

(1991) 04 P&H CK 0134
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4139 of 1987

Arjan Singh and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 16-04-1991

Acts Referred:

Transfer of Property Act, 1882 — Section 41

Citation : (1993) 103 PLR 141

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : P.N. Makani, for the Appellant; P.C. Mehta Sr. Advocate, Som Nath Saini and Laxmi Grover, for the Respondent

Final Decision : Allowed

Judgement

G.R. Majithia, J.—The petitioners have impugned the orders of Deputy Secretary Revenue-cum- Settlement Commissioner, Haryana dated January 24, 1977, Chief Settlement Commissioner, Haryana dated August 28, 1981 and of Naib Tehsildar Sales, Sirsa dated December 27, 1982 forfeiting the sale price deposited by some of the petitioners in favour of the Government and ordering that the land be sold by auction in this writ petition under Articles 226-227 of the Constitution of India.

2. Facts First :-

Land measuring 4.13 Standard Acres was allotted to Ram Lal son of Wadhawa Singh of village Mohamadpur Salarpur in District Sirsa, The allotment was cancelled on February 9, 1959. Ram Lal allottee had transferred by sale the total allotted area to the petitioners and others before the cancellation of allotment. The petitioners who were bona fide purchasers were summoned by Tehsildar Sales, Hisar and offered the cancelled area at reserve price vide order dated February 2, 1969. The petitioners accepted the offer. The department executed registered sale deeds in their favour on May 27, 1970 and on the basis of the

same mutations No. 412 dated July 3, 1977, 327 dated June 11, 1973, 326 dated June 11, 1973 and 328 dated June 11, 1973 were duly sanctioned in their favour. Reference was made by the department to the Deputy Secretary Rehabilitation-cum-Settlement Commissioner that the transfer in favour of the petitioners was contrary to the government instructions. The Settlement Commissioner issued notice to Saudagar Singh one of the vendees only who appeared before him. The Settlement Commissioner noted that cancellation of the sale deeds in favour of the transferees after 20 years would result in great hardship to them. He declined to cancel the same. However, he directed that the vendees be asked to pay the market price of the areas sold to them and in case of default, the land be sold by public auction. The petitioners challenged the order of the Settlement Commissioner dated January 24, 1977 in revision before Chief Settlement Commissioner, Haryana. The Chief Settlement Commissioner held that the revision was incompetent. The submission of the petitioner that the ex-parte order of the Settlement Commissioner dated January 24, 1977 in so far as it concerns the petitioners be set aside was rejected with the observation that no reasonable explanation has been forthcoming for setting aside the ex-parte order. It was not disputed that the Settlement Commissioner had decided the reference without notice to the petitioners. The Naib Tehsildar Sales vide his order dated December 27, 1982 assessed the market price of the land already sold to the petitioners vide sale deeds dated May 27, 1970. Since the petitioners did not agree to deposit the market price, the price already paid by them was forfeited and the land was ordered to be sold by public auction. The land was sold by public auction by Naib Tehsildar (Sales)-cum-Managing Officer, Sirsa to respondent No. 5 and the vendee purports to have been put in possession. An entry to this effect was made in Roznamcha Waqiyati No. 369 dated June 5, 1987. The official respondents and the auction purchaser did not choose to file written statement controverting the factual pleas taken in the write petition. Their defence is struck off under Order 8 Rule 10 Civil Procedure Code.

3. At the time of hearing of the petition Mr. P.C. Mehta, Sr. Advocate, appeared for the auction purchaser and wanted to make submissions. I permitted him to do so. The learned counsel submitted that the allottee in the State of Haryana cannot insist that the excess land be transferred to him and in support of his submission, he relied upon The Secretary to Government Haryana, Rehabilitation Department, Chandigarh and Ors. v. Hari Singh and Anr. 1990 P. L. J. 64 . Jagmohan Singh Vs. Union of India and Others, . Chief Settlement Commissioner Punjab and Anr. v. Sampuran Singh 1986 R. L. R 69. These rulings have no bearing to the facts of the instant case. The allottee has not moved this Court for a direction to the State to allot him the excess area which is sought to be retrieved from him. Thus apart from the fact that the defence of the respondents has been struck off, no sustainable legal ground on behalf of the auction purchaser to sustain the action of the department in transferring the land in his favour by public auction has been pressed into service.

