

(2004) 05 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No"s. 4628 and 4629 of 1983

Sukhdev Singh and Others

APPELLANT

Vs

The Financial Commissioner, Revenue and Secretary to Govt.
Punjab and Another and Another

RESPONDENT

Date of Decision : 20-05-2004

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 33
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 92

Citation : AIR 2005 P&H 87 : (2004) 2 ILR (P&H) 415 : (2004) 138 PLR 696 :
(2004) 3 RCR(Civil) 765

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : S.N. Saini, for the Appellant; Baljit K. Mann, D.A.G. for Respt No. 1
and Y.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—This judgment shall dispose of Civil Writ Petition Nos.4629 and 4628 of 1983 filed by the same petitioners challenging the order dated 21.6.1983. However, the facts are being taken from Civil Writ Petition No. 4629 of 1983.

2. The petitioners have impugned the order dated 21.6.1983, passed by respondent No. 1, vide which the auction sale of the land in question was set aside after about 23 years.

3. The brief facts of the case are that the evacuee properties bearing No. 7, 7-A and 9-A to 9-D, comprising of four shops and residential accommodation situated in Rajpura, were put to open auction on 8.12.1960 by the Rehabilitation Department under the provisions of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter referred to as "the Rules of 1955"). The father of the petitioners, Shri Kesar Singh, emerged as a highest bidder in the said public auction in the sum of Rs. 14,000/-. His bid was accepted and

subsequently, the auction sale was confirmed, and an intimation in this regard was sent to him vide letter dated 4.3.1961 (Annexure P-1). He paid the entire sale consideration and consequently, the sale certificate (Annexure P-2) with regard to the property in question was issued in his favour on 7.12.1972.

4. Some part of the aforesaid property was in occupation of one Gurdit Singh, Satwant Kaur (respondent No. 2 in C.W.P. No. 4629 of 1983) and Piare Lai (respondent No. 2. in C.W.P. No. 4628 of 1983). Balwant Singh son of the aforesaid Gurdit Singh, who was a member of the Armed Forces at Lucknow addressed a letter to the Regional Settlement Commissioner, Punjab, Jullundur through the Military authority for allotment of part of the property in occupation of his father Gurdit Singh. In reply to the said letter, vide report dated 13.6.1963 (Annexure P-3), the District Rent and Managing Officer, Ambala, intimated to the authorities that the property in question was already auctioned, the sale certificate was issued and therefore the same was not available for transfer in favour of the occupant Gurdit Singh on the basis of his possession. Again, a similar request was sent by Gurdit Singh for transfer of shop No. 9-A in his occupation. The said request was again rejected by the Assistant Settlement Officer-cum-Managing Officer, Jullundur, vide his order dated 15.2.1967- (Annexure P-4) on the ground that the property has already been sold and the same was not available for allotment. Aggrieved against the said order, Gurdit Singh filed appeal, which was dismissed by the Assistant Settlement Commissioner, exercising the delegated powers of the Settlement Commissioner vide his order dated 28.6.1967 (Annexure P-5) on the ground that the property in dispute was part of one unit, which had already been sold in public auction. Still not satisfied, the said Gurdit Singh filed revision u/s 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as "the Central Act") before the Chief Settlement Commissioner, which too was dismissed on 31.8.1967 (Annexure P-6) while holding that when an evacuee property is in possession of more than one person, then the same does not remain transferable, and has to be put to public auction. Since the property was already auctioned, therefore, no interference was made.

5. At one point of time, due to the mis-representation of the aforesaid Gurdit Singh, the property being No. 9-A, which was a shop in his occupation, was proposed to be put to auction on 18.5. 1967. When Kesar Singh, father of the petitioners, vide his petition dated 27.4.1967 (Annexure P-7) raised objection to the Managing Officer (Sales), Jalandhar, that the said property was already sold in public auction and purchased by him vide sale certificate dated 7.12.1972, the aforesaid proposed auction was withdrawn vide letter dated 1.5.1967 (Annexure P-8).

