SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Chanchal Singh and ors. Vs. the State of Punjab and ors.

Chanchal Singh and ors. Vs. the State of Punjab and ors.

SooperKanoon Citation : sooperkanoon.com/634340

Court : Punjab and Haryana

Decided On : Nov-14-2002

Reported in : AIR2003P& H184; (2003)134PLR30

Judge : V.K. Bali and; Satish Kumar Mittal, JJ.

Acts : Punjab Panchayat Samities and Zila Parishad (Sales, Lease and other alienation of property and Public Places) Rules, 1964 - Rules 4 and 5; Punjab Panchayat Samities and Zila Parishads Act, 1961 - Sections 115(3); Punjab Panchayati Raj Act, 1994 - Sections 137

Appeal No. : Civil Writ Petition No. 8753 of 2001

Appellant : Chanchal Singh and ors.

Respondent : The State of Punjab and ors.

Advocate for Def. : Ashok Aggarwal, Adv. and; Maya, Adv. for Respondent No. 2

Advocate for Pet/Ap. : J.K. Sibal and; Kumar Sethi, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

V.K. Bali, J.

1. Chanchal Singh and 11 others through present petition filed by them under Article 226 of the Constitution of India seek issuance of writ in the nature of certiorari so as to quash order, Annexure P-11 and other similar orders issued to the petitioners and in consequence of setting aside of the orders aforesaid, to stay eviction of the petitioners from the plots that they had obtained on lease from Panchayat Samiti, Jandiala Guru, District Amritsar-second respondent herein.

2. Brief facts, as projected in the petition and relevant for deciding the controversy in issue, reveal that in February and May, 2000 the second respondent leased plots for ten years for business purposes after publicity for the plots, subject-matter of auction was done. The plots were of the size of two kanals. The petitioners being highest bidders in the auction and having paid non-refundable security and advance lease money for one year, were handed over the possession by the Samiti after executing lease deeds. The petitioners commenced construction of boundary walls, stores, office etc. after filling up the low lying land at huge cost. Some of the petitioners even completed construction upto roof level. On August 3, 2000 the police of Jandiala Guru Police Station, at the behest of political revivals of the petitioners, came and demolished part of boundary wall of plot No. 3 of Smt. Soman Wati and threatened others to vacate the possession or face the dire consequences. It is the case of petitioners that this was done without issuance of any show cause notice for cancellation of the lease. Constrained, CWP No, 10271 of 2000 came to be filed in this Court challenging the forcible dispossession of petitioners at the hands of police on August 7, 2000. Despite knowledge of the orders passed by this Court, restraining the respondents not to dispossess them, respondents once again overtook demolition work of some of the properties of plot holders at odd hours. The Division Bench of this Court took notice of the aforesaid act and ordered restoration of demolished construction. However, ultimately writ petition was decided on October 6, 2000 and counsel for the State conceded that no action of eviction shall be taken without issuance of show cause notice to the petitioners. On December 24, 2000 show cause notices were issued to the petitioners which were received on January 1, 2001. These notices contained the allegation of connivance of petitioners with the Samiti authorities and violation of the Punjab Panchayat. Samities and Zila Parishad (Sale, lease and other alienation of property and public places) Rules, 1964. Constrained, once over

again, the petitioners filed CWP No.208 of 2001 challenging the show cause notices. However, the said writ petition was dismissed as withdrawn enabling the petitioners to file reply to the show cause notices. The impunged order, Annexure P-11 and similar others then came to be passed by the Financial Commissioner and Secretary to Government of Punjab, Rural Development Department. It is this order and other similar orders, which, as mentioned above, have been challenged in the present petition.

3. Before we might proceed any further in the matter, we would like to mention the ultimate directions that came to be issued in the first writ petition bearing No.10271 of 2000 which read as follows:-

'1. The respondent authority shall proceed to consider the matter regarding the auction alleged to have taken place in February and May, 2000 expeditiously. Ifpossible, the matter shall be decided within three months.

