

(1993) 07 P&H CK 0121
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2543 of 1988

Surinder Singh

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 16-07-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Land Revenue Act, 1887 — Section 79

Citation : (1993) 104 PLR 626

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : Jaswant Jain, for the Appellant; D.R. Trikha, D.A.G. and S.S. Dalal, for the Respondent

Final Decision : Allowed

Judgement

Amarjeet Chaudhary, J.—This judgment will disposed of C. W. P. Nos. 2543 and 2546 of 1988 involving common question of law and facts. For the purposes of this judgment, fact have been taken from C. W. P. 2543 of 1988 "Surinder Singh v. The State of Haryana and Ors."

2. The petition filed under Articles 226 and 227 of the Constitution of India seeks issuance of a writ of certiorari for quashing order dated 10.2.1988 copy which of is Annexure P-6 to the petition, vide this order, respondent No. 2, i e the Commissioner, Hissar" Division, Hissar, had ordered re-auction of the property details of which have given in para 2 of the writ petition. The earlier auction dated 27. . 1988 in favour of the petitioner was cancelled.

3. The background which led to the filing of the writ petition is that land measuring 8 kanals alongwith plant and machinery belonging, to M/s Anjani Grinding Industries, Hissar, (hereinafter referred to as "the property in dispute") was attached u/s 79 of the Punjab Land Revenue Act, 1987 (hereinafter referred to as the Act), as the said Company had failed to repay the loan to respondent No. 6 Respondent No. 6 in order to realize the money from the said Company,

had obtained, sanction u/s 75 of the Act for sale of property from the competent authority. Thereafter, on completion of formalities, proclamation for auction of the property in dispute was issued in the Daily Punjab Kesari dated 22.1.1988. The auction was conducted on the date fixed and four persons participated in the auction proceedings. The highest bid of Rs. 3 lacs was offered by the petitioner. The total recovery against M/s Anjani Grinding Industries, Hissar, was to the tune of Rs. 4,98,632-86. Thereafter, one Push pa Rani offered to purchase the property in dispute for Rs. 3,60,000/- and bank draft dated February 3, 1988 for Rs. 90,000/- was also sent. Respondent No. ?, Commissioner, Hissar Division, vide impugned order, ordered re-auction of the property in dispute and the draft of Ms. Pushpa was returned to her. Aggrieved against the order of cancellation of bid held on 27.1.1988 the petitioner has filed the present writ. The challenge to the cancellation of the earlier bid is on the ground that petitioner was the highest bidder and at the fall of the hammer had paid 1/10 