

(2011) 07 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 13338 of 2011. O and M

Kailasho Devi

APPELLANT

Vs

The Financial Commissioner and Principal Secretary To
Government of Haryana

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Haryana Evacuee Properties (Management and Disposal) Act, 2008 — Section 9
Sale of Surplus Rural Properties Rules — Rule 5

Citation : (2011) 4 PLR 550

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surya Kant, J.—The petitioner seeks quashing of the order dated 27.02.2009 passed by the Chief Commissioner [Sales], Haryana [Annexure P-2] as well as the order dated 18.05.2011 [Annexure P-4] passed by the Financial Commissioner-cum-Principal Secretary, Government of Haryana, Revenue and Disaster Management Department, up-holding the above mentioned order of the Chief Commissioner [Sales].

2. The case has a chequered history. Land measuring 44 kanals 2 marlas situated in village Moonak, District Karnal was put to restricted auction which was meant for the members of the Scheduled Caste community only, by the Rehabilitation Department on 14.07.1977 and it fetched the highest bid of Rs. 7500/- given by one Banwari son of Antu. The said auction was challenged by one Ajit Singh offering the higher amount of Rs. 9000/-. The then Chief Commissioner [Sales] vide order dated 12.02.1980 ordered re auctioning of the land. The restricted auction was again held on 15.01.1981 and Sardari Lal and Chuni Lal sons of Shri Khazan Chand, predecessors-in-interest of the petitioner were the highest bidders for a consideration of Rs. 40,000/- and they deposited a sum of Rs. 5000/- being 1/8th of the total bid amount.

3. Smt. Maina Devi @ Munni Bai widow of Antu Ram [mother of Banwari Lal, who, was the highest bidder in the auction held on 14.07.1977] filed objections contending that no proper munadi was conducted and general public did not get any information regarding the second restricted auction held on 15.01.1981. Her objections were rejected and auction was confirmed by the Additional Settlement Officer [Sales] vide order dated 23.06.1983. Warrants of possession were also issued in favour of Sardari Lal and his brother being the highest bidders in the subsequent auction dated 15.1.1981. However, possession could not be delivered to them as the highest bidder of the previous auction, namely, Banwari Lal and his mother Smt. Maina Devi @ Munni Bai started fighting with the authorities at the spot as they were presumably in possession of the property. Smt. Maina Devi meanwhile filed a revision petition before the Joint Secretary [Rehabilitation-cum-Settlement Commissioner, Haryana and offered a higher amount of Rs. 48,000/-. She was asked to deposit Rs. 4000/- to prove her genuineness and she deposited the said amount.

4. The Joint Secretary-cum-Settlement Commissioner vide order dated 24.10.1983 accepted the revision petition of Smt. Maina Devi and while setting aside the second auction dated 15.01.1981, directed re-auction of the land with the initial bid of Rs. 8,000/-

5. The above stated order dated 24.10.1983 was challenged by Sardari Lal and his brother [highest bidders of the second auction dated 15.01.1981] before this Court in CWP No. 1630 of 1984. The writ petition came to be decided after 24 long years vide judgment dated 05.08.2008 whereby the order dated 24.10.1983 passed by the Joint Secretary [Revenue]-cum- Settlement Commissioner, Haryana was set aside as it was; bereft of any reasons and the matter was remitted to the above stated authority for a fresh decision.

6. Pursuant to the directions issued by this Court, the Joint Secretary [Revenue]-cum- Chief Commissioner [Sales], Haryana while deciding the matter afresh vide his order dated 27.02.2009, framed the following three issues:-

1. Whether the objection petitioner was prevented in participating the auction due to lack of proclamation and his grievance in the objection petition was genuine and he has suffered injuries?

2. Whether the proclamation of auction dated 15.01.1981 was done in accordance with law and the proclamation papers placed on the file prove this fact?

3. Whether the confirming authority is bound to confirm the auction?

7. The Chief Commissioner [Sales] thereafter proceeded to discuss the facts and the legal position and while deciding issue No. 1 he held that the objection petitioner [Smt Maina Devi] was prevented from participating in the auction due to lack of proclamation. Issue No. 2 was also consequently decided holding that the auction dated 15.01.1981 was not conducted in accordance with law. While

deciding Issue No. 3, the Chief Commissioner [Sales] held and rightly so that the confirming authority was not bound to confirm the auction when it is found to have been held contrary to the prescribed procedure. Consequently, the claim of Sardari Lal and his brother for confirmation of the auction held on 15.01.1981 was rejected with the following directions:-

With the above observation, I reject the case of Shri Sardari Lal etc. with regard to confirmation of auction and I order that the land in question be re-auctioned after wide publicity and due notices to the parties. The objector as also the previous highest bidder will be at liberty to take refund of the amount deposited by them. However, it is ordered that before re-auction, the proclamation of auction would be carried out as per the procedure laid down in the Rules and the highest bidders/objectors [their successors in case of their death] in the previous auction would" be specifically informed about the date of auction.