4. The action of the official respondent to say the least is wholly illegal.

Admittedly, land measuring 4.30 acres was allotted to Shri Ram Lal. The allotment was cancelled on February 9, 1959. Prior to the cancellation, the allottee had transferred the land for valuable consideration to the petitioners. The department called upon the petitioners to repurchase the land from it on the reserved price. The petitioners accepted the offer. The department executed sale deeds dated May 27, 1970 in favour of the petitioners Mutations No. 412 dated July 3, 1977, 327 dated June 11, 1973, 326 dated June 11, 1973 and 328 dated June 11, 1973 were duly sanctioned in their favour on the basis of the sale deeds. After a lapse of many years, reference was made to the Settlement Commissioner for cancellation of the registered sale deeds duly executed in favour of the vendee/petitioners on May 27, 1970. The Settlement Commissioner did not cancel the sale deeds since the action would have resulted in immense hardships to the vendees. He, however, directed that the land be re-transferred to the vendees on the market price. Moreover he passed the order without hearing the vendee-petitioners. He issued notice to one of the vendees Saudagar Singh, who appeared before him No notice was issued to the petitioners. Any order prejudicial to the interest of the party passed without hearing him is void. Pursuant to the order of Settlement Commissioner, the Naib Tehsildar assessed the market price and asked the petitioners to deposit the same and get the sale deeds executed in their favour. Since they refused to pay the market price of the land as assessed by the Naib Tehsildar, the sale price paid by them vide sale deeds dated May 27, 1970 was forfeited to the Government and the property was ordered to be sold by public auction.

6. The reference by the Department to the Settlement Commissioner was wholly illegal and uncalled for. The petitioners had initially purchased the property from the allottee for consideration. There is nothing on the record to suggest that they were not entitled to the protection of Section 41 of the Transfer of Property Act. They accepted the department's offer to purchase the land on the reserved price and the sale deeds were duly registered in their favour. They acquired a valid title in the land. The settled rights could not be unsettled by the department by making a reference to the Settlement Commissioner to cancel the sale deeds under departmental instructions. The petitioners paid sale price twice over. First, they paid it to the allottee and thereafter to the department. No omission or negligence or lack of bona fide has been attributed to them. A document of title validly executed in favour of the petitioners could only be cancelled in accordance with law and not otherwise. A valid title acquired by the petitioners under the Sale Deeds could not be set aside by resorting to departmental instructions. After the execution of the Sale Deeds a binding contract has come into existence between the State and the petitioners Any of the parties aggrieved against the binding contract can avoid it in accordance with law not by taking resort to the departmental instructions alleged to have been issued by the State Government. The order of the Settlement Commissioner holding that the land be sold to the petitioners at the market price thus cannot be sustained. The order of the Chief Settlement Commissioner under which the revision filed by the petitioners was

rejected is not only unjust but also is patently illegal. The transfer by public auction in favour of respondent No. 5 being wholly without jurisdiction cannot be sustained.

7. For the reasons aforesaid, the Writ Petition succeeds, the order of Deputy Secretary Revenue-cum-Settlement Commissioner, Haryana, dated January 24, 1977 is quashed. Resultantly, all the subsequent orders dated August 28, 1981 of Chief Settlement Commissioner, Haryana and December 27, 1982 of Naib Tehsildar Sales, Sirsa are quashed. The Transfer/allotment in favour of respondent No. 5 is also quashed. If respondent No. 5 has been delivered possession of the land transferred-allotted, respondent No. 4 will put the petitioners in possession of the same within one month from the date of receipt of copy of this judgment. No order as to costs.