
(1994) 01 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 685 of 1993

M/s. Swadesh Rubber Industries,

APPELLANT

Vs

Sardar Singh and others

RESPONDENT

Date of Decision : 05-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 2, 79, 83, 90(3)
Haryana Public Moneys (Recovery of Dues) Act, 1979 — Section 3(1)
Punjab Land Revenue Act, 1887 — Section 91

Citation : AIR 1994 P&H 306 : (1995) 1 ILR (P&H) 218 : (1994) 107 PLR 380

Hon'ble Judges : S.D. Agarwala, C.J.; N.K. Sodhi, J

Bench : Division Bench

Advocate : V.K. Jain, J.L. Malhotra, for the Appellant; S.S. Dalal and D. N. Ganeriwala, for the Respondent

Judgement

S.D. Agarwala, CJ.—These four connected Appeals Nos, 685 of 1993, 656 of 1993, 686 of 1993 and 655 of 1993 arising out of two Civil Writ Petitions Nos. 2546 of 1988 and 5543 of 1988 are being disposed of by a common judgment passed in LPA No. 685 of 1993. Both the writ petitions were disposed of by a common judgment passed by the learned single Judge on July 16, 1993.

2. In brief, the facts, on the basis of which the writ petitions were filed are as follows:--

Writ Petition No. 2543 of 1988 was filed by one Surinder Singh challenging the order dated February 10, 1988 contained in Annexure P-6 passed by the Commissioner, Hissar by which the bid in an auction given by Surjnder Singh was not accepted and fresh auction was directed. M/s, Adjani Grinding Industries situated at Industrial Area, Hissar took a loan from the Haryana Financial Corporation. Since the loan was not paid, a certificate of recovery for Rs. 4, 98,632.86 was issued by the Collector, Chandigarh under S.3(1) of the Haryana Public Moneys Recovery of Dues) Act, 1979.

3. Sanction was obtained for the sale of the property in dispute after completing the various formalities. Proclamation for sale of the property in question was issued for 27th of January, 1988. The property sought to be sold was land, building and machinery of M/s. Anjani Grinding Industries. The Haryana Financial Corporation on 21st September, 1987 had got the value of the property assessed which was sought to be auctioned at Rs. 7.6 lacs.

4. On 27th January, 1988 only four persons participated in the bid. The highest bid was for Rs. 3 lacs which was offered by Surinder Singh. As already mentioned, the certificate for recovery, which was issued was for Rs. 4,98,632.86, After the property was auctioned Surinder Singh deposited Rupees 30,000/- being 1/10th of the auction amount, with the Tehsildar, who conducted auction. Thereafter by an order dated 10th of February, 1988, the Commissioner Hissar Division exercising the powers of the Collector Hissar did not accept the bid of Surinder Singh and directed fresh auction. It is this order which has been challenged in Civil Writ Petition No. 2543 of 1988.

5. Civil Writ Petition No. 2546 of 1988 was filed by Sardar Singh. Here also M/s. Swadeshi Rubber and Plastic Industries situated at Satrod Kalan, Delhi Road at Hissar had taken a loan from the Haryana Financial Corporation. A sum. o''f Rupees 19,84,469,76 was due against it and consequently a recovery certificate was issued to the Collector for recovery of the said amount. A proclamation of sale was issued on 12th January, 1988. The auction was held on 20th January, 1988. The highest bidder was Sardar Singh, who deposited a sum of Rs. 75,000/- being 1/4th of the auction amount in pursuance of the said bid. In fact, the Haryana Financial Corporation had got the property which was sought to be auctioned assessed and its value was Rs. 13.25 lacs. But the highest bid in the auction was only For Rs. 3 lacs. By an order dated 10th February, 1988, the Commissioner, Hissar Division, exercising the powers of the Collector, Hissar did not accept the bid and directed fresh auction. It is this order dated 10th February, 1988, Annexure P-7, which is the subject of challenging in Writ Petition No. 2546 of 1988.

6. Both these writ petitions came up for hearing before the learned single Judge, who disposed them of by a common judgment.

7. Against the order passed in C.W.P. No. 2543 of 1988, two Letters Patent Appeals have been filed in this Court, namely, LPA No. 686 of 1993 by M/s. Anjani Grinding Industries and LPA No. 655 of 1993 by the Haryana Financial Corporation. Similarly against the order passed by the learned single Judge in C.W.P. No. 2546 of 1988, LPA No. 685/1993 has been/filed by M/s. Swadeshi Rubber Industries and LPA No. 656 of 1993 has been filed by Haryana Financial Corporation.

8. We have heard learned counsel for the parties in alt the four appeals on behalf of the appellants as well as on behalf pf the respondents.

9. The only question involved in the present appeals is as to whether inadequacy

of price paid in an auction can be a valid ground for the cancellation of the auction sale.

10. It is not disputed in respect of both the auctions that one of the important conditions of auction was as follows :--

"The bidders may bid for the machinery or for the full unit but the sale shall be subject to the approval of the Collector, who may in his discretion refuse to accept the highest-bid in case he considers it too low," .

