(2013) 10 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 23548 of 2012

Sukhbir APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Citation : (2014) 173 PLR 828

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Augustine George Masih, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, C.J.

C.M. No. 14418 of 2013

1. Leave is granted to place on record written statement of respondent No. 5, on acceptance of the oral prayer of learned counsel for the said

respondent to recall the order dated 15.07.2013 whereby he had been proceeded against exparte.

Application is accordingly allowed.

C.W.P. No. 23548 of 2012.

The petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking quashing of the alienation of land measuring 5

Kanals situated within the municipal limits of Ganaur, District Sonepat, by respondent No. 3-Municipality in favor of respondent No. 4-Brahman

Sabha in pursuance to a registered sale-deed dated 28.03.2011 duly registered on 31.03.2011. This sale deed was executed on the basis of a

resolution dated 22.08.2008 of respondent No. 3-Municipal Committee, the approval of which was obtained from Deputy Commissioner, Sonepat. The transaction is stated to be in violation of Rule 2 of the Haryana Municipalities Management of Municipal Properties and State

Properties Rules, 1976.

In the present proceedings, it has come to light that the Rules relied upon to file the present petition have been superseded by the subsequent Rules

notified on 02.11.2007 known as Haryana Management of Municipal Properties and State Properties Rules, 2007 framed in exercise of powers

conferred by clause (a) of Sub-section (1) of Section 257 of the Haryana Municipal Act, 1973. It is these rules which would govern the

transaction in question, as to the mode and manner of disposal of the property and fixation of sale price. Rules 3 and 4 of the Haryana

Management of Municipal Properties and State Properties Rules, 2007 would be relevant which read as under:-

3. ...Subject to any directions issued by the State Government, Municipality may dispose of any site/building belonging to it by way of sale or lease

or exchange or by creation of any easement right or privilege or on tehbazari or otherwise as per provisions of these rules.

4. (1) In the case of sale/lease by allotment, the sale price/premium shall be the market price to be determined by the State Government, on the

recommendation of the Deputy Commissioner.

Provided that the State Government may fix the sale price/premium less than the market price for allotment of a site/building under Rules 8(2), 8(3)

and 9(1) by recording reasons in writing;

(2) In the case of sale/lease by auction, the sale price/premium shall be the reserve price or any higher price/premium determined as a result of

bidding in open auction.

(3) Development charges as fixed by the State Government from time to time shall also be levied alongwith sale price/premium.

2. It is not disputed before us that the mode of sale is available and that all the necessary formalities under the Rules have been concluded.

3. Despite the aforesaid, learned counsel for the petitioner seeks to assail the transaction by firstly contending that only auction should be the mode

of disposal of the property and secondly by seeking to impugn the price fixation.

4. In our view, the auction is only one of the modes for disposal of the property especially when the statutory rules enacted reflecting the will of

legislature prescribes other modes of disposal as well. The price fixation is also as per the Rules.

5. Learned counsel for the petitioner seeks to rely upon the observations made by the Hon''ble Supreme Court in Saroj Screens Pvt. Ltd. Vs.

Ghanshyam and Others, , to contend that in the widened economic activities of the State, the law heeds to protect the individual interest as well as

public interest and the discretion of the Government cannot be unlimited. However, the facts of the said case show that while setting aside the

alienation and permitting invitation of tender, the factual matrix was taken note of i.e. the question of renewal of lease in respect of a commercial

property of the Corporation. This was so as the commercial property would be governed by the market price. However, in the present case, we

are concerned with the charitable activities of running a Dharamshala for which the land has been made available by sale after complying with all

the formalities as stipulated under the statutory rules and that too on the basis of price determined by the Corporation.

6. We may also note that the present petition has been styled as a Public Interest Litigation and there are thus no competition interest as in the case

of Saroj Screens Private Limited (supra). Not only that the petitioner has merely stated that he is a resident of Ganaur, District Sonepat and has

not even complied with the Maintainability of Public Interest Litigation Rules, 2010. We may also add that prior to the sale deed an endeavor was

made by 11 plaintiffs by filing a suit for injunction in the civil court in which no interim relief was granted. The petitioner was one of the plaintiffs in

that suit and the said suit was dismissed for non-prosecution. It is the say of learned counsel for the petitioner that the suit for injunction had

accordingly become infructuous. However, it appears that after the sale transaction, another suit has been filed by another set of plaintiffs in which

one of the plaintiffs is common where declaratory relief has been sought for cancellation of the sale-deed while the petitioner has filed the present

petition seeking to assail the transfer by sale-deed by way of present Public Interest Litigation.

We thus find no reason to exercise our jurisdiction to entertain the present Public Interest Litigation.

Dismissed.

Pending applications are also dismissed.

Augustine George Masih, J.

