
(2011) 10 P&H CK 0132
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 5683 of 1986

Babu Ram and Others

APPELLANT

Vs

The Joint Settlement (Rehabilitation)-Cum-Settlement
Commissioner, Haryana Chandigarh and Others

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Citation : (2012) 2 ILR (P&H) 124

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : C.L. Ghai with Dinesh Ghai, for the Appellant; O.P. Sharma, Addl. AG, Haryana, for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—The writ petition challenges the order allowing the revision filed by the 4th respondent. The 4th respondent was a successful bidder in an auction that had taken place on 09.07.1985, after resuming the property, which had been originally sold in an earlier auction held on 26.09.1979 where the petitioner had bid for the property at Rs. 62,000/-. The sales had taken place under the Displaced Persons (Compensation & Rehabilitation) Act, 1954 and the relevant rules. As per the original condition in the auction, the petitioner had paid Rs. 7,750/- being 12 1/2 % of the highest bid and the balance amount of Rs. 54,250/- was to be paid in 15 half yearly installments. It appears that the petitioner had paid the first 5 installments and failed to deposit the balance due installments within time. The Tehsildar (Sales) forfeited the amounts paid and ordered the resumption of the property after notice on 07.02.1985. After resumption of the property, when it had been put up on auction afresh and on the first day, nobody was present in the restricted auction held for Harijans. The 4th respondent bid at "70,000/- was accepted and "9,000/- was deposited on the same day as earnest money. After the auction was concluded in favour of the 4th respondent, an objection petition had been filed by the petitioner in terms of

the Rule 92 of the Displaced Persons (Compensation & Rehabilitation) Act. According to him, the re-auction ought not to have been held and he had not been served any notice. The Assistant Settlement Officer before whom the objection has been given, found that the petitioner's plea could be accepted if, he deposited the highest bid of 70,000/- and the installments were to be worked out afresh. It is this order passed by the Assistant Settlement Officer (Sales) on 18.10.1985 that was subject of challenge in a revision by the subsequent auction purchaser arrayed as 4th respondent. In the order passed by the revisional authority, it is recorded that the notices had been sent to the petitioner but since he had refused to accept the same, he was set an ex parte by an order dated 30.05.1986 and proceeded to pass the final order on 27.06.1986. It is this order, which is in challenge in the writ petition.

2. In the impugned order, the revisional authority has held that the Assistant Settlement Officer, who had conducted the sale, could have either accepted the objection and set aside the subsequent auction or rejected the petition, confirming the subsequent auction. There was no procedure or rule allowing for the Settlement Officer to merely accept the highest bid of the successful bidder and annul his own earlier order of resumption made. The learned counsel appearing for the petitioner contends that pursuant to the order passed by the Settlement Officer, he had also paid all the further installments. He has been in possession of the property for over 20 years and, therefore, the subsequent auction, which was set aside and allowing the petitioner the benefit of the earlier auction ought not to be interfered at this length of time. The learned counsel also states that there are Government instructions that the subsequent auction shall forthwith be stopped if, the successful bidder in whose favour the sale was concluded earlier, paid up all the installments of which he had defaulted, on the date of fresh auction.

3. I cannot accept any of these contentions as tenable. If the petitioner has come by benefit of continuing in possession for this long period of 25 years from the time when the writ petition was filed, there is no virtue about it, except that the Court could not be listed for hearing. I urged the counsel to address arguments on how the order passed by the revisional authority could be faulted, especially when the ground taken for setting aside the order of the Settlement Officer was, there was no rule which allowed for annulling the auction sale conducted subsequently by the only fact that the defaulter was prepared to pay the same price on a subsequent date. There ought to be finality and definiteness about State actions. The order passed by the Settlement Officer was clearly arbitrary and he allowed his own whims to prevail. At best, the Settlement Officer could have only directed a fresh auction to take place and allow for the petitioner to bid at the auction again if, he had materials to hold that the subsequent auction had been vitiated by any material irregularity. If he was allowing the subsequent auction to be set aside by an offer of "70,000/-, which was the highest bid, he could not have accepted without putting it again to the 4th respondent, who could have either increased the bid or secure a competitive bidding between

persons, who were interested in the purchase of the property. No privilege would attach to an auction purchaser, who had failed to pay the installments and who had suffered an order of resumption. The order passed cancelling his own subsequent auction and allowing the defaulter opportunity to make the payment after accepting the deposit from the subsequent bidder, does not meet with any justice oriented approach of the Officer.

4. In this writ petition, the 4th respondent, who was the successful bidder, has not been served notice at all. The State itself is not too anxious to protect the decision of the authority, whose order is impugned in this writ petition, though the order of the Joint Settlement Commissioner passed in revision was perfectly justified. The Commissioner has not allowed the subsequent auction to be concluded in favour of the 4th respondent. On the other hand, he had only directed the property to be re-auctioned after due wide publicity. Since the petitioner claims, he has been in possession of the property for all these years and that he also belongs to Scheduled Caste community, if a fresh auction to be held, the petitioner will have the final right to match the highest bid and if he does so, the sale shall be concluded in his favour. Fresh auction shall be conducted after securing vacant possession of the property from the petitioner in accordance with law. The writ petition is dismissed.