2. Any party which is aggrieved by the final decision, shall be entitled to seek its remedy in accordance with law.

3. If the petitioners in CWP No. 10271 of 2000 have any grievance with regard to the violation of any interim order passed by the Court, they would be entitled to seek their remedy before the competent court.

4. The petitioners in CWP No. 10271 of 2000 shall not raise any further construction for a period of six months from today. If they do so, after that, it shall be at their own risk and responsibility. In case, they are evicted from the plots before that date, the question of construction shall not arise.

In view of the statement made by Mr. Berry to which none of the counsel has raised any objection, both the petitions have been rendered infructuous. These are accordingly disposed of. In the circumstances, there will be no orders as to costs.' The directions, reproduced above, would clearly demonstrate that the earlier writ petition and the second one as well, which was dismissed as withdrawn enabling the petitioners to file reply to the show cause notices, are wholly irrelevant for the purpose of deciding the controversy in the present case.

4. The show cause notice contains five grounds, which according to the respondents, were sufficient to entail an order of cancellation of the lease. The same read thus:-

'I. Publicity for leasing out property on 29.2.2000 was made only by affixing printed pamphlets on some places (stoppages) of the villages whereas under rule 5 of the rules ibid, auction notice was to be published at least in one regional language newspaper and the same was to be displayed at some conspicuous place in the Samiti area, which evidently has not been done in this case.

2. Sarv Shri Avtar Singh r/o Village Walia Mojhpur, Satnam Singh and Balwinder Singh (complainant) offered that lease has been obtained at a very lower rate;

3. You have been leased out the said plot for ten years in contravention of Rule 3 of the Rules ibid whereby property can be leased out only upto a maximum period of five years.

4. The auction of plot has not been done with the prior approval of the Government as laid down in rule 3 (amended) and standing order dated 16.3.1992.

5. The auction of plot has not been done by the auction committee constituted by the Government under the rules'.

5. While dealing with the grounds for cancellation of lease deed, as mentioned in Annexure P-9 and by taking into consideration the reply to the show cause notice, order Annexure P-11, impugned in the present petition, came into being on the following grounds:-

'1. No notice under Rule 5 for auction of the land has been issued in locallanguage in a newspaper. In this manner, notice has not been pasted by the PanchayatSamiti on conspicuous places in its jurisdiction.

2. In accordance with above said rules, property can be auctioned maximum for aperiod of five years, although this plot has been auctioned for a period of 10 years.

The auction has been conducted in violation of amended Rule 3 and Standing Orderdated 16.3.1992 issued, by the Government and without prior approval of Government.

3. For conducting the auction, no resolution has been passed in the proceedings book by the management. In connivance with the members of the Auction Committee, Executive Officer and Jasjit Singh, Tax Collector etc. illegalities have been committed which is quite evident from the application submitted by Shri Avtar Singh son of Major Singh of village Walia Maujpur, Satnam Singh and Balwinder Singh, for cancellation of lease in which on 28.7.2000 they had offered to give double the amount of auction amount to the Executive Officer. As per report of the Divisional Deputy Director (PR) Jalandhar, dated 3.8.2000 total lease money amounting to Rs.92,000/- and security amounting to Rs.76,500/- in respect of 19 plots has not been deposited, which also includes the lease money and security in respect of your plot'.

6. On the facts, as detailed above, Mr. J.K. Sibal, learned counsel for the petitioners has raised three points. It is first contended by him that the Rules of 1964 relied upon by the concerned authorities in passing the impugned order, Annexure P-11, were promulgated exercising the powers under Section 115(3) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961. The Act of 1961 had been repealed by the Punjab Panchayati Raj Act, 1994 which grants power under Section 137 to acquire, hold and dispose of the property. The provisions contained in Section 137 clearly provide that it is only for the acquisition or disposal of immovable property that the Panchayat Samiti shall need to obtain the previous approval of the State Government. Insofar as lease is concerned, same cannot be termed as 'disposal', contends the learned counsel. For his aforesaid contention, learned counsel relies upon a Supreme Court judgment in Deputy Commissioner of Sales Tax v. M/s Thomas Stephen and Co. Ltd., A.I.R. 1988 S.C., 997. Disposal in law would mean-sale of property with a view to pass title, further contends the learned counsel.