8. Three revision petitions filed before the State Government against the above mentioned order u/s 9 of the Haryana Evacuee Properties [Management and Disposal] Act, 2008 have also been dismissed by the Financial Commissioner-cum-Principal Secretary, who while rejecting the contentions of Sardari Lal and his brother that proper publicity was made before the auction dated 15.01.1981, Has observed as follows:-

The objector could not participate in the auction and the objections had to be filed against the auction. It is also established on record that there has been uncertainty in respect of visit of the Additional Settlement Officer [Sales], The genuine grievance of the objector that he could not participate in the auction due to the fact that he was misguided, have been proved on record and the land has been ordered to be re-auctioned. The contention of the counsel for the petitioners that the proclamation papers at pages 61, 63 and 65 go to show that the proclamation was done according to rules is not tenable. These documents/reports do not fulfill the requirement of law. One copy of the notice was to be affixed in a conspicuous place where the property is situated. These documents/reports do not fulfill the requirement of law. One copy of the notice was to be affixed in a conspicuous place where the property is situated. These are no report on these papers that the notice was pasted on the conspicuous part of the property. The Rules for sale of evacuee property also go to show that the proclamation papers/notice shall state the date, time and place of the proposed sale, the description of the property to be sold, its location and boundaries etc., terms and conditions of the sale and other particulars which the Settlement Commissioner or other officer considers material. The proclamation papers do not fulfill these requirements too. The contention of learned counsel for the petitioner that proclamation notice is the notice to all is also not tenable. Shri Banwari fought the case in respect of the auction of 1977 up to Commissioner and Secretary [Reh] but the land was ordered to be re-auctioned. When there were specific orders for notice about the date of auction to him, it had become the mandatory requirement to inform him about the date of auction which was

not done. Due to these factors, the auction dated 15.1.1981 along with its confirmation orders deserves to be set aside and have rightly been set aside by the Joint Secretary [Rehabilitation] -cum-Commissioner [Sales]. I find no irregularity in the impugned order and accordingly uphold the same.

9. Aggrieved, the petitioner whose predecessors-in-interest, namely, Sardari Lal and his brother were the highest bidders in the auction held on 15.01.1981, has again approached this Court.

10. I have heard learned counsel for the petitioner at some length and perused the impugned orders. It is mainly contended that the auction dated" 15.01.1981 could not have been set aside merely on the basis of the so-called irregularities or omissions. It is urged that unless the Confirming Authority arrives at a firm conclusion that any material irregularity or fraud was committed, resulting into a substantial injury to any person while conducting the sale, it is obligatory upon the Authority to confirm the auction. Reliance is placed upon the decision of the Hon"ble Supreme Court in Gurbax Singh v. The Financial Commissioner & Another 1991 PLJ 192 and of this Court in Thakar Singh v. State of Punjab 2 (2009) 155 PLR 125.

11. In my considered view, the contention as noticed above, is wholly misconceived and contrary to the facts proved on record. The plea that a report given by Sanjay Singh Patwari counter-signed by the Chowkidar of the village regarding holding of the munadi is available on record and that the allegation of lack of proclamation stands falsified, is liable to be rejected outrightly for the reason that Rule 5 of the Rules" for the Sale of Surplus Rural Properties, mandates that notice of the intended sale is to be given 15 days in advance and it must contain the date, time and place of the proposed sale, description of the property, along with location and boundaries. The notice of munadi relied upon by the petitioner on the other hand is totally vague and it does not contain such descriptions. Similarly the authorities below have found that the said notice is only an exercise on papers and factually no munadi was conducted. Otherwise also, it is beyond one"s comprehension that Banwari Lal, who was the highest bidder in the first auction held in 1977 or his family members would not have come forward to participate in the second auction when on the very first opportunity available to them they offered a higher amount of Rs. 48,000/- for the land in question. That apart, there is a concurrent finding of fact that no proclamation was held and the rights of other members of the scheduled caste community who were entitled to participate in the restricted auction were jeopardized. The auction of a public property, even if restricted for one community, has to be held after proper publicity to give an opportunity to participate to all the eligible persons. The denial of such an opportunity amounts to playing fraud upon them. Holding of an auction in a clandestine manner is not a mere procedural irregularity which can be cured or rectified subsequently. That being so, no case to interfere with the impugned orders is made out.

12. Dismissed.