
(2008) 03 P&H CK 0131
In the Punjab And Haryana At Chandigarh

State of Punjab and Another	Vs	APPELLANT
Ashok Singh Garchha and Others		RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Constitution of India, 1950 — Article 162

Citation : (2008) 152 PLR 46 : (2008) 3 RCR(Civil) 648

Hon'ble Judges : Vijender Jain, C.J.;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vijender Jain, C.J.—This order will dispose of L.P.A. No. 90 and 91 of 2008, arising out of C.W.P. No. 3732 of 1982 and 3570 of 1982 respectively, directed against the order dated 8.8.2007 whereby the learned single Judge allowed the aforesaid writ petitions and set aside the order of Chief Sales Commissioner-cum-Deputy Commissioner, Ludhiana, exercising revisional jurisdiction u/s 10 of the Punjab Package Deal Properties (Disposal) Act, 1976 (for short "the 1976 Act") wherein the sale of land by auction in favour of the petitioners was set aside after 17 years.

2. Facts in brief are that surplus rural evacuee land situated in village Khera Bet, Tehsil and District Ludhiana which was lying unutilized for many years after the partition of the country was transferred by Central Government to the State of Punjab in 1961 at a fixed price under a transaction popularly known as "Package Deal". It is further noticed that instructions were framed under Article 162 of the Constitution of India, by the State of Punjab for disposal of package deal properties and were commonly known as Package Deal Rules, 1962. These 1962 instructions/rules were replaced by a regular enactment known as Punjab Package Deal Properties (Disposal) Act, 1976 and rules were framed u/s 18 of the 1976 Act known As Punjab Package Deal Properties (Disposal) Rules, 1976 and Rule 6 of the same provided procedure of sale by auction.

3. Land measuring 78 kanals 16 marlas situated alongside river Sutlej in village Khera Bet, Tehsil and District Ludhiana was put to open auction on December 5, 1963. Due process as required under instructions/1962 Rules was followed before the auction proceedings were conducted. Seventy persons including ex-Sarpanch and Numberdars were present at the time of auction. The bid sheet has also been placed on record as Annexure A-1. The said land was purchased in auction by the respondents and the auction proceedings were confirmed by the competent authority and thus had become final.

4. The respondents after a lapse of 17 years of allotment initiated action for cancellation of the said sale by auction primarily on the ground that there was procedural lapse in the conduct of the auction as 15 days' notice had not been given prior to the conduct of the auction or the entries in the roznamcha have not been properly made or the records had not been properly made or the records had not been properly maintained and thus the procedure provided under Rule 5(c) of the instructions/1962 Rules had been violated and therefore, the sale was vitiated by element of fraud and hence the revisional authority u/s 10 of the 1976 Act was competent to invoke its power and cancel the allotment/sale by auction. It has been further stated that the Government had appointed a Committee of legislators known as "Harchand Singh Committee" to inquire into the cases of grabbing of evacuee lands by high dignitaries and further influential public men. The said Committee had also inquired into the allegations against the respondents and had found that by exercising their influence they had managed to purchase evacuee land in their own names or in the names of other persons in violation of the rules. The report had been submitted by the Harchand Singh Committee in the year 1973. On the basis of that report the records relating to respondents were scrutinised and it was found that there were procedural defects in the conduct of the auction and thus violating the provisions of 1962 instructions/rules. However, no action on the same was taken till April, 1980. The record further bears out that vide order dated 30.6.1981 (Annexure P-4) the Chief Sales Commissioner (Deputy Commissioner, Ludhiana) set aside the sale of the land in question in favour of the respondents for the reason that proclamation for sale of land was defective and factum of auction was not mentioned in any record maintained by the Patwari concerned. This order dated 30.6.1981 (Annexure P-4) was under challenge before the learned single judge.

5. It is apparent that the action of the revisional authority had been initiated u/s 10(2) of the 1976 Act. For ready reference, the same is extracted hereunder:

10(2) Without prejudice to the generality of the foregoing power under Sub-section (1) if the Chief Sales Commissioner is satisfied that any order whether passed before or after the commencement of this Act, for the transfer of package deal properly to any person, has been obtained by him by means of fraud, false representation or concealment of any material facts, then, notwithstanding anything contained in this Act, the Chief Sales Commissioner may pass an order cancelling or modifying their order of such transfer.

It is discernible from the reading of Sub-section (2) of Section 10 of 1976 Act that the power of revision in the present case could be invoked if the sale by auction in favour of respondents-petitioners had been obtained by means of fraud, false representation or concealment of any material facts, the same could have been cancelled or modified. In the present case a perusal of Annexure P-2 vide which reference has been made by the Rehabilitation Department to the Chief Sales Commissioner indicates that the entire thrust is on the procedural defects in the issuance of public notice or entries in the roznamcha etc. Similar is the position in the impugned order dated 30.6.1981 (Annexure P-4) passed by the Chief Sales Commissioner where towards the end of the order a mere averment has been made to the effect that the sale is vitiated by element of fraud, without pointing out as to how the fraud had been committed. The learned single Judge while dealing with the issue has held as under:

Here also main thrust is only on the procedural defects or the violation of Rule 5(c) of the Rules, which provides for procedure for disposal of the property. Accordingly, I find that the ingredients of Section 10 of the Act for initiation of action against the petitioners are not forthcoming in the present case, which could enable the authorities to pass an order for cancellation of sale in favour of the petitioners. It is settled law that an order passed by a quasi-judicial authority cannot be supplemented or justified with any material which does not form part of the reasoning adopted by the authority. The delay in initiation of action by the respondents in the present case is also a circumstance which weakens the stand of the respondents. Accordingly, I find that the impugned order suffers from legal infirmities and deserves to be quashed.

Thus, we find that the action of the revisional authority in the present case suffers from lack of jurisdiction besides the vice of delay and laches.

6. We are distressed to notice that quasi-judicial orders are passed by senior bureaucrats exercising jurisdiction (appellate or revisional) under various Acts keeping in view the colour of the government against sound and settled principles of law leading to travesty of justice, besides causing unnecessary harassment to the litigants.

7. We find no infirmity with the judgment of learned single Judge and the same is upheld and both the appeals being devoid of merits are dismissed. No order as to costs.