11. From this condition, it is clear that it was open to the Collector before approving the bid to examine whether the adequate price has been obtained or not in respect of the property which was sought to be auctioned. Adequacy of price, therefore, was a relevant consideration before a bid could be approved by the Collector.

12. The Collector had authorised the Tehsildar to hold the auction but the ultimate authority to accept the bid was the Collector, and the Collector had specifically made it a condition of the auction that it would be open to him to refuse to accept the highest bid in case he considers it too low.

13. In our opinion, therefore, the highest bidders could not acquire any vested right in respect of the sale unless the bid was approved by the Collector. A property could be said to have been sold only if the highest bid had been accepted by the Collector and not before that.

14. In the circumstances since the property which was sought to be auctioned was of much higher value than the highest bids in both the cases, it was open to the Collector not to accept the bid and as such it cannot be said that the Collector acted illegally or with material irregularity in the exercise of his jurisdiction in not accepting the bids of the highest bidders. The view taken by the learned single Judge that inadequacy of the price fetched in an auction is not a valid ground for the cancellation of the auction proceedings, in our view, cannot be sustained in law.

15. The Punjab Land Revenue Act, 1987 (hereinafter called the Act) lays down the procedure for the sale of immovable properties when a recovery certificate is issued to the Collector for the recovery of an amount due against a defaulter.

16. The learned counsel for the respondent has relied upon S.91 of the Act and urged that a sale could be set aside only on the ground of some material irregularity or mistake in publishing or conducting it and not on the ground of inadequacy of the said price. S.91 of the Act reads as follows :--

"91. Application to set aside sale.-- (1) At any time within thirty days from the date of the sale, application may be made to the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it.

(2) But a sale shall not be set aside on that ground unless the applicant proves

to the satisfaction of the Commissioner that he has sustained substantial injury by reason of the irregularity or mistake."

17. The above section entitles a person to make an application to the Commissioner to set aside the sale on certain grounds. The question, however, is as to whether a sale at all takes place when the bid is not accepted.

18. S. 79 of the Act provides that on the receipt of the sanction of the Commissioner of the sale of any immovable property, the Collector shall issue a proclamation of the intended sale.

19. S. 83 of the Act empowers the Collector, from time to time, to postpone the sale.

20. After the proclamation of sale in the instant case, the Collector had authorised the Tehsildar to conduct the sale With the specific condition that the sale shall be subject to the approval of the Collector.

21. In our view, consequently, the sale is not complete unless the Collector accepts the highest bid. Since the sale is not complete without the approval of the Collector, the question of applicability of S. 91 of the Act does not arise. It is only after a sale has taken place which has been approved by the Collector that the provisions of S. 91 of the Act could be invoked and not otherwise. Since in the instant case, the sale has not taken place as the bid was not approved by the Collector, the learned counsel for the respondents cannot possibly rely on S. 91 of the Act. In our opinion, by the mere giving of the bid, no right vests in the bidder, unless the said bid is accepted by the Collector, Who is the person authorised to sell the property.

22. Since in the instant case, the bid was not accepted, the sale actually did not take place and, therefore, the provisions of S. 91 of the Act do not apply at all. Before accepting the bid, the Collector was justified in refusing to accept it as it was not for adequate consideration. In the circumstances, the impugned orders in the writ petitions were valid in law and no interference was called for by this Court under Art. 226 of the Constitution of India.

23. In *Bombay Salt and Chemical Industries Vs. L.J. Johnson and Others*, a sale by auction under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 came up for consideration and it was held as follows :--

"It is clear from the rules and the conditions of sale imposed under R. 90(3) and set out in the notice of sale that the declaration that a person was the highest bidder at the auction does not amount to a complete sale and transfer of the property to him: The fact that the bid has to be approved by the Settlement Commissioner shows that till such approval which the Commissioner is not bound to give, the auction-purchaser has no right at all. It would further appear that even the approval of the bid by the Settlement Commissioner does not amount to a transfer of property for the purchaser has yet to pay the balance of the purchase-money and the rules provide that if he fails to do that he shall not have

any claim to the property. The correct position is that on the approval of the bid by the Settlement Commissioner, a binding contract for the sale of the property to the auction-purchaser comes into existence. Then the provision as to the sale certificate would indicate that only upon the issue of it a transfer of the property takes place."

24. It is clear from the rules and conditions set out above that the declaration that a person was the highest bidder at the auction does not amount to a complete sale and transfer of the property to him. The fact that the bid has to be approved by the Settlement Commissioner shows that till such approval which the Commissioner is not bound to give, the auction-purchaser has no right at all. It would, further appear that even the approval of the bid by the Settlement Commissioner does not amount to a transfer of property for the purchaser has yet to pay the balance of the purchase-money and the rules provide that if he fails to do that he shall not have any claim to the property. This principle, in our opinion, would be applicable to the present case. Unless the highest bid had been accepted by the Collector, the auction-purchaser gets no right in the property at all and it cannot be held to be a sale in his favour.

25. In view of the foregoing discussion, the appeals are allowed; the order of the learned single Judge dated 16th July, 1993 is set aside and both the writ petitions are dismissed. Parties are, however, directed to bear their own costs throughout.

26. Order accordingly.