
(2020) 02 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 22725 Of 2016

Mansa Central Cooperative Bank Ltd.

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 11-02-2020

Acts Referred:

Punjab Cooperative Societies Rules, 1963 — Rule 72(11)(h)(i)
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 02 P&H CK 0065

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : Ramesh Goyat, S.K. Jindal, Kanica Sachceva, Ashwani Prashar

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J

Through the present petition filed under Articles 226/227 of the Constitution of India, the petitioner-bank challenges the order dated 27.11.2015

(Annexure P/7) passed by respondent no.1 whereby the said respondent has set aside the order of forfeiture of 15% amount deposited by respondent

no.4 which was ordered to be forfeited vide undated order (Annexure P/4) passed by the Assistant Registrar Co-operative Societies, Mansa and

direction has been issued to the petitioner-bank to return the said amount to the said respondent.

Counsel for the petitioner-bank has primarily raised a grievance that respondent no.4 had deposited the amount on account of auction proceeding

conducted in pursuance of auction notice (Annexure P/1) and had failed to deposit the balance amount and therefore, `23,00,000/- which were

deposited by him had been rightly forfeited. It has accordingly been submitted

that respondent no.4 had voluntarily participated in the auction and therefore on account of non deposit of balance amount, the petitioner-bank is well justified in forfeiting the amount deposited. The impugned order dated 27.11.2015 (Annexure P/7) as such passed by respondent no.1 in revisional jurisdiction has also been challenged on the ground of lack of jurisdiction.

Mr. Ashwani Prashar, Advocate, counsel appearing on behalf of respondent no.4 on the other hand submitted that the proceedings were conducted under the Punjab Cooperative Societies Rules, 1963 (hereinafter referred to as 'the Rules') and Rule 72 (11) (h) (i) provides that in case of default in deposit within period prescribed, the Recovery Officer 'may' defray the expenses of the sale to be forfeited to the Government and therefore, forfeiting the whole amount was not justified. It was further submitted that the land which had been auctioned was not free from all encumbrances and finding had been recorded that the different land was auctioned subsequently which proved that the earlier land of Baldev Singh had been auctioned who had objected to the said proceedings. It was accordingly, contended that since the order of forfeiture was passed under provisions of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as 'the Act') by the Assistant Registrar Co-operative Societies, Mansa, the revision would be maintainable as no specific remedy of appeal has been provided.

A perusal of paper-book would go on to show that in pursuance of auction notice (Annexure P/1) 1/3rd share of land measuring 136 Kanals 3 Marlas of Bahadur Singh and 1/3rd share of land measuring 84 Kanals 10 Marlas belonging to Darshan Singh, both residents of village Talhian, Tehsil Budhlada, District Mansa which was under attachment and mortgaged with the bank was sought to be auctioned on 22.8.2013 for the amount of `56,68,101/- against the 15 awards by the Assistant Registrar, Cooperative Societies, Mansa being the Sale Officer, respondent no.3.

As per proceedings which were conducted on 22.8.2013 (Annexure P/2), respondent no.4's duly authorised representative had taken part in the auction and thus deposited 15% of the auction amount whereas remaining 85% was to be deposited within one month by him as per the provisions of the rule.

Vide notice dated 18.9.2013 (Annexure R/4/1) respondent no.4 objected to the auction proceedings wherein he had given the highest bid at `9,01,000/-

per acre on the ground that the land contained super structures/houses and few families were residing in the said land. Therefore complaining that

vacant possession could not be delivered he had asked for actual map and demarcation of the land. He also intimated that he had balance 85% amount

available with him in his bank account maintained in Allahabad Bank, Branch BRS Nagar, Ferozepur Road, Ludhiana and sought actual and correct

description of the auctioned land with an assurance that the super structures on the land would not create any hindrance in peaceful delivery of

possession. The availability of amount of `1,42,61,384/- as per bank certificate dated 18.9.2013(Annexure R/4/2) was also appended in support.

The said notice was replied to by respondent no.3 vide letter dated 19.9.2013 (Annexure R/4/3) that respondent no.4 had deposited 15% amount of the

auctioned amount and remaining 85% amount was to be deposited within one month but the same was not deposited and therefore, the said amount

was to be forfeited as per law. It was replied that auction was conducted before all the participants and they were shown the complete map of the

property.