7. The brief facts of case in Deputy Commissioner of Sales Tax (supra) would reveal that the assessee in the said case was a manufacturer and dealer in tiles,

terrcotta wares and ceramics. It was assessed to tax under section 5-A of the Kerala General Sales Tax Act, 1963, amongst others, on the purchase turnover of the cashew shells and consumed stores, lime shells etc. purchased by the assessee Company. These items were used as fuel in the kiln in the factory of the assessee for the manufacture of tiles and other items. It was sought to be assessed to tax. The assessee contended that cashew shells were used by them as fuel for manufacturing products, referred to above and, therefore, by virtue of relevant notification the purchase turnover to cashew shells were exempt from tax. In the alternative, it was contended by the assessee that the purchases in question were not liable for levy of tax since none of the conditions prescribed in clauses (a), (b) or (c) of Section 5-A of the Act was satisfied. The assessee had also purchased during the relevant years in question lime shell and certain stores described as consumed which had been used in the maintenance of the kiln and the factory. These purchases were also claimed as non-taxable in view of the conditions prescribed in clauses aforesaid of Section 5-A of the act. Being not satisfied, the Assessing Authority and first appellate Authority over-ruled the contentions of the assessee the brought these purchases to tax under Section 5A(1) of the act. Section 5-A dealing with the levy of purchase tax reads thus:-

'5-A. Levy of purchase tax - (1) Every dealer, who, in the course of his business-, purchases from a registered dealer or from any other person any goods the sale or purchase of which is liable to tax under this Act in circumstances in which no tax is payable under Section 5, and either -

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) disposes of such goods in any manner other than by way of sale in the State; or

(c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall, whatever be the quantum of the turnover relating to such purchase for a year,pay tax on the taxable turnover relating to such purchase for the year at the

rates mentioned in S.5'.

8. It is on the construction of Section 5-A of the Act, after the Tribunal and High Court, that the matter came before the Hon'ble Supreme Court. One of the contentions that was raised before the High Court was that the goods had been disposed of otherwise than by way of sale within the State and hence liable to tax by virtue of Section 5A(1)(b) of the Act. While dealing with this matter, Hon'ble Supreme Court observed that 'the question, therefore, is whether there is any disposal of these goods in any manner otherwise than by way of sale within the State. Disposal means transfer of title in the goods to any other person. The expression 'dispose' means to transfer or alienate'.

9. In our considered view, judgment of the Supreme Court relied upon by learned counsel has no parity at all with the fact of the case in hand. Disposal of goods in connection with tax pertaining to Section 5-A of the Kerala General Sales Tax Act, 1963 is entirely different than the disposal of property which is adequately dealt with by the provisions contained in the Transfer of Property Act. The contention of learned counsel that lease for ten years would not include in its sweep 'disposal' thus, needs to be repelled. At this stage, it is relevant to make a mention of the written statement filed on behalf of the respondents. It has, inter-alia, been pleaded in the written statement filed on behalf of the second respondent that according to the provisions of Rule 4 of the Punjab Panchayat Samiti and Zila Parishads (Sale, lease and other alienation of property and Public Places) Rules, 1964, before leasing out the premises, prior approval of the Government was mandatory and the period of lease could not extend beyond a period of five years whereas lease in the present case was given without the approval of Government and that too for a period of ten years. Rule 4(1) of the 1964 Rules reads thus:-

'Panchayat Samiti or Zila Parishad shall not ordinarily sell any property or public place belonging to or vested in it, it it can be leased out or profitable maintained:

Provided that the previous sanction shall be obtained of:-

(i) The Deputy Commissioner, if the value of property or public place does not exceed ten thousand rupees;

(ii) The Commissioner, if the value of the property or public place does not exceed ten thousand rupees, but does not exceed fifty thousand rupees; and

The Government, if the value of the property or public place exceeds fifty thousand rupees'.

