

(2011) 11 P&H CK 0078

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No.1408 of 1986 (O and M)

Dr. Girdhari Lal Garg

APPELLANT

Vs

The Municipality, Mandi Dabwali and others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Haryana Municipal Act, 1973 — Section 246, 249, 253
Punjab Municipal Act, 1911 — Section 236, 236(2)

Citation : (2012) 2 RCR(Civil) 221

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The petitioner challenges the auction that has been confirmed by the Government on 18.02.1986 in respect of Shop Nos.11/12 and 12/22 that was auctioned by the Municipal Committee, Mandi Dabwali. The petitioner makes objection to this order on the ground that the Haryana Committees Management of Properties of Municipal Committee and State Property Rules of 1976, sets out a procedure for alienation and empowers the Deputy Commissioner alone as a sanctioning authority for sale as well as a confirming authority post sales. The contention is that the auction which was held and alleged to have been concluded was not specifically sanctioned by the Deputy Commissioner and had not also been confirmed by him in the manner required under the Rules. On the petitioner's objection pointing out to certain irregularities, the Deputy Commissioner himself had passed an order on 30.12.1985 suspending the resolution of the Municipality and invaliding the sale that had taken place. This order purports to be in exercise of his power u/s 246 of the Haryana Municipal Act of 1973. Adverting to the order passed by the Government through the Commissioner and Secretary, Haryana State Local Bodies Department, approving of the sales for Shop Nos.11 and 12 in favour of Darshan Kumar and Kundan Lal for Rs.16,000/-and Rs.36,000/-, it is contended by the petitioner that a power which is required to be exercised by the Deputy Commissioner cannot be

exercised by any higher authority. The order of the Government lacks jurisdiction and hence invalid and inoperative.

2. The defence is entered by the State as well as the persons in whose favour the properties are ultimately sold, namely, R-3 to R-5. It is stated at the outset that the petitioner has no locus standi to file the petition since he knew about the auction and he had also made the deposit for participation but later made himself scarce. The petition deliberately suppresses the fact of the petitioner's knowledge of the entire proceedings. The issue of locus standi will not assume much significance since the attack is primarily on the alleged violation of the procedure established by the Act and the relevant rules. The case would, therefore, require to be examined from the point of view of whether the auction and sale involved any violation of provisions contained for sale of public properties.

3. The learned senior counsel appearing on behalf of the respondents 3 and 4, Mr. Sarin points out that the sanction for the sale emanated from the proceedings of the Government communicated to the Deputy Commissioner by the Commissioner-cum-Secretary on 12.09.1976 that the plots belonging to the Municipal Committee could be sold by open auction. As a matter of fact, the sales of 19 shops other than the 3 shops which were auctioned subsequently, that is 22 in all, were put up for auction and bids were concluded as found expressed through communication of the Commissioner to the Deputy Commissioner on 10.03.1977. The sale in respect of shops No.9, 11 and 12 were set aside and advertised for sale again. The contention is that once a sanction had been given by the Government on 12.09.1976 and carried through by the Deputy Commissioners subsequently, it would not require a fresh sanction at every time. The sale held in respect of the shops No.9, 11 and 12 must be taken as a continuation of the power that the Deputy Commissioner had secured from the Government. For our purpose, we still stay confined only to the sales of Shop Nos.11 and 12. I accept the contention of the respondents and hold that there was a valid sanction for the sale. The objection that there was no previous sanction for sale by the Deputy Commissioner cannot, therefore, avail to the petitioner.

4. We must examine the objection that the sale had not been confirmed by the Deputy Commissioner, then it would require to be seen that after the sale, the Government states that through a memo of the Deputy Commissioner, Sirsa in office reference No.7-10/2437/LFA, dated 06.12.1985 sanction from the Government has been sought for confirmation and the proceedings issued by the State through the Commissioner (R-3) records the fact that keeping in view of the report of the Administrator, Municipal Committee and SDO (Civil), Dabwali, the case was recommended for obtaining the approval from the Government to sell the property. It was only pursuant to this that the Government itself has purported to have issued the order which is challenged in the writ petition on 18.02.1986 at the instance of the Commissioner and

Secretary. The learned senior counsel for the petitioner contests the claim of the Government and says that the document in Annexure R-3 only refers to a report of the Administrator and this cannot be taken as a recommendation going from the Deputy Commissioner. If there is certain doubt under R-3, it could be resolved only through a proper reading of the document along with the impugned order itself. The preamble portion of the impugned communication dated 18.02.1986 reads as a letter "sent by Commissioner and Secretary, Haryana State Local Bodies Department, Chandigarh to the Director, Local Bodies, Haryana State, an endorsement copy of which is sent to the Deputy Commissioner, Sirsa-cum-Administrator, Municipal Committee, Mandi Dabwali for necessary action." The communication from the Commissioner has obviously flowed only after the information has come through the Deputy Commissioner's office. It must be merely a matter of internal arrangement that the SDO (Civil) has made a report but the recommendation must be taken to be only at the instance of the Deputy Commissioner. I would, therefore, discard the objection again given on the side of the petitioner that there was no confirmation by the Deputy Commissioner as required under the Rules.

