
(2010) 02 P&H CK 0311
In the Punjab And Haryana At Chandigarh

G.S. Sethi and Company

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Punjab Municipal Act, 1911 — Section 236(2)

Citation : (2010) 158 PLR 475 : (2010) 2 RCR(Civil) 511

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Permod Kohli, J.—The Municipal Council, Pathankot vide its Resolution Nos. 128 and 129 adopted on 9.11.2004 decided for sale of certain properties of Municipal Council after seeking sanction of the Director, Local Bodies, Punjab and rates fixed by the Deputy Commissioner, Gurdaspur. Sale was notified through public notice issued in news papers. The auction was scheduled to be conducted on 1.8.2005 at 12.00 noon in the Meeting Hall, Swimming Pool Complex, Pathankot. Various properties were put to auction. Petitioner participated in the auction in respect to commercial plot of 16 marlas situated at Old Library near Chan Da Dhaba, Dalhousie Road, Pathankot. The minimum price reserved in the auction notice was 96 lacs. The petitioner was the highest bidder for a sum of Rs. 105 lacs. Auction in favour of the petitioner was finalised as is evident from the auction sheet Annexure P-1. The petitioner had deposited the security amount and on being the highest bidder also deposited 25% of the bid amount. Auction was duly videographed. Before the Municipal Council could adopt appropriate resolution accepting the auction, Deputy Director, Urban Local Bodies, Amritsar wrote a letter dated 29.9.2005 asking the Executive Officer, Municipal Council, Pathankot to confirm the auction after calling the meeting, however, in regard to the property auctioned in favour of the petitioner, it is mentioned that there are rumours in respect of the auction for 16 marlas commercial sites and it was conveyed that auction be done again. The Municipal Council held its meeting on 11.11.2005 to consider the auction held on 1.8.2005. The aforementioned

communication of the Deputy Director, Urban Local Bodies was also placed before the Municipal Council. The Council after consideration of the aforesaid communication and the auction report approved the entire auction held on 1.8.2005 by adopting the resolution. The suggestion of the Deputy Director vide letter dated 29.9.2005 was specifically and unanimously rejected as is evident from the Resolution No. 211 (Annexure P-3). It is alleged that the petitioner approached the Municipal Council for allotment and possession of the plot. It was during the inquiry that the petitioner came to know that a show cause notice dated 14.3.2006 was received by the Municipal Council from the Director of Local Govt. Punjab, Chandigarh, General Branch in respect to the land auctioned in favour of the petitioner on the basis of the communication of the Deputy Director, Local Urban Bodies, Amritsar. The Municipal Council was asked to show cause why the auction be not annulled. The Municipal Council was advised to cancel the auction in view of the letter of the Deputy Director and re-auction the same. Persuaded by the aforesaid notice the Municipal Council adopted another Resolution No. 262 dated 26.5.2006. It has been noticed that a number of councillors objected to the cancellation. The Council neither approved the auction nor cancelled the same.

2. Aggrieved of the action of the Municipal Council, petitioner served a legal notice dated 8.9.2006 (Annexure P-6). Receiving no response, the present petition has been filed seeking quashment of the Resolution No. 262 dated 26.5.2006 (Annexure P-5) and for implementation of earlier Resolution No. 211 dated 11.11.2005.

