith. The Civil Miscellaneous application is accordingly allowed in the above terms.

35. In view of the above, Civil Writ Petition Nos. 6695 and 7065 of 2001 and the miscellaneous applications filed therein are dismissed. Civil Miscellaneous No. 16339 of 2001 in Civil Writ Petition No. 7270 of 2000 is allowed. In the circumstances, we make no order as to costs.

36. Petition dismissed.