5. Even if it were to be contended that such specific confirmation did not come through the Deputy Commissioner himself, it is contended on behalf of the respondents that the power of the Deputy Commissioner is at all times regulated by the power of the Government u/s 253 of the Haryana Municipal Act. Section 253 reads as follows:

253. General powers of State Government over officers.--Notwithstanding anything in this Act, the State Government shall have the power of reversing or modifying any order of any officer of the State Government passed or purporting to have been passed under this Act, if it considers it to be not in accordance with the said Act or the rules or to be for any reason inexpedient, and generally for carrying out the purposes of this Act the State Government shall exercise over its officers all powers of superintendence, direction and control:

Provided that the power of reversing or modifying any order of any officer of the State Government shall not apply to the orders passed by the Tribunal or the District Judge in an election petition.

The general powers of the State Government over its officers ought to include also the power to confirm the sale which the Deputy Commissioner exercises under the Rules. In fact, the Deputy Commissioner's action cannot be on a stand alone basis. Every act of his shall be required to be immediately reported to the Commissioner who could confirm, modify or rescind the order. If the contention of the petitioner were to be that the Deputy Commissioner not merely did not confirm but he had cancelled the sale through his order u/s 246 which has been passed on 30.12.1985 under Annexure P-9, then even such decision cannot obtain validity without a proper report as contemplated u/s 249. It is the specific contention on behalf of the respondents that the alleged order of cancellation of auction by the Deputy Commissioner passed on 30.12.1985 had never been

communicated to the Commissioner in the manner that Section 249 enjoined. With no definite material available for me, it is not possible to uphold the validity of the objection of the Deputy Commissioner only by resort to this order dated 30.12.1985.

6. There is yet another reason as to why this order cannot bind the respondents. The learned counsel for the petitioner would contend that in *pari materia* provision of the Punjab Municipal Act of Section 236 was interpreted by a Division Bench of this Court in *Karam Singh v. The State of Punjab and others*-1979 LXXXI 427, laying down that Section 236(2) necessarily envisaged the affording of an opportunity of being heard to all the persons likely to be affected by the annulment or modification of a resolution of the municipality, but this provision is in the negative and every person, who feels aggrieved cannot contend that he is entitled to of any opportunity of being heard before the annulment or modification of the resolution. The nature of order passed u/s 246 has been the subject of yet another decision taking a different view by a later Division Bench ruling that has come through *M/s Chhatwal Potteries, Gurgaon v. State of Haryana and others*- 2000 (1) PLR 388. Dealing with the provision of Section 246 relating to payment of composition fee, the Court underscored the fundamental precept in law of *audi alteram partem* as an integral part of the concept of Rule of law embodied under the Constitution and any order passed without notice or opportunity of hearing cannot be legally tenable and would be liable to be declared as void. I would hold this proposition as too well established for a prevarication whether an order of cancellation could be made without any notice to persons, who are likely to be effected by such a decision. I cannot also support the decision of the Deputy Commissioner alleged to have been passed on 30.12.1985 without involving the successful bidders in auction before he finally took a decision.

7. The learned senior counsel for the petitioner would contend that the Rules that require the Deputy Commissioner to act cannot be supplanted by the Government or the Commissioner in the higher ladder of authority and would refer to the decision of the Hon'ble Supreme Court in *Manohar Lal v. Ugrasen and others* in Civil Appeal No.973 of 2007, rendered on 03.06.2010 holding that no higher authority in the hierarchy, namely, in appeal or a revisional authority could exercise the power of statutory authority and the superior authority could not mortgage his wisdom and direct the statutory authority to act in a particular manner. The Hon'ble Supreme Court held that if the appeal or revisional authority takes upon itself the task of statutory authority and passes an order, it cannot be termed to be an order under the Act. This order would apply in cases where the statutory authority is completely discarded or overrun in his decision by a higher authority. In this case, the initial order of conduct of sale has been communicated by the Commissioner and put to action through the Deputy Commissioner. The subsequent order of confirmation has gone from him with a report from the Administrator and again sanctioned by the Government. Both before sale and post sale, the actions for auction have gone through the Deputy

Commissioner and confirmed by the higher authority. The Deputy Commissioner has at no time been discarded or his recommendation trampled upon. We have already found that it is not possible to give any weight to the alleged order of cancellation of the auction purported to have been done through Annexure P-9 in view of the inherent defect of the decision rendered without notice and not shown to have been reported as statutorily required u/s 249 of the Haryana Municipal Act.

8. I would, therefore, hold that the auction which was held and affirmed after the recommendation of the Deputy Commissioner by the Government is not liable for being set aside in the manner urged by the petitioner. On the other hand, I would hold that the petition lacks bona fides in suppressing the fact that he had himself known the auction proceedings, having originally deposited the earnest money, and he has secured an order of doubtful merit from the Deputy Commissioner to buttress his contention in the writ petition. The writ petition is dismissed with cost assessed at Rs.10,000/-.