3. Respondents No. 2 and 3 representing Municipal Council, Pathankot filed their separate written statement accepting the holding of auction in favour of the petitioner and also acknowledged deposit of Rs. 26.50 lacs as 25% of the bid amount being the highest at the fall of the hammer. It is pertinent to note that the bid was held on the date and time notified and in presence of respondent No. 5 Deputy Director, Urban Local Bodies, Amritsar, who later issued the letter dated 29.9.2005 objecting the auction. Besides the present Executive Officer and other functionaries of the Municipal Council were also present. It is also admitted that petitioner's bid at Rs. 105 lacs was the highest and above the minimum reserved price of Rs. 96 lacs. There is another important feature of the reply. The bid was held on 5.8.2005 in presence of respondent No. 5 but he still chose to write the letter dated 29.5.2005 after more than one and a half month. The Municipal Council also admitted the adoption of Resolution No. 211 confirming the sale in favour of the petitioner and other highest bidders. It is, however, stated that the auction conducted by the Municipal Council was required to be approved by the Govt. in terms of Section 236(2) read with Section 232 of the Punjab Municipal Act, 1911. The Municipal Council has also referred to the show cause notice dated 14.3.2006 from the Govt. and it is stated that on the basis of the aforesaid show cause notice the Municipal Council vide its Resolution No. 262 adopted on 26.5.2006 in its meeting held on 11.11.2005 discussed the matter and in view of the divided opinions of the councillors decided to forward a reply to the Govt. It

was, however, recorded that majority of the members are in favour of the non-approval in view of the increasing value of the property. The proposal for cancellation was also opposed by six Municipal councillors named in Resolution No. 262 dated 26.5.2006.

4. The State Govt. in its reply while admitting the holding of auction in favour of the petitioner and its confirmation by the Municipal Council has simply stated that on the basis of the letter dated 29.9.2005 the Govt. decided to issue the show cause notice in exercise of provisions of the Punjab Municipal Act, 1911.

5. The petitioner has filed replication to both the replies reiterating the averments made in the writ petition.

6. From the show cause notice dated 14.3.2006 (Annexure P-4) it appears that the Govt. has allegedly exercised power u/s 236 of the Punjab Municipal Act seeking cancellation of the auction. This show cause notice has been issued by the Director Local Govt. Punjab, Chandigarh exercising the powers of the Govt. Section 236 of the Municipal Act reads as under:

236. Power to (State Govt. and its officers over committees) -

(1) The State Govt. and Deputy Commissioners, acting under the orders of the State Govt. shall be bound to require that the proceedings of the committees shall be in conformity with law and with the rules in force under any enactment for the time being, applicable to Punjab generally or the area over which the committee have authority.

(2) The State Govt. may exercise all powers necessary for the performance of this duty, and may among other things, by order in writing, annul or modify any proceedings which it may consider not to be in conformity with law or with such rules as aforesaid or for the reasons which would in its opinion justify an order by the Deputy Commissioner u/s 232.

(3) The Deputy Commissioner may within his jurisdiction for the same purpose exercise such powers as may be conferred upon him by rule made in this behalf by the State Govt.

7. From the bare reading of the aforesaid section it appears that the powers under this section can be exercised by the State Govt. and Deputy Commissioner under the orders of the State Govt. requiring the proceedings of the Committee to be in conformity with the law and the rules in force. Sub Section 2 of Section 236 further empowers the Govt. to annul or modify any proceedings which in its opinion are not to be in conformity with law or such rules and for the reasons justify an order by the Deputy Commissioner u/s 232. Under sub Section 3 of Section 236, Deputy Commissioner can exercise similar jurisdiction and for the same purpose as may be conferred upon him by rules made by the State Govt. in this regard. The action of the respondents including the Resolution No. 262 dated 26.5.2006 is to be tested on the touch stone of the powers conferred upon the State Govt. and the Deputy Commissioner respectively under sections 236

and 232 of the Punjab Municipal Act, 1911.

8. The only ground on which the auction concluded in favour of the petitioner has been sought to be annulled is the communication dated 29.9.2005. This letter has been made foundation by the Govt. to issue show cause notice. Relevant extract of the letter reads as under:

There are many rumours in respect of auction conducted for 16 marlas commercial site, near Charan Dhaba, Old Library, Dalhousie Road. Under the circumstances, it will be better if this auction is done again so that people have faith in the working of Municipal Council.