6. Subsequently, on 15.4.1977, after the expiry of 17 years from the date of auction and 5 years after the issuance of sale certificate, aforesaid three persons, namely Gurdit Singh, Satwant Kaur (respondent No. 2 in C.W.P. No. 4629 of 1983) and Piare Lal (respondent No. 2 in C.W.P. No. 4628 of 1983) filed three

separate revision petitions u/s 24 of the Central Act challenging the validity of the auction sale in favour of father of the petitioners on the ground that the auction was not properly conducted and the sale was confirmed below the reserve price. Those revision petitions were dismissed by the Chief Settlement Commissioner vide his order dated 26.12.1977 (Annexure P-10), while observing as under:-

"..The report of the Assistant Settlement Officer (Sales) does not show any serious defect in the property of the sale which would warrant its cancellation in suo motu proceedings. If the petitioners were aggrieved against the transfer of the property in favour of Kesar Singh, they should have challenged the transfer order at the appropriate time before the appellate authority. They cannot invoke the jurisdiction of the Chief Settlement Commissioner u/s 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, after the lapse of so many years without exhausting the remedy below. There being no merits in all the three revision petitions before me, these are liable to be dismissed and I order accordingly."

7. Against the said order, Satwant Kaur, respondent No. 2 in CWP No. 4629 of 1983, and Piare Lai, respondent No. 2 in CWP No. 4628 of 1983, filed two separate revision petitions u/s 33 of the Central Act before respondent No. 1. Those petitions were allowed vide impugned order dated 21.6.1983 (Annexure P-12) and the sale in favour of the father of the petitioners was set aside, while observing as under:-

"I have gone through the impugned order and the record of the case and have also considered the arguments advanced on both sides. The auction and the circumstances of the case are indeed peculiar. The only weighty reason in favour of the respondent is the considerable delay on the part of the petitioners. There is no denying the fact that the petitioners have assailed the sale at a very belated stage and ordinarily such delay could be sufficient reason to dismiss their petition but the auction being managed affair has to be set aside. The fact that there were only two bidders and the highest bid was 50% below the reserve price compels me to conclude that the sale was not just and fair but it cannot inspire confidence. There is nothing else on the record to suggest that these apparent infirmities were considered before confirming the sale. I am, therefore, inclined to accept the petitions and set aside the sale. The property should be disposed of in accordance with the policy in force now."

8. The petitioners have challenged the aforesaid order passed in two revision petitions by filing the present two writ petitions.

9. Counsel for the petitioners submitted that respondent No. 1 was not justified in setting aside the sale in favour of father of the petitioners after 23 years of the date of auction, particularly when the auction was confirmed and sale certificate was issued. In support of his contention, learned counsel relied upon a decision of the Hon''ble Apex Court in Roop Lal (dead) by L Rs v. Financial Commissioner,

