
(1982) 01 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1023 of 1973

Chhotu Sood

APPELLANT

Vs

Tax Recovery Officer and Others

RESPONDENT

Date of Decision : 20-01-1982

Acts Referred:

Income Tax Act, 1961 — Section 222

Income Tax Rules, 1962 — Rule 15(2), 59(2), 60, 61

Citation : (1982) 31 CTR 239 : (1983) 141 ITR 54

Hon'ble Judges : Ajit Singh Bains, J

Bench : Single Bench

Advocate : J.K. Sibal, for the Appellant; D.N. Awasthy, for the Respondent

Judgement

Ajit Singh Bains, J.—M/s. Bhagwan Dass and Sons was a company carrying on its business at Hoshiarpur. It was mainly the resin business which was being done by the company. It became a defaulter to the tune of Rs. 36,32,825" to the I.T. Dept. For realizing the arrears, the factories of the aforesaid company were attached u/s 222 of the I.T. Act, 1961 (hereinafter referred to as "the Act"). Since the money, which was in arrears, was not realized by the I.T. Dept. the property was put to auction to satisfy the arrears.

2. Proclamation for sale of the property was issued on 22nd of July, 1970, and the date of auction was fixed on 8th of September, 1970. After that, the date of the auction was postponed three times and ultimately on 23rd of November, 1970, the auction took place. The highest bidder on that day was the petitioner, Shri Chhotu Sood, son of Shri Amrit Lal Sood, grandson of Shri Bhagwan Dass (defaulter) and auction was confirmed in his favour for Rs. 1,41,000. Some other persons including Gurdev Lal had also participated in the auction proceedings. Gurdev Lal's bid was Rs. 1,40,000.

3. Certain complaints were made to the authorities that the auction was not properly held and that after the bid of Gurdev Lal, the TRO, Shri Sukhdev Singh, wrote the name of Chhotu Sood as the last bidder without telling it to anybody

that Chhotu Sood was the grandson of the defaulter, Shri Bhagwan Dass. The Commissioner, Jullundur Division, held enquiries in the matter and entrusted it to the Deputy Commissioner, Hoshiarpur. The Public Grievances Officer reported that the TRO, Shri Sukhdev Singh, had conducted the auction in an irregular manner. In the meantime, Gurdev Lal also filed objections and ultimately the sale in favour of Chhotu Sood was cancelled by the Commissioner. Dissatisfied with the order of the Commissioner, Shri Chhotu Sood unsuccessfully went before the Financial Commissioner and the revision was dismissed. It is against the cancellation of the sale in his favour that the present writ petition has been filed by Shri Chhotu Sood, son of Shri Amrit Lal Sood and grandson of Shri Bhagwan Dass (defaulter).

4. Reply has been filed on behalf of the TRO, I.T. Dept. Chandigarh.

5. It was canvassed on behalf of the petitioner that the Commissioner has not passed a judicial order and there has been no material irregularity or substantial injustice in the conduct of sale and that the sale could not be cancelled at the instance of Gurdev Lal in view of the clear provisions of IT. 60 and 61 of the Second Schedule to the Act, and that the order of the Financial Commissioner is not a speaking order.

6. I have perused the order of the Financial Commissioner. It is a detailed order affirming the order of the Commissioner. Thus, I find no merit in the contention that the Financial Commissioner's order is not a speaking order. Moreover, he affirmed the order of the Commissioner. Sitting on the revisional side, he was to give detailed reasons only if he was to disagree with the Commissioner.

7. So far as the locus standi of Gurdev Lal, the objector, is concerned, the petitioner has relied upon *Cherla Poulose Koovapally Kattavil Vs. K.P. Sathiavan Nair and Another*, wherein it is observed that even the auction purchaser has no locus standi. That auction took place under the CPC and not under the I.T. proceedings. The Commissioner, in my view, even could go into the matter suo motu as certain patent illegalities were brought to his notice and specially when the bid was in favour of the grandson of the defaulter. Thus, I do not find any ground that the Commissioner had no jurisdiction to go into the matter at the instance of Gurdev Lal. It is not only Gurdev Lal who had filed complaint and objections, some other persons also complained to the higher authorities. The Commissioner is holding a public office and it is his duty that if certain irregularities or fraud is brought to his notice, he should go into the matter to remove those grievances in order to do justice. In fact the complaint was made against the TRO and Commissioner was his disciplinary authority also. It is during that enquiry that the illegalities were noticed.

8. So far as the objection that the order of the Commissioner is not a judicial order, it is to be noted that the Commissioner had noticed all the facts which were brought to his notice. The objection of the petitioner's counsel that no opportunity was given to him by the Public Grievances Officer when he held the

enquiry is without any merit. He was not required to be given any opportunity at the enquiry stage. It was the Commissioner who cancelled the sale and before cancelling the sale, the petitioner was served and was given full opportunity to state his case and only after hearing him, the cancellation order was passed. Two illegalities have been committed by the TRO in conducting the sale. Firstly, under Rule 59(2) of Schedule II to the Act, a person who makes a bid on behalf of another person is to furnish authority on his behalf. Rule 59(2) is in the following terms :

"59. (2) All persons bidding at the sale shall be required to declare if they are bidding on their own behalf or on behalf of their principals. In the latter case, they shall be required to deposit their authority, and in default their bids shall be rejected."