9. Except the above averments no other material has been considered by the Govt. while issuing show cause notice (Annexure P-4) nor the Municipal Council in its impugned Resolution No. 262 dated 26.5.2006 referred to any other ground or material. The relevant extract of the resolution adopted by the Municipal Council is noticed hereunder:

Resolution as approved: Detailed discussion were held on this item. Majority of the members of the council were in favour of non approval of this auction in the financial interest of the Municipal Council in view of the fact that the value of property has increased many fold and this property should be auctioned again. By doing so, Municipal Council shall have sufficient financial gain. The following members disagreed with this opinion and they reiterated that the auction already done should be accepted:

1. Vibhuti Sharma (Ward No. 13)
2. Smt. Ompati (Ward No. 20)
3. Sh. Rajesh Gupta (Ward No. 22)
4. Sh. Ramesh Lal (Ward No. 28)
5. Sh. Panna Lal Bhatia (Ward No. 30)
6. Sh. Anil Vij.

The reply should be sent to Govt. on these lines.

Sd/- Municipal Council, Pathankot.

10. It is relevant to note that the auction was hold on 1.8.2005. The Deputy Director sent a communication dated 29.9.2005 referring to some rumours without specifying the nature and extent of accusation or the allegations, even when he himself was present at the time of open public auction. The Director also without verifying the contents of the letter dated 29.9.2005 issued notice acting as a Post Office. Surprisingly, the Municipal Council in its later Resolution No. 262 dated 26.5.2006 did not revoke its earlier Resolution No. 211 dated 11.11.2005 but in view of difference of opinions amongst its members decided to forward reply to the State Govt. to the show cause notice. This writ petition was

filed in the year 2006, whereas the reply to the writ petition was filed by the respondents in August, 2007 and March, 2008 respectively. Till date no material has been brought on record nor there is any reference to such material in the replies to justify the action and substantiate the so called rumours referred to in the letter of the Deputy Director. It appears that none of the authorities be it the functionaries of the Govt. or the Municipal Council have applied their mind and proceeded to act upon some rumours without the same being verified and substantiated in any manner. The auction was held by advertisement in news papers. It was an open auction whereby the minimum bid amount was fixed. The amount had been determined by the Deputy Commissioner concerned. It was an open public auction in presence of the President and Executive Officer of the Municipal Council and a number of other persons as the bid consists of as many as 10 properties. The Municipal Council has approved the entire bid. Doubt is sought to be created only in respect to one property auctioned in favour of the petitioner. The doubt has not resulted in any substantial or verifiable allegation at least not referred to in the reply or brought on the record. Even the resolution refers to the increase in price of the property after the auction. It is pertinent to mention that neither in the show cause notice nor the reply filed by the respondents, it is contended that the price of the property at the time of auction was more than the bid amount. The only ground is increase in the prices subsequent to the auction. The question is whether such a plea can be entertained and is sufficient to annul the auction.

11. It is contended on behalf of the respondents that the acceptance of the bid was not communicated to the petitioner, hence, no right is created in him. To support their contentions, reliance is placed upon Delhi Development Authority Vs. Mr. Ravindra Mohan Aggarwal and Another,

12. In the aforesaid case Hon"ble Supreme Court was considering the auction of property of Delhi Development Authority. The plot sold by auction was a green belt. It was sold after the passing of interim order by the High Court and the acceptance was not communicated by the Delhi Development Authority to the auction purchaser. It was under these circumstances that the Hon"ble Supreme Court held that there was no transfer of the property. The relevant observations are contained in para 7 which reads as under:

Having heard the learned Counsel for the parties, we are of the opinion that there is merit in the appeal and the same deserves to be allowed. On the date of the auction the plot being in the green-belt, could not and should not have been put to auction. There is no estoppel against statute and when the considerations of public interest are involved. The acceptance of the bid recorded by the vice-chairman, DDA on the file was bad for two reasons. Firstly, it was so recorded after the passing of the interim order of stay by the High Court though it was in the process of being communicated. Secondly, the acceptance was not communicated by the DDA to the respondents and therefore the acceptance was not complete. Merely because the respondents gathered knowledge of the

acceptance having been recorded on the file would not make any difference. Reliance on Section 43 of the Transfer of Property Act is entirely misconceived inasmuch as there was no transfer or grant ever made by the DDA in favour of the respondents. Acceptance of bid at a public auction and deposit of 25% of bid amount do not constitute a transfer of property. The respondents have no basis in law to support their claim. Even the equitable considerations would not justify a public authority like DDA being directed today to provide an alternate plot to the respondents in the same locality and at the same price after a lapse of 14 years from the date of the auction.

13. Above mentioned observations of the Hon"ble Apex Court are not attracted to the facts of this case. Offer of the petitioner was accepted in the public auction, whereupon the petitioner deposited 25% of the bid amount on the fall of the hammer. The Municipal Council in its meeting adopted the Resolution No. 211 and accepted the auction of all the properties including the one in favour of the petitioner. There was no impediment for such an auction like in the aforementioned case before the Hon"ble Apex Court.

14. The State Govt. has only referred to the letter of the-Deputy Director, who was present at the time of auction and never objected to the same regarding its fairness or adequacy. He has also referred to some unidentified and unsubstantiated rumours. The Municipal Council in its Resolution No. 262 only discussed the increase in prices and not the adequacy of the prices at the time of auction. The second Resolution No. 262 was passed on 26.5.2006, whereas Resolution No. 211 accepting the auction was adopted on 29.9.2005. The second resolution was thus passed after more than six months. The show cause notice issued by the State Govt. asking the Municipal Council to annul the resolution is also not in confirmity with law. The Govt. can exercise power u/s 236 of the Punjab Municipal Act only, if, the resolution passed by the Committee is not in confirmity with law. In case of Jagser Singh v. Ram Singh 1992 R.R.R. 59 at page 64 following observations have been made:

A bare perusal of the aforesaid provisions would reveal that as and when Municipal Committee passes any resolution the power is given to the Deputy Commissioner to suspend any such resolution or order of the Committee. This exercise of power by the Deputy Commissioner is further controlled by the conditions mentioned therein. u/s 236 of the Punjab Municipal Act the only power the State Govt. is to see that the orders passed by the Committee are in confirmity with law and the rules in force and under Sub-section (2) of Section 236, the State Govt. can exercise such powers in that context.

15. Neither in the show cause notice, referred to above nor in the reply anything is revealed to even remotely suggest that the Resolution No. 211 of the Municipal Council suffers from any illegality or is not in confirmity with any law, rule or regulation. The show cause notice itself being contrary to the spirit of Section 236 cannot be permitted to be acted upon. Otherwise also the Municipal Council in its meeting vide Resolution No. 262 did not revoke its earlier resolution nor

formulated any opinion to cancel the earlier resolution. Thus Resolution No. 211 remains intact. Coming to the question of denying the benefit of the auction to the petitioner on the question of adequacy of the prices the law is clear on the subject. In case of *Rajender Singh Vs. Ramdhar Singh and Others*, following observations have been made in para 17:

17. The other ground for setting aside the same is the inadequacy of the price. The respondents have not alleged any fraud or material irregularity in the conduct of the Court's auction sale, whereby they suffered injustice. Mere inadequacy of the price is not a ground for setting aside the court sale. That finding of the learned Judge also is not sustainable in law.

16. Even though in the reply filed by the respondents or even in the show cause notice sufficiency of the prices is not an issue, however, on the basis of the increase in the prices the auction approved in favour of the petitioner cannot be recalled or set aside in view of the ratio of the aforesaid judgments.

17. This petition is, accordingly, allowed. Municipal Council, Pathankot is directed to implement the Resolution No. 211 dated 11.11.2005 (Annexure P-3) by accepting the balance amount of the bid money from the petitioner within a period of three months.