
(2018) 01 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : 4906 of 2009

M/s Honey Builders Pvt. Ltd.	Vs	APPELLANT
State of Haryana and others		RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:

Citation : (2018) 01 P&H CK 0003

Hon'ble Judges : Surinder Gupta

Bench : Single Bench

Advocate : Ashwani Talwar, Kapil Bansal, Onkar Rai

Final Decision : Dismissed

Judgement

1. Plaintiff-appellant-Honey Builders Pvt. Ltd. purchased suit land vide two sale deeds dated 20.09.2004 (Ex. P-4 and Ex. P-6) from respondent no. 3-Itwari Lal and respondent no. 4-Bodla and others. Suit filed by plaintiff-appellant seeking the relief of injunction to restrain defendants i.e. State of Haryana and Tehsildar Sales, Custodian Department, Gurgaon from alienating the suit land in open auction or by way of allotment or in any other way and also from interfering in possession of plaintiff, was dismissed. It filed appeal before Additional District Judge, Gurgaon, which was also dismissed. BRIEF FACTS:-

2. Suit property was evacuee property and it was put to auction on 23.03.1985 amongst Harijans and was sold to Itwari Lal, who was highest bidder for Rs.37,000/-. He deposited Rs.4625/- as earnest money and the sale was confirmed by Additional Settlement Officer (Sales) vide order dated 19.04.1985 and symbolic possession was delivered to him vide rapat no. 705 dated 02.06.1985. The agreement was executed with Itwari Lal on 21.06.1985 and as per terms of agreement, remaining payment was to be made in 15 half-yearly installments w.e.f. 15.06.1986 but he did not pay any installment and vide order dated 17.03.1993, auction of land in favour of Itwari Lal was cancelled and earnest money paid by him was forfeited. He was intimated accordingly. The land

was again put to auction on 16.09.1993 in which Gopal Singh turned out to be highest bidder for Rs.3 lacs but this auction was not approved and re-auction of the land was ordered by Joint Secretary, Rehabilitation Department, Haryana vide order dated 13.04.1995. Itwari Lal filed petition under Section 4 of the P.P. Act, 1972, which was dismissed by the Collector, Gurgaon vide order dated 18.11.1993. He again filed suit against the State, which was dismissed as withdrawn on 04.12.1993. Itwari Lal in collusion with Bodla and others succeeded in obtaining a collusive decree dated 16.01.1992 from Court of Sh. B.K. Aggarwal, Sub Judge Ist Class, Gurgaon and got mutation of ownership of the suit land sanctioned illegally in the name of Bodla and others with regard to land measuring 19 kanals 14 marlas out of suit land. In that case Rehabilitation Department was not impleaded as party. On directions of Department, Patwari Halqa recorded a rapat no. 252 in jamabandi for the year 1986-87 to the effect that Itwari Lal will not sell/mortgage the suit land.

3. After sanctioning of mutation in favour of Itwari Lal and Bodla etc. plaintiff purchased the suit land from them and got mutation no. 12636 and 12637 sanctioned in its favour on 30.09.2004.

4. The Government as a matter of policy decided to auction surplus rural evacuee land with a term that buyer will not sell/alienate the land for ten years from the date of confirmation of auction. The plaintiff-appellant had purchased the land without making due verification and enquiry from Rehabilitation Department and notice for auction of the surplus land was issued for 22.09.2005 but the same could not be conducted in view of injunction order issued by the Court.

5. The plea raised by plaintiff-appellant in this case is that it had purchased the suit land after making all the enquiries and seeing the record of mutation as such is bona fide purchaser. This plea was discarded by Courts below.

6. Learned counsel for plaintiff-appellant has submitted that mutation had been sanctioned in favour of Itwari Lal and Bodla etc. and on seeing the record of mutation, plaintiff-appellant had purchased the suit land from them. On perusal of lower Court file, I find that plaintiff-appellant has nowhere placed on file any copy of jamabandi or khasra girdawari, which was seen before purchasing the land from Itwari Lal and Bodla etc. Strangely enough, no reference to any jamabandi, from which khasra numbers were taken, as mentioned in sale deeds (Ex. P-4 and Ex. P-6), find mentioned in these sale deeds. During course of arguments, learned counsel for the plaintiff-appellant was requested to point out to any jamabandi produced by plaintiff-appellant, from which it had made enquiries regarding status of sellers before purchasing the land but he could not lay his hands to any copy of jamabandi. Only one copy of jamabandi has been produced on file as Ex. D-6, which pertains to the year 1986-87 and has a specific note in red ink in column no. 11 that Itwari Lal has been restrained from selling or mortgaging the suit land due to non-payment of outstanding auction money. Order was also passed by Naib Tehsildar Sales, Gurgaon on 16.12.1992 giving directions to revenue officials to make entry in the revenue record that

Itwari Lal was not entitled to sell or mortgage the land.

7. Above facts show that plaintiff-appellant was also aware of the entry in jamabandi and had deliberately avoided to make reference of the same in sale deeds and that it had not verified this fact from the revenue record. Even it had avoided to produce any record on file, which was inspected, in support of its contention that before purchase of land title of vendors was verified. The mere production of mutation order is not sufficient to prove the plea of bona fide purchaser as raised by the plaintiff-appellant as the enquiry is to be made from revenue record, which include jamabandi, khasra girdawari, DDR of patwari etc. Plaintiff has not produced any evidence that mutations relied upon by it were ever incorporated in jamabandi. Plaintiff-appellant on inspection of record would have come to know that the land belongs to Rehabilitation Department and on enquiry become aware of title of Rehabilitation Department over the suit land.

8. Plaintiff-appellant had purchased the land from Itwari Lal and Bodla etc., who were litigating with the State and were fully aware about cancellation of auction in their favour. Even if, it be believed that Itwari Lal and Bodla etc. had cheated plaintiff-appellant, in that case remedy available to plaintiff-appellant is to file claim against vendors and not to lay any claim over the suit land which vests in State and is a public property. Neither plaintiff-appellant nor vendors of plaintiff-appellant can be allowed to cheat the State and grab the public property in connivance with the revenue officials. It is evident that despite entry in the revenue record that Itwari Lal will not sell the land, mutation of part of the suit land was sanctioned in favour of Itwari Lal and Bodra etc. and then in favour of plaintiff-appellant. It appears that some employees/officers in Revenue Department, Haryana have joined hands with vendors and even plaintiff-appellant in grabbing the suit land and this fact requires to be looked into.

9. As a sequel of my above discussion, I find no merit in this appeal and the same is dismissed.

10. Copy of this judgment be sent to Chief Secretary, Government of Haryana to look into the matter and take appropriate action against revenue officials/officers, who have colluded with Itwari Lal and Bodla etc. to facilitate grabbing of public property in this case.