Haryana 2001(4) R.C.R. 812 (S.C.), wherein it was held that once the allotment was made and thereafter the conveyance deed executed, then the auction sale cannot be set aside in exercise of power u/s 33 of the Central Act. Learned counsel for the petitioners submitted that respondent No.1 has set aside the sale on two grounds; firstly that only two bidders participated in the auction, therefore, it was a managed affair and secondly that the highest bid was 50% below the reserve price. According to learned counsel, the sale could not be set aside on these two grounds after the expiry of 23 years, particularly when not only the bid was confirmed, but the sale certificate was also issued. He submitted that detailed procedure for setting aside the sale has been laid down under Rule 92 of the Rules of 1955. This Rule provides that if a person desires that the auction sale be set aside because of any irregularity or fraud in the conduct of the sale, he can file an application in this regard to the Settlement Commissioner within a period of seven days from the date of the acceptance of the bid. He further submitted that even the Settlement Commissioner has suo motu power under Sub-rule (4) of Rule 92(1) of the Rules of 1955 to set aside the sale if he is satisfied that any material irregularity or fraud was committed in the conduct of the sale. He submitted that in this case neither any objection was filed by anyone, including respondent No. 2 in both the present writ petitions, at the relevant time when the highest bid of the father of the petitioners was accepted, nor the Settlement Commissioner, in exercise of his suo motu power set aside the auction on the ground of bearing any material irregularity or fraud in the conduct of the auction. Learned counsel for the petitioners further submitted that the highest bid of the father of the petitioners was accepted and confirmed and the sale certificate was issued. Therefore, the sale could not have been set aside on the ground of material irregularity or fraud being committed during the conduct of auction. Thus, according to learned counsel for the petitioners, respondent No. 1, exercising the powers of Central Government u/s 33 of the Central Act, was not having any jurisdiction to set aside the auction sale at such a belated stage and that too on the ground that there was material irregularity in the conduct of the auction. In support of his contention, he relied upon a decision of the Hon'ble Apex Court in Gurbax Singh v. The Financial Commissioner and Anr. 1991 P.L.J. 192, a Division Bench decision of this Court in Sucha Singh and Ors. v. Gurdial Singh and Ors. 1977 P.L.J. 6 and Anr. decision of this Court in Piara Singh v. The Chief Settlement Commissioner, Haryana and Ors, (2001)129 P.L.R. 683.

10. On the other hand, learned counsel for respondent No. 2 in C.W.P. No. 4629 of 1983 submitted that there is no illegality and jurisdictional error in the impugned order passed by respondent No. 1. He submitted that the material irregularity in conducting the auction in the year 1960 is apparent, as notice of the public auction was not widely published, therefore, only two bidders participated in the auction. He submitted that part of the property in question was in possession of respondent No. 2 and other tenants and in view of this fact, the auction sale should not have been confirmed. He further submitted that a big

fraud was committed as the auction was confirmed at the price which was 50% below the reserve price. He further submitted that even the bid amount of Rs. 14,000/- was not paid by father of the petitioners. He further submitted that the Central Government has jurisdiction u/s 33 of the Central Act to cancel the auction sale if it is found that fraud was committed in conduct of the auction.

11. After hearing learned counsel for the parties and perusing the record of the case, I am of the opinion that the impugned order dated 21.6.1983 (Annexure P-12) passed by respondent No. 1 is liable to be quashed. Merely because only two persons participated in the auction, it cannot be inferred that there was any defect in the publication and conduct of the auction. Respondent No. 1 has passed the impugned order on the basis of wrong inference drawn without any basis. Undisputedly, the property in question was put to public auction in the year 1960 by the Rehabilitation Department under the Rules of 1955. The said auction was held according to the procedure prescribed for sale of property under Rule 90 of the Rules of 1955. The father of the petitioners was the highest bidder. His bid was accepted, auction sale was confirmed, entire amount was paid/adjusted and ultimately a sale certificate was issued on 7.12.1972. These facts are not disputed. Counsel for the respondents have also not disputed that after issuance of the sale certificate, on many occasions, an attempt was made for allotment of part of the property to the persons in occupation, but their request was turned down on the ground that the property had already been auctioned and the same was not available for allotment. It is also not disputed that soon after the auction bid, no objection for setting aside the auction was filed under Rule 92 of the Rules of 1955. Though the auction sale was confirmed on 4.3.1961 and the entire sale consideration was paid, but the sale certificate was issued in the year 1972 and till then, there was no complaint against the aforesaid auction sale. It is only after the issuance for sale certificate that the persons in occupation of some part of the property in question tried to get the portion in their occupation allotted to them. When they failed in their attempt, in the year 1977, they filed objections u/s 24 of the Central Act for setting aside the auction sale on the ground of material irregularity alleged to have been committed during the course of conduct of the auction. I am of the opinion that after 17 years of the auction, there was no scope to exercise the revisional jurisdiction for setting aside the auction sale on the alleged ground of material irregularity and fraud committed during the conduct of the auction. A Division Bench of this Court in Such a Singh and others case (supra) held that though no period of limitation is prescribed for invoking the revisional jurisdiction of the Chief Settlement Commissioner u/s 24 of the Central Act, but it does not follow that persons can lie low for any length of time and invoke the revisional powers of the Chief Settlement Commissioner after the lapse of several years. Keeping in view this principle, the Chief Settlement Commissioner, vide his order dated 26.12.1977 (Annexure P-10) dismissed the revision petitions of the private respondents while observing that they cannot invoke the jurisdiction u/s 24 of the Central Act after the lapse of so many years. Not only this, the Chief