On 20.9.2013 legal notice (Annexure R/4/4) was also served upon the said respondent asking for various details of the land and seeking clarification

whether there was any super structure/houses built up on the said land and fraud had been committed upon respondent no.4. On 12.11.2013

(Annexure P/4), respondent no.2 Deputy Registrar, Co-operative Societies, Mansa sought information whether the entire amount of sale had been

deposited in the bank so that process of confirmation of sale could be started. It is apparent that thereafter order (Annexure P/4) had been passed by

respondent no.3 forfeiting the amount of `23,00,000/- deposited by respondent no.4. On 9.5.2014 (Annexure P/5) respondent no.3 also replied to the

application dated 22.4.2014 intimating respondent no.4 that the amount had been forfeited as per provisions of law.

In such circumstances, the revision petition was filed before respondent no.1 which was allowed vide order dated 27.11.2015 (Annexure P/7) by

setting aside the undated order (Annexure P/4) whereby forfeiture had been ordered while exercising the powers of State Government under Section

69 of the Act.

A perusal of the said order would go on to show that the objections against the auction had been filed by Baldev Singh and Gulzar Singh which had

been rejected by the Deputy Registrar, Cooperative Societies, Mansa on 24.6.2014. Baldev Singh had filed a petition before the Joint Registrar who

had set aside the order on 26.2.2015 and remanded the case. Thus, respondent no.1 after perusing the record also came to the conclusion that the land

which was put to auction on 30.12.2014 and 8.12.2015 was different from the land which had been earlier auctioned on 22.8.2013 and noticed that

respondent no.4 herein had sufficient amount ready with him to make the payment of remaining 85% amount. The sale notices were also compared to

come to the said conclusion that the two lands were different and thus it was held that order of forfeiting was also against the principle of natural

justice and direction had been issued to return the amount.

Respondent no.4 has also made necessary pleadings to this effect in paragraph no. 8 of his written statement, regarding Baldev Singh challenging the

auction proceedings though his land was not subject matter of auction as per auction proceedings (Annexure P/1). It was contended that there was

dispute regarding the identity of the property and whose property was being sold.

The petitioner bank in its rejoinder to the written statement has admitted that the objections had been filed by Baldev Singh son of Diwan Singh who is

apparently brother of Bahadur Singh whose land was put to auction. Thus, it is apparent that there was a dispute as such regarding the land which

was sought to be auctioned and as noticed 1/3rd share of the land of both Bahadur Singh and Darshan Singh was being auctioned against 15 awards

which were in favour of the bank.

Rule 72 (10) of the Rules provides that immovable property shall not be sold in execution of a decree unless such property has been previously

attached. Similarly sub Clause (e) of Rule 72 (11) provides that proclamation of sale is to be published by affixing a notice in the office of the

Recovery Officer and the Tehsil Office at least 30 days before the date fixed for the sale and also by beat of drum in the village or locality on two

consecutive days. The proclamation shall state the time and place of the sale and specify as fully and accurately as possible the property to be sold.

The auction notice (Annexure P/1) herein also does not contain any date and

therefore it is not decipherable that whether the said procedure was followed or not. Under sub Clause (f) of Rule 72 (11) the sale is to be held after the expiry of 30 days calculated from the date on which notice of proclamation was affixed in the office of the Recovery Officer. Clause (g) provides that 15% of the auctioned amount is to be deposited in the office of the Sale Officer at the time of purchase and in default the property shall be resold. Under sub Clause (h) balance is to be paid within fifteen days from the date of sale. Sub Clause (i) provides that in default of payment within the period mentioned in the last preceding clause, the deposit may if the Recovery Officer deems fit after defraying the expenses of the sale be forfeited to the Government. The defaulting purchaser is to forfeit all claims to the property or to any part of the sum for which it may subsequently be sold. Relevant provisions of Rules are reproduced hereunder:-

72. Procedure in execution of award etc:-

xxx xxx xxx

(10) Immovable property shall not be sold in execution of a decree unless such property has been previously attached.

Provided that where the decree has been obtained on the basis of a mortgage of such property, it shall not be necessary to attach it.

(11) xxx xxx xxx

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) Proclamation of sale shall be published by affixing a notice in the office of the Recovery Officer and the Tehsil Office at least thirty days before

the date fixed for the sale and also by beat of drum in the village or locality on two consecutive days previous to the date of sale and on the day of sale

prior to the commencement of the sale. Such proclamation shall, where attachment is required before sale, be made after the attachment has been

effected. Notice shall also be given to the decree-holder and the defaulter. The proclamation shall state the time and place of sale and specify as fully

and accurately as possible -

(i) the property to be sold,

(ii) any encumbrance to which the property is liable,

(iii) the amount for the recovery of which sale is ordered, and

(iv) every other matter which the Sale Officer considers material for a purchaser to know in order to judge the nature and value of the property.