It is further provided in Rule 5 that when any property or public place is to be sold or giyen on lease, the Panchayat Samiti or the Zila Parishad shall publicise an auction notice in at least one regional language newspaper and by displaying the auction of notice at conspicuous place in the Samiti area and the headquarter town of the Zila Parishad and outside the offices of the Panchayat Samiti and Zila Parishad and in such other manner as may be considered useful by the Chairman, Panchayat Samiti or Zila Parishad. In addition to these rules, it has further been pleaded that the Government has issued instructions dated February 19, 1982, Annexure R-1 which clearly indicates that the lease in question shall be sent to the Government for approval which has not been done in the present case, as necessitated under the said Government instructions on the subject. It is then pleaded that a complaint was received by the District Development and Panchayat Officer, Amritsar regarding the alleged auction of the disputed property and the matter was enquired into and it was found that due procedure was not adopted as required under the rules and land was auctioned without any wide publicity. The approval of the Deputy Commissioner was not obtained before auction of the Samiti property though it was statutory obligation. On an enquiry into the matter, the District Development and Panchayat Officer, Amritsar, recommended to the Government on February 27, 2000 for cancellation of the said lease. At the first instance, as mentioned above, the contention of Mr. Sibal that disposal does not include lease for a period often years, even if one is to go by Section 137 of the Punjab Panchayati Raj Act, 1994, has no merit, in the second instance, in any case, the instructions do adequately deal with the lease of Samiti land which in turn do entail publication as also sanction of the competent authority. Even if, therefore, it is assumed for the sake of arguments (though it does not appear to be correct to us) that Rules 4 and 5 of the 1964 Rules shall not apply, the same shall not make any difference.

10. The second contention of Mr. Sibal, learned counsel for the petitioners is that whereas different grounds have been stated in notice, Annexure P-9, impugned order, Annexure P-11 has been passed on different grounds. This again does not appear to be correct. Notice, Annexure P-9, mentions grounds pertaining to non-publicity, lease having been obtained at a very low rate, lease for ten years in contravention of the rules and there being no prior approval of the competent authority, whereas order, Annexure P-11 has been passed by holding no notice for auction, period of lease being in excess of one provided under the rules or instructions and there being no resolution passed in the proceedings book by the management and connivance of the members of the auction committee. The last ground mentioned in order, Annexure P-11 might not have been specifically mentioned in the show cause notice, Annexure P-9, but if two grounds, as mentioned in the order, Annexure P-11, are held to be substantiated, it shall not make any difference in the case and in any case these grounds were sufficient to entail an order of cancellation.

11. Last contention of the learned counsel is that the officers/officials, who were charge-sheeted for having connived with the petitioners in leasing out the land, were ultimately exonerated in the enquiry that was held against them and, therefore, the ground of connivance of the officials cannot be taken into consideration for cancellation of the lease in favour of the petitioners. We do not find any merit in this contention of learned counsel as well. The departmental proceedings may need far stronger proof to hold a person guilty. We do not know as to on what grounds the officials of the Samiti were exonerated. Along with the replication filed on behalf of the petitioners only the order exonerating the said officials has been placed on record. The enquiry report has not been brought on record or shown to us during the course of arguments. It may be a case where no evidence was led or a doubt might have arisen with regard to their complicity in conniving with the petitioners in leasing out the land. In any case, as mentioned above, the grounds mentioned in the impugned order, Annexure P-11, were sufficient to entail an order of cancellation of the lease.

12. Before we may part with this order, we would like to mention that if there is aproper procedure prescribed for disposal of the property, same has to be strictly

adheredto. The public property cannot be given to anyone as a bounty. If the procedure may,therefore, require proper publication and sanction of the competent authority, same hasto be done.

Finding no merit in this petition, we dismiss the same in limine, however, the parties to bear their own costs.

Sd/- Satish Kumar Mittal, J.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com