Settlement Commissioner called for the report from the Executive Officer before passing the said order. The report was submitted by S. Tirlok Singh, Executive Officer, copy of which has been annexed with the petition as Annexure P-11. In the said report, it has been categorically mentioned that the auction sale was confirmed after proper scrutiny. It was held that the property was sold in open auction, the sale was duly confirmed and the sale certificate was issued after payment of the full amount. It has also been mentioned in this report that the authorities before the confirmation of sale were aware of the fact that the auction sale was below the reserve price.

12. In view of these facts, vide the impugned order, respondent No. 1 set aside the auction sale in an arbitrary manner. It has been noticed in the impugned order that the objectors have assailed the sale at the belated stage and ordinarily such delay should be sufficient for dismissing the petition. In spite of that sale was set aside while observing that in the auction only two persons participated and the highest bid was 50% below the reserve price. In my opinion, on these grounds, the auction sale could not have been set aside after the lapse of 23 years, particularly when the sale was confirmed long back and the sale certificate was also issued 11 years ago. Respondent No. 1 has completely overlooked the fact that the auction sale was under the Rules which provide a complete procedure for setting aside the sale on the ground of material irregularity and fraud. Neither any objection was raised soon after the auction sale nor the Settlement Commissioner set aside the auction in exercise of his suo motu power u/s 92(2)(4) of the Rules of 1955. Even the Chief Settlement Commissioner had declined to exercise his revisional jurisdiction for setting aside the auction sale on the ground of delay and laches. From the report obtained by the Chief Settlement Commissioner, it is clear that the confirming authority was aware of the fact that only two persons participated in the auction and the highest bid was 50% below the reserve price. In spite of those facts, the sale was confirmed. Therefore, it is not the case where some material fact was deliberately concealed from the authority, who had to confirm the auction sale. In these circumstances in my opinion, setting aside the auction sale after 23 years of the confirmation and 11 years after the issuance of the sale certificate and that too in exercise of the power u/s 33 of the Central Act is wholly unjustified and beyond the scope of the jurisdiction of the authority. The various contentions raised by learned counsel for respondent No. 2 in C.W.P. No. 4629 of 1983 are not relevant. His contention that no proper notice was published by the authority and that the property could not have been sold in public auction because the same was in possession of other persons cannot be accepted at this stage when no such objection was filed under Rule 92 of the Rules of 1955 within seven days of the bid. The contention of learned counsel for respondent No. 2 that he could not file such objection at relevant time because he was not aware of the auction sale, cannot be entertained and accepted at this stage. It is clear from the report that soon after the issuance of sale certificate, the persons in occupation of part of the property tried to get the same allotted to them on the basis of their

possession, but their claims were not accepted by the authorities while observing that the property had already been auctioned. Even at that time, no objection regarding irregularity in the conduct of sale was raised. Subsequently, when their claim for allotment of part of the property on the basis of their possession was rejected, for the first time in the year 1977 they filed petition u/s 24 of the Central Act for setting aside the auction sale on the ground of irregularity and fraud in the conduct of auction. Therefore, at this belated stage, their plea should not have been entertained.

13. In view of the aforesaid discussion both these writ petitions are allowed. The impugned order dated 21.6.1983(Annexure P-12) passed by respondent No. 1 is set aside.

14. No order as to costs.