(f) When any immovable property is sold under these rules, the sale shall be subject to the prior encumbrances on the property, if any, The decree-holder shall, when the amount for the realisation of which the sale is held exceeds Rs.100, furnish to the Sale Officer within such time as may be fixed by him or by the Recovery Officer, an encumbrance certificate from the Registration Department for the period of not less than twelve years prior to the date of attachment of the property sought to be sold, or in cases falling under the proviso to sub-rule(10), prior to the date of the application for execution. The time for production of the encumbrance certificate may be extended at the discretion of the Sale Officer or the Recovery Officer, as the case may be. The sale shall be by public auction to the highest bidder, provided that it shall be open to the Sale Officer to decline to accept the highest bid where the price offered appears to be unduly low or for other reasons to be recorded in writing and provided also that the Recovery Officer or the sale Officer may, in his discretion, adjourn the sale to a specified day and hour, recording his reason for such adjournment. Where a sale is so adjourned for a longer period than seven days, a fresh proclamation under clause (e) shall be made, unless the judgment debtor contents to waive it. The sale shall be held after the expiry of not less than thirty days calculated from the date on which notice of the proclamation was affixed in the office of Recovery Officer. The time and place of sale shall be fixed by the Recovery Officer and the place of sale, shall be the village or locality where the property to be sold is situated or such adjoining prominent place of public resort as may be fixed by the said Recovery Officer;

Provided that in cases where an encumbrance certificate is not obtainable owing to the destruction of the connected records, an affidavit from the village Patwari in regard to the encumbrances known to him supported by a certificate from the Registration Department that the encumbrance certificate cannot be granted owing to the destruction of the connected records, shall be accepted in the place of an encumbrance certificate.

(g) A sum of money equal to 15 percent of the price of the immovable property shall be deposited by the purchaser in the hands of the Sale Officer at

the time of the purchase, and in default of such deposit, the property shall forthwith be re-sold;

Provided that, where the decree-holder is the purchaser and is entitled to set off the purchase money under clause (k), the Sale Officer shall dispense

with the requirements of this rule.

(h) The remainder of the purchase money and the amount required for the general stamp for the sale certificate shall be paid within fifteen days from

the date of sale:

Provided that, the time for repayment of the cost of the stamp may, for good and sufficient reasons to be recorded in writing, be extended at the

discretion of the Recovery officer up to thirty days from the date of sale:

Provided further, that in calculating the amounts to be paid under this clause, the purchaser shall have the advantage of any set-off to which he may

be entitled under clause (k).

i) In default of payment within the period mentioned in the last preceding clause, the deposit may, if the Recovery Officer thinks fit after defraying the

expenses of the sale, be forfeited to the Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for

which it may subsequently be sold.â??

It is apparent that the said procedure had not been followed in its true letter and spirit which led to the dispute regarding the identity of the property

and a different property had been sold subsequently as has been recorded by respondent no.1 in his order dated 27.11.2015 (Annexure P/7).

Counsel for respondent no.4 is well justified to submit that Rule 72 (11) (h) (i) of the Rules provides that the Recovery Officer may forfeit the amount

and reliance can be placed upon the judgment of the Apex Court in Union of India and others Vs. A.K.Pandey 2010(1) S.C.T. 208 wherein

interpretation of word 'shall' and 'may' was done and it was held that where it is 'shall' the same is mandatory. Relevant part of the judgment reads as

under:-

â??14.Â In his classic work, ""Principles of Statutory Interpretation"" (seventh edition), Justice G.P. Singh has quoted passage of Lord Campbell in

Liverpool Borough Bank v. Turner 1861 30 LJ Ch 379 that read :

no universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory whether implied nullification

for disobedience. It is the duty of Courts of justice to try to get at the real intention of Legislature by carefully attending to the whole scope of the statute to be considered.

15. In Crawford's Statutory Construction (1989 reprint), the following excerpt from People v. Sutcliffe 7 N.Y.S. (2) 431 is quoted :

It is a rule of statutory construction that where a statute is framed in terms of command, and there is no indication from the nature or wording of the act or the surrounding circumstances that it is to receive a permissive interpretation, it will be construed as pre-emptory.

16. In his discussion on the subject, ""Mandatory and Directory or Permissive Words"" Crawford in the afore-noticed treatise says:

Ordinarily the words ""shall"" and ""must"" are mandatory, and the word ""may"" is directory, although they are often used inter-changeably in legislation.

This use without regard to their literal meaning generally makes it necessary for the courts to resort to construction in order to discover the real

intention of the legislature. Nevertheless, it will always be presumed by the court that the legislature intended to use the words in their usual and

natural meaning. If such a meaning, however, leads to absurdity, or great inconvenience, or for some other reason is clearly contrary to the obvious

intention of the legislature, then words which ordinarily are mandatory in their nature will be construed as directory, or vice versa. In other words, if

the language of the statute, considered as a whole and with due regard to its nature and object, reveals that the legislature intended the words ""shall

and ""must"" to be directory, they should be given that meaning. Similarly, under the same circumstances, the word ""may"" should be given a mandatory

meaning, and especially where the statute concerns the rights and interests of the public, or where third persons have a claim de jure that a power

shall be exercised, or whenever something is directed to be done for the sake of justice or the public good, or is necessary to sustain the statute's

constitutionality.

Yet the construction of mandatory words as directory and directory words as mandatory should not be lightly adopted. The opposite meaning should

be unequivocally evidenced before it is accepted as the true meaning; otherwise, there is considerable danger that the legislative intent will be wholly or partially defeated.

17. Crawford further says in his treatise that prohibitive or negative words can rarely, if ever, be directory.....

Negative, prohibitory and exclusive words or terms are indicative of the legislative intent that the statute is to be mandatory.â??

In the facts and circumstances of the case, it is apparent that the present case is a case of forfeiture of amount and the Assistant Registrar had also

not issued any notice to respondent no.4 but chose to pass an order when being called upon by his superior on 12.11.2013 (Annexure P/4). It has

already come on record that Baldev Singh who was brother of Bahadur Singh had objected to the attachment and sale of land which is joint in nature.

In such circumstances, respondent no.4 was well justified to seek clarification and had shown his willingness to deposit the balance amount which was

available with him since the rate per acre offered was `9,01,000/-. It is also to be noticed that the land of two persons was being sold and 1/3rd share

was not clarified by the petitioner-bank and also that which portion as such was sought to be sold in favour of respondent no.4. The auction notice also

does not contain the details of the land regarding the village as such though Khasra numbers have been mentioned but the Hadbast number and name

of village is absent in the detail of the land given. Therefore, there was no statutory compliance of the provisions of the Rules as notice of 30 days

earlier had also not been complied with. The petitioner-bank cannot take advantage of the statutory lapse and claim that it was entitled for forfeiture of

the entire amount. The order dated 27.11.2015 passed by respondent no.1 setting aside the forfeiture as such is well justified.

The argument raised while relying upon judgment of the Apex Court in Shree Hanuman Cotton Mills and another Vs. Tata Air Craft Ltd. 1970(3)

SCR 127 that forfeiture as such was rightly done would not be setting aside the forfeiture applicable to the facts and circumstances of the present

case. In the said case, there was a cancellation of the contract and in default of making payment, the company was held entitled to forfeit

unconditionally the money paid by the buyer. In such circumstances while relying upon the terms of the contract, the Apex Court came to the

conclusion that the dismissal of the suit of the plaintiff whereby recovery of forfeited amount had been prayed for was justified. In the present case,

there is no such contract which had entered between the parties and therefore, the said judgment would not be applicable as the terms of the statute

only provide for a directory enforcement and is not mandatory in nature.

The argument raised that respondent no.1 did not have any power to adjudicate on the dispute is without any basis. Section 69 of the Act reads as

under:-

â??69. Revision : The State Government and the Registrar may, SUO MOTO or on the application of a party to a reference, call for and examine the

record of any proceedings in which no appeal under section 68 lies to the Government or the Registrar, as the case may be, for the purpose of

satisfying itself or himself as to the legality or propriety of any decision or order passed and if in any case it appears to the Government or the

Registrar that any such decision or order should be modified, annulled or revised, the Government or the Registrar, as the case may be, may, after

giving persons affected thereby an opportunity of being heard, pass such order thereon as it or he may deem fit.â??

The Full Bench judgment in Jasbir Singh and others Vs. Commissioner (Appeals), Jalandhar Division and others 2011(3) PLR 545 has held that the

revision is maintainable before the State Government on the application made by the aggrieved person and record of any proceeding in which no

appeal is provided can be examined. Relevant portion reads as under:-

58. In view of the above discussion, we reach to the following conclusion:-

(i) The State Government or the Registrar under Section 69 of the Punjab Act and the State Government under Section 115 of the Haryana Act can

exercise its SUO MOTU revisional jurisdiction on the application made by an aggrieved person, whether he is or not a party to the reference.

(ii) The remedy of revision is barred only in case where appeal against the impugned order lies under Section 68 of the Punjab Act or under Section

114 of the Haryana Act.

(iii) The remedy of revision is not barred in those cases where aggrieved person has a right of appeal under the Statutory Service Rules or Common

Cadre Rules. An aggrieved party can challenge the order of Registrar or Deputy Registrar passed as an Appellate Authority under the Statutory

Rules or Common Cadre Rules by filing a revision under Section 69 of the Punjab Act or under Section 115 of the Haryana Act as no remedy of

appeal has been provided under Section 68 of the Punjab Act or under Section 114 of the Haryana Act against such order. But, if the appellate order

is passed by the official of the Society and not by the Registrar or Deputy Registrar of the Co-operative Society, no revision is maintainable against

such an order. The revision is maintainable only against the order passed by the authority under the Act or a proceeding arising out of the Act and the

Rules framed thereunder.

(iv) The remedy of revision either SUO MOTU or otherwise cannot be invoked against an order passed by the Society. The said power can be

exercised against the decision or order passed by the authority under the Act or a proceeding arising out of the Act or the Rules framed there-under.

(v) The SUO MOTU power of revision cannot be exercised by the State Government or the Registrar, as the case may be, where a revision under

Section 69 of the Punjab Act or under Section 115 of the Haryana Act itself is not maintainable either on the ground that against the impugned order

an appeal has been provided under Section 68 of the Punjab Act or under Section 114 of the Haryana Act or on any other ground. In case the

Government or the Registrar, as the case may be, exercise SUO MOTU power of revision on the application of an aggrieved party or otherwise, it

must be specifically so stated in the order itself.â??

Similarly, a Division Bench of this Court in Kot Shamir Co-operative Agricultural Service Society Ltd. Vs. State of Punjan and others AIR 2000

Punjab and Haryana 107 has held that once an order had been passed by the Deputy Registrar under the statute while exercising the power of

Registrar as a delegatee, the Registrar then as such cannot examine the record in proceedings under Section 69 of the Act and the revision would only

lie before the State Government. Relevant part of the judgment reads as under:-

â??6. From a conjunctive reading of the above provisions, it is evident that the order dated 8-5-1995 confirming the sale had been passed by the

Deputy Registrar by exercising the powers of the Registrar under Section 63 of the Act. The said order, therefore, would be deemed to have been

passed by the Registrar and as such no revision against such an order could be filed before the Registrar. This proposition stands settled by the

decision of a Division Bench of this Court in the case of Brij Lal v. State of Punjab reported in 1973 Pun LJ 462 wherein it had been held that where

the orders sought to be revised had been passed by the Registrar or his delegatee, the powers of revision under Section 69 vested in the State

Government and not in the Registrar. It had been clarified that when an order is passed by a delegatee of the Registrar, it is deemed to be the order of

the Registrar himself. Similar views was taken by another Division Bench of this Court in the case of Rajinder Pal Singh v. State of Punjab reported in

1997 (1) Pun LJ 441. In the present case also the Deputy Registrar had passed the order dated 8-5-1995 as a delegatee of the Registrar and as such

the revision petition under Section 69 against this order could lie only before the State Government and not before the Registrar himself. In this view of

the matter, the order of the Registrar, Co-operative Societies passed on 24-7-1996 (Annexure P- 9) entertaining a revision against the order of the

Deputy Registrar dated 8-5-1995 was without jurisdiction. That being so, the order of the Financial Commissioner dated 7-8-1997 (Annexure P-10)

upholding such an illegal order, would also be illegal. We, therefore, quash both the aforesaid orders.

7. Since the impugned orders have been quashed on the preliminary legal issue only. We do not consider it necessary to go into the other issues raised

on behalf of the parties. The writ petition stands allowed. No costs.â??

In such circumstances argument raised by the counsel for the petitioner-bank that respondent no.1 had no jurisdiction to entertain the revision petition

is devoid of merits and not justified in the facts and circumstances of the case as it is a case where the petitioner is trying to unduly enrich itself. Thus,

there is no ground to interfere with the impugned order dated 27.11.2015 (Annexure P/7).

Accordingly, the present writ petition is dismissed.