
(2010) 03 P&H CK 0186
In the Punjab And Haryana At Chandigarh

Baljit Singh and Others

APPELLANT

Vs

Financial Commissioner, Revenue and Others

RESPONDENT

Date of Decision : 02-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 65

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 33

Citation : (2010) 03 P&H CK 0186

Hon'ble Judges : Alok Singh, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Alok Singh, J.—This is an appeal assailing order dated 21.5.2003 passed by learned Single Judge thereby dismissing CWP No. 8108 of 2001.

2. Brief facts of the present case are that disputed land measuring 7 marlas, Plot No. 34 Min. (southern portion) in village Bhunga was package deal property owned by the State government and was liable to be disposed of according to the provisions of Package Deal Properties (Disposal) Act, 1976 (hereinafter referred to as the Act). On 23.1.1968, the aforesaid land was put to auction. Gajinder Singh (father of respondent No. 2) being the highest bidder, was declared auction purchaser on 12.3.1968 and auction sale was confirmed by the Assistant Settlement Commissioner. Kehar Singh farther of the petitioner preferred objections against the confirmation of the sale. His objections were dismissed and sale was confirmed vide order dated 12.3.1968. Against that order, no appeal was filed.

3. Undisputedly, thereafter, on 18.4.1968, Government of Punjab took a policy decision to transfer package deal property on reserved price in favour of a person who has house adjacent to the package deal property. Accordingly, Kehar Singh once again made an application on 25.4.1968, seeking transfer of the land in dispute, which had already been sold to Gajinder Singh in public auction. His application was rejected on the ground that property was not available for

transfer as the same had already been sold in public auction. Kehar Singh thereafter, filed an appeal before the Chief Settlement Commissioner, which was dismissed vide order dated 22.4.1969. Thereafter, Kehar Singh preferred petition u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the 1954 Act), which was also dismissed on 6.11.1973. Kehar Singh thereafter, approached this Court by filing CWP No. 574 of 1974, which was disposed of by this Court vide order dated 5.1.1982, remanding the matter to the Sales Commissioner, Hoshiarpur, observing that the Assistant Settlement Commissioner had no jurisdiction to confirm auction sale and it could only be confirmed by the Sales Commissioner.

4. After the remand of the matter by this Court, the Sales Commissioner, Hoshiarpur vide his order dated 29.4.1983 set aside the auction sale and directed to allot the land in question to Kehar Singh on the basis of policy decision of the Government of Punjab dated 18.4.1968.

5. Feeling aggrieved by the setting aside of the auction sale and allotment in favour of Kehar Singh, Gajinder Singh - auction purchaser filed an appeal before the Chief Sales Commissioner, which was dismissed on 12.12.1983. Auction purchaser thereafter, preferred revision before the Commissioner, Jalandhar Division, Jalandhar, which was allowed on 25.5.1988 and the matter was once again remanded to the Sales Commissioner directing him to decide the matter in accordance with the order passed by this Court. After the remand, Sales Commissioner vide order dated 16.8.1988 confirmed the auction sale in favour of Gajinder Singh and rejected the claim of Kehar Singh for allotment of the land.

6. Again Kehar Singh filed an appeal before the Chief Sales Commissioner, challenging the confirmation of the auction sale and rejection of his application for allotment of the land. That appeal was dismissed vide order dated 23.2.1989. Thereafter, Kehar Singh preferred revision before the Commissioner, Jalandhar Division, Jalandhar, which was allowed vide order dated 1.10.1997. Against the order of the Commissioner, Jalandhar Division, Jalandhar, setting aside confirmation of the auction sale, auction purchaser Gajinder Singh filed a petition u/s 15(i) of the Act before the Financial Commissioner, Punjab. Learned Financial Commissioner, Punjab vide his order dated 31.10.2000 set aside the order passed by the Commissioner, Jalandhar Division, Jalandhar and confirmed the order passed in favour of Gajinder Singh and rejected the sale in favour of Kehar Singh for allotment of the land. This order of learned Financial Commissioner dated 31.10.2000 was challenged by filing CWP No. 8108 of 2001, which was dismissed by learned Single Judge, which is impugned in the present appeal.

7. We have heard learned Counsel for the parties and perused the record.

8. Undisputedly, Jasbir Singh has filed writ petition as well as present appeal as attorney of the sons of Kehar Singh. Undisputedly, Kehar Singh has expired and his sons are not in possession and Jasbir Singh is claiming possession over the house adjacent to the property in dispute saying that he has purchased through

power of attorney from the sons of Kehar Singh.

9. Learned Counsel for the appellants argued that when government policy came on 18.4.1968 to allot the land on the reserved price to the persons having houses adjacent to the package deal property, by that time, there was no valid confirmation of the auction sale in favour of Gajinder Singh. Hence, there was no legal war in allotting the land in favour of Kehar Singh, who, admittedly, was having house adjacent to the land in question. He further argued that once confirmation of the auction sale was set aside, then it should not have been confirmed rather allotment should have been made in favour of Kehar Singh as per the existing policy of the Government of Punjab.

10. In our humble opinion, since Jasbir Singh is not a legal heir of Kehar Singh and claims to be purchaser of the property from Kehar Singh, hence he cannot take advantage of the policy of the government for transfer of the land on reserved price in favour of the persons having houses adjacent to the land in question. The moment legal heirs of Kehar Singh moved from the house in question leaving Jasbir Singh therein, they too have no locus to prosecute the application seeking the allotment of the land on reserved price.

11. We have perused the record and it is clear from the perusal of the record that confirmation of the auction sale made by the Assistant Settlement Commissioner was set aside by this Court vide order dated 5.1.1982 on the ground that auction sale should have been confirmed only by the Sales Commissioner and the Assistant Settlement Commissioner had no jurisdiction to confirm it. In fact, auction was never set aside. The matter was sent back to the Sales Commissioner for passing appropriate order on the auction sale. There was no illegality in the auction sale. Even during the course of arguments, on being asked, learned Counsel for the appellants could not point out any illegality in the auction sale dated 23.1.1968 in which, admittedly, Gajinder Singh was found to be the highest bidder and his highest bid was accepted. That being so, confirmation of the auction sale remains a formality and it is settled position of law that property shall be deemed to have been vested in the auction purchaser from the time when the property is sold and not from the time when the sale becomes absolute or confirmed by the competent officer thereafter. We can take help from the principle of Section 65 of CPC, which reads as under:

65. Purchaser's title:- Where immovable p is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

12. Undisputedly, auction was made on 25.4.1968, in which Gajinder Singh was found to be the highest bidder. However, ultimately the sale was confirmed in second round of litigation on 31.10.2000 by learned Financial Commissioner in a petition u/s 15(i) of the Act. The confirmation of the auction sale vide order dated 31.10.2000 shall relate back to the date of auction dated 25.4.1968.

Hence, from 25.4.1968 i.e. the date of auction, the auction purchaser Gajinder Singh shall be deemed having title over the property in dispute. In view of this, after 25.4.1968 i.e. the date of auction of the property, the property was no more available to be allotted taking shelter of the policy of the Punjab government either in favour of Kehar Singh or his representatives on the basis that Kehar Singh is having house adjacent to the package deal property.

13. In view of the above, we find no infirmity in the view taken by learned Single Judge. The appeal is devoid of merit and hence is dismissed.