10. From a reading of this rule, it is plain that if a person takes part on behalf of another, he has to furnish the authority on whose behalf he took part in that auction proceedings. Admittedly, Shri Chhotu Sood did not participate in the proceedings. It was only one Mohit Kumar Sood, claiming to be a relation of Chhotu Sood, who participated in the auction proceedings and gave bid on his behalf but there is no document on the record which could authorise Mohit Kumar Sood to participate on behalf of Chhotu Sood. From the affidavit filed by Shri D.D. Sharma, Inspector, Income Tax, Hoshiarpur, which is annexed with the reply as annex. P-1/B this fact is substantiated that no authority was filed by Mohit Kumar Sood to participate in the bid on behalf of Chhotu Sood. In bid No. 13, it is recorded as follows :

"Chhotu Sood, s/o Amrit Lal Sood, Hoshiarpur, No. 3, Moria Street, Calcutta, through Shri Mohit Kumar Sood, representative."

11. Thus, it is apparent that without any authority on behalf of Chhotu Sood, Mohit Kumar Sood did participate on his behalf. In the reply filed by the Department it is averred that the words "through Shri Mohit Kumar Sood" appear to be a later interpolation. Admittedly, Chhotu Sood was not present at the spot in person and the bid was recorded in his name, contrary to the provisions of r. 59(2) of the Second Schedule to the Act and it was later on that the name of Mohit Kumar Sood was introduced by Shri Sukhdev Singh. This is not a sufficient compliance of the aforesaid rule as the representative had to file his authority to make the bid at the auction on behalf of the principal before making the bid. This rule is mandatory and not directory. As no letter of authority is on the record, the bid on this account alone is null and void.

12. Secondly, the TRO issued the proclamation of sale in Form No. II CP 13, under Rules 38 and 52(2) of Schedule II to the Act covering several properties of the defaulter on July 22, 1970. Under the pro forma of sale the auction was fixed from 8th September, 1970, to 11th September, 1970, in the Tehsil office for all the properties without specifying any specific date for the auction of any individual property on a particular date. The TRO on 11th of September, 1970,

recorded the following order :

"As I am going back and Shri Krishari Lal Kanungo has been asked to conduct the sale of houses in Malla Silian and Talkian and there are no bidders for the remaining property, therefore, it is got proclaimed through Sri Devinder Kumar, peon of my office, that the remaining property will be sold by public auction on 7/8-10-1970 between 10 a.m. and 4 p.m."

13. Again on 8th October, 1970, the auction did not take place and it was postponed to be actioned on 2nd/3rd November, 1970, between 10a.m. and 4 p.m. Again the auction did not take place and it was postponed to 23rd November, 1970 between 10 a.m. and 4 p.m., on which date the auction took place. Thus, this auction clearly was contrary to the provisions of r. 15(2) of Schedule II to the Act which requires that where a sale of immovable property is adjourned for a longer period than one calendar month a fresh proclamation of sale under the Schedule shall be made unless the defaulter consents to waive it. The sale was made under the proclamation of sale dated 22nd July, 1970. There were three postponements, the first one within and the other two beyond the period of one calendar month. This rule is also mandatory and not directory. Thus, a fresh proclamation of sale after 8th October, 1970, was needed as the sale was made on 23rd November, 1970. Rule 15(2) is in the following terms ;

"15. (2) Where a sale of immovable property is adjourned under Sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it."

14. From the aforesaid rule it is clear that the sale conducted on 23rd November, 1970, is contrary to the provisions of the aforesaid rule. From the reply of the Department it is clear that there was no consent of the defaulter on the record waiving the fresh proclamation after the expiry of one calendar month from the date originally fixed for the sale.

15. It seems that the TRO, Shri Sukhdev Singh colluded with the defaulter and he was in a hurry to conclude the bid in favour of the grandson of the defaulter, which is apparent from the complaints filed by Samitter Singh and Gurdev Lal. In these complaints it is mentioned that they were prevented from carrying on their bids and that the bid had been knocked down in favour of the petitioner suddenly and they were not allowed to give further bids.

16. No other point is urged.

17. For the reasons recorded, I am of the view that the impugned orders of the Commissioner as affirmed by the Financial Commissioner are reasonable, just and proper.

18. The orders of the Commissioner and the Financial Commissioner did not suffer from any illegality or infirmity. No case is made out for invoking the extraordinary jurisdiction of this court under Articles 226 and 227 of the Constitution of India.

19. Accordingly, this petition fails and is dismissed with costs. Counsel fee, Rs. 1,000.