(1983) 01 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5308 of 1975

Milkha Singh APPELLANT

Vs

The State of Punjab and Others RESPONDENT

Date of Decision : 24-01-1983

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 33
Punjab Package Deal Properties (Disposal) Rules, 1976 — Rule 11, 15, 5, 5(1)(2), 6(2)

Citation : AIR 1983 P&H 390

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Judgement

1. Evacuee house No. 80, situate at village Bajuha Kalan, Tehsil Nakodar, District Jullundur, is in occupation of the petitioner. Its reverse price is Rs. 35,000/- . It was put to auction on Sept. 3, 1964, and again on Oct. 7, 1964, but nobody offered any bid. This house was put to auction for the third time on Feb. 23, 1968, and the highest bid offered was that of the petitioner for Rs. 8,000/- . The highest bid offered by the petitioner being inadequate was not approved. The house was put to auction for the fourth time on Nov. 27, 1972, and the highest bid again was that of the petitioner for Rs. 12,000/- . Since the highest bid offered by the petitioner was less than the reserve price it was referred to the Deputy Secretary Rehabilitation-cum-Settlement Commissioner for approval. The Settlement Commissioner inspected the house. Before the Settlement Commissioner could approve the highest bid of the petitioner, Gurdev Singh respondent submitted an application that he was prepared to pay Rs. 20,000/- for the said house and in support of his offer he deposited Rs. 14,400/- as challenge money. The Settlement Commissioner heard the petitioner and Gurdev Singh respondent and by order dated Nov. 1, 1973, (P. 1) approved the highest bid of the petitioner. Gurdev Singh feeling aggrieved by the order P. 1 filed a petition u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act (hereinafter the Act). The Financial Commissioner (Taxation), who exercised the powers u/s 33 of the Act treated the application under Rule 15 of the Package

Deal Rules and by order dated July 29,. 1975, (P. 3) set aside the order P. 1 and further directed that the house be put to auction with the first bid of Gurdev Singh respondent for Rs. 20,000/- . The petitioner has assailed the order P. 3 in the present writ petition.

2. The learned counsel for the petitioner has argued that the order of the Deputy Secretary Rehabilitation-cum-Settlement Commissioner (P.1) was final under the Package Deal Rules (hereafter the Rules) and could not be assailed u/s 33 of the Act. The argument proceeds that the Financial Commissioner Taxation wrongly treated the petition filed by Gurdev Singh under S. 33 of the Act as one under R. 15 of the Rules. The Secretary of Government, Punjab, Rehabilitation Department, can be best give n award under R. 15 of the Rules and has no jurisdiction to pass an order like P. 3. The order P.3 is, therefore, liable to be quashed. The contention of the learned counsel for the petitioner must prevail. It is not disputed that the highest bid of Rs. 12,000/- offered by the petitioner was subject to approval by the Settlement Commissioner or an officer appointed by him for the purpose. The relevant part of Rule 5 which deals with the procedure for the sale of Punjab Deal properties by public auction reads :--

"5. Procedure for sale of property by public auction

....

The highest bid in respect of which an initial deposit has been made shall be subject to the approval of the Settlement Commissioner or an officer appointed by him for the purpose. Provided that no bid shall be accepted until after the expiry of fifteen days from the date of the auction."

3. Rule 9 of the Rules deals with complaints. The relevant part of this rule reads :--

"9. Complaints. Where a person desires that the sale of any property should not be approved under Rule 5(I)(2) or Rule 6(c)(2) or Rule 7(h) because of any alleged irregularity or fraud in the conduct of the (including the case of a sale by public auction in the notice of the sale) or on the ground of any transferee not being eligible to purchase the land in his occupation at fixed price, he may make an application to that effect to the Settlement Commissioner or any other Officer authorised by him in this behalf, to approve the acceptance of the bid or tender, as the case may be.

Provided that every such application for setting aside a sale shall be made :--

(a) to (c) ... .

(d) if after consideration of the facts alleged the Officer to whom the application is made is satisfied that any material irregularity or fraud has been committed in the publication or the conduct of the sale, or the transfer, he may withhold approval and make an order that the property be reauctioned or resold by inviting fresh tenders or pass such other order as may be appropriate."

4. Rule 11 of the Rules deals with the powers of revision by the Settlement Commissioner and it reads :--

"The Settlement Commissioner may call for the record of any case pending before or decided by a Subordinate Officer and pass such order as may be deemed fit including the resumption of property. Provided that the party affected by the proposed order shall be given an opportunity of being heard."

5. Rule 15 of the Rule deals with arbitration and it reads :--

"in the event of any dispute about the sale the matter may be referred to the Secretary to Government Punjab Rehabilitation Department, whose decision shall be final."

6. It is not disputed that the powers of the Central Government u/s 33 of the Act could not be invoked for assailing the order of the Deputy Secretary Rehabilitation-cum-Settlement Commissioner P. 1 approving the highest bid of the petitioner for Rs. 12,000/- . It is also not disputed that Gurdev Singh respondent filed a petition u/s 33 of the Act against the order of the Deputy Secretary Rehabilitation-cum-Settlement Commissioner (P. 1). It is, therefore, clear that the order of the Deputy Secretary Rehabilitation-cum-Settlement Commissioner P. 1 could not be assailed u/s 33 of the Act. The Financial Commissioner Taxation, however, treated the petition u/s 33 of the Act as one under Rule 15 of the Rules (sic) could be exercised by the Secretary and not Financial Commissioner Taxation. Maybe that the Financial Commissioner Taxation was also the Secretary to Government, Punjab, Rehabilitation Department. The fact, however, remains that the impugned order P. 3 was passed by the Financial Commissioner Taxation and not by the Secretary to Government, Punjab, Rehabilitation Department. Secondly, the Secretary to Government, Punjab Rehabilitation Department could assume jurisdiction as an Arbitrator under Rule 15 of the Rule if a proper reference had been made to him by a party of the sale. The learned counsel for Gurdev Singh respondent has argued that Gurdev Singh respondent was also a party to the sale for the purpose of Rule 15 inasmuch as he offered to give the initial bid of Rs. 20,000/- if the property was put to reauction. I am not impressed by this contention. Gurdev Singh respondent cannot be treated as a party to the sale of the house in dispute merely because he offered to give an initial bid of Rs. 20,000/- if the house is put to reauction. Gurdev Singh respondent could file a complaint under Rule 9 of the Rules produced above. The complaint could be allowed only if it had been found that a material irregularity or fraud had been committed in the publication or the conduct of the sale. No such material irregularity or fraud in the conduct or the publication of the sale of the house in dispute is alleged or proved. Gurdev Singh respondent, therefore, cannot be treated as a party to the sale for the purpose of Rule 15 merely by offering to give an initial bid of Rs. 20,000/- if the house is put to re-auction. It is not disputed that a reference Rule

15 of the Rules was not made either by the Rehabilitation Department or by the petitioner. This apart, the Financial Commissioner Taxation did not deal with the case as an Arbitrator. Assuming that the Financial Commissioner Taxation was competent to act as an Arbitrator under Rule 15 of the Rules and a proper reference for arbitration had been made to him, it was incumbent for him to afford an opportunity to the parties to lead evidence and further to give an award and not an effective decision like P. 3. The text and tenor of the impugned order P-3 is suggestive that the Financial Commissioner Taxation dealt with the case u/s 33 of the Act and not under Rule 15 of the Rules.

7. In the result, the writ petition is allowed and the impugned order of the Financial Commissioner dated July 29, 1975, P. 3 set aside. No order as to cost.

8. Petition allowed.

