
(1996) 01 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 478 of 1982

Sher Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-01-1996

Acts Referred:

Citation : (1996) 112 PLR 755 : (1996) 3 RCR(Civil) 143

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Lakhbir Singh Wasu, for the Appellant; P.S. Mehta Ranjan Lohan and Laxman Singh, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—This writ petition is filed against the orders of Deputy Secretary (Rehabilitation)-cum-Settlement Commissioner Haryana dated 21.10.1981.

2. The agricultural and admeasuring 34 bighas 1 biswa comprising in khasra No. 237 Min was an evacuee property which was acquired by the Central Government u/s 12 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954. The said land was transferred to the State of Punjab in fine year 1961 under "Package Deal. Thereafter, the said property was put to auction on 13.5.1965 which is a restricted auction in which only persons belonging to the Scheduled Castes were allowed to take part in the auction. The 3rd respondent became the highest bidder having bid it for a sum of Rs. 5210/-. He also deposited the five percent of the sale amount according to the conditions of the auction. Thereafter, one Chandgi Ram filed a writ petition questioning the sale in auction in CWP No. 94 of 1965. The said writ petition was dismissed on 20.7.1972. Even after the dismissal of the writ petition the said Chandgi Ram raised certain objections before the Additional Settlement Officer-cum-Settlement Commissioner, who rejected the objections vide his order dated 29.1.1973. While rejecting the objections of Chandgi Ram, the Additional Settlement Officer also confirmed the

sale held in favour of 3rd respondent. However, he directed that the auction purchaser should pay the balance of the earnest money in the instalments in accordance with the conditions applicable in regard to the restricted auction failing to comply with the said instructions, the sale would have been deemed to have been set aside. Thereafter, it appears the auction purchaser namely the 3rd respondent did not pay the balance of the earnest money. On that ground the land was put to re-auction on 24.4.1974. In the said re-auction one Pirthi Singh was the highest bidder and said Pirthi Singh sold the land to the writ petitioner for a sum of Rs. 20,000/- under a sale deed dated 9.12.1977. On 25th of September, 1978, the 3rd respondent who is the original auction purchaser of the land filed a revision petition before the Deputy Secretary (Rehabilitation)-Cum-Settlement Commissioner (2nd respondent) for setting aside the 2nd auction in favour of Pirthi Singh. The said revision petition was allowed by 2nd respondent on 21.10.1981. Aggrieved by the said order, the petitioner who is the purchaser from the 2nd auction purchaser filed this writ petition challenging the order of the 2nd respondent dated 21.10.1981.

3. If the auction in favour of 3rd respondent held in the year 1965 continues to be valid and in force than the 2nd auction in which Pirthi Singh became the highest bidder would be invalid. It is, therefore, to be seen whether the auction held in favour of 3rd respondent continues to be in force in spite of the fact that he has not deposited the balance of the earnest money. It may be stated here that the 3rd respondent paid the balance of the sale consideration on 8.1.1982.

4. There is no dispute that the 3rd respondent became the highest bidder at the auction and purchased the disputed land for a sum of Rs. 5210/-. At the time when the auction was held in the year 1965, the auction purchaser has to deposit 5 per cent of the bid amount, but could not deposit the further amount and possession was also not delivered to him because of the writ petition filed by Chandgi Ram in CWP No. 94 of 1965. The writ petition was pending in this Court for about 7 years and it was disposed of on 20.7.1972. It is pertinent to note that during the pendency of the writ petition there was stay of confirmation of the auction and further proceedings in pursuance of the auction. Therefore, the 3rd respondent could not pay the balance of the sale consideration or the instalment thereof. Even after the dismissal of the writ petition in 1972, Chandgi Ram raised certain objections for confirmation of the sale before the Additional Settlement Officer-cum-Settlement Commissioner, Ambala but by his order dated 29.1.1973 rejected the objections. While rejecting the objections filed by Chandgi Ram, the Additional Settlement Officer cum-Asstt. Settlement Commissioner, Ambala passed the following final order:-

"I, therefore, proceed to confirm the sales. However, they will be liable to pay the balance of the earnest money and the instalment in accordance with the instructions now applicable in regard to restricted auction. In case they fail to comply with (his condition, the sales shall be deemed to have been set aside.

This order came to be passed on 29.1.1973. The State of Haryana issued

instructions in regard to the recovery of instalments from the Harijans in cases of belated possession in its Memo No. 6(74)/GI/7989/94-70 dated 15.10.1970. The said instruction reads as follows:-

"It. has come to the notice of the Govt. that in some cases after the confirmation of a sale, the possession of the land purchased by the Harijans auction purchaser in restricted auctions is not delivered to them before first or even the second instalment falls due on a/c of operation of stay order, objections and belated decision thereon. A question has arisen as to from which date should the grace period of one year for recovery of instalments be recovered after taking into consideration the factum of possession. Govt. has decided that the recovery should start after two harvests from the date of possession of the land".

5. Thus it is clear that at the time when the Additional Settlement Officer-cum-Asstt. Settlement Commissioner passed the final order, the recovery of the instalments should start after 2 years from the date of the possession of the land. Admittedly, the possession of the land was not given to the 3rd respondent. Therefore, there was no question of non-compliance of the order of Additional Settlement Officer-cum-Asstt. Settlement Commissioner, Ambala dated 29.1.1973. Instructions of the Government which were in force at that time were referred to above. Therefore, the recovery of the instalments should start after two years from the date of possession of the land, when the possession of the land was not given to auction purchaser, there was no question of any default on his part. Therefore, the order, dated 29.1.1973 will stand. Therefore, there was no reason to put the land in auction on 24.4.1974 when there was no default of the order of the Additional Settlement Officer-Cum-Asstt. Settlement Commissioner dated 29.1.1973. Thereafter, the re-auction cannot be said to be a valid one.

6. Apart from that before putting the property to re-auction it is the bounden duty of the officers concerned to give a notice to the 3rd respondent calling upon him to pay any amount due from him otherwise the property would be put to auction. Such a notice was not issued to the 3rd respondent. The record shows one notice for payment of balance amount of sale consideration was said to have been issued to the 3rd respondent but the same was not personally served on him but was affixed on the door. The recovery notice is contrary to the instructions dated 15.10.1970. Further as observed by the 2nd respondent in his order that Tehsildar (Sales) passed the order on 29.11.1973 for issuing a fresh notice to the 3rd respondent but no such notice was issued to the 3rd respondent. This fact was not controverted. Therefore, I am of the opinion that the auction held on 24.4.1974 in favour of Pirthi Singh cannot be said to be valid one. Therefore, the auction which has been held in the year 1965 in favour of 3rd respondent stands. Therefore, the petitioner will not get any right as his vendor has not acquired any title to the property by virtue of the auction held on 24.4.1974.

7. I am, therefore, of the opinion that the writ petition is devoid of any merits.

The writ petition is accordingly dismissed. In the circumstances of the case, there will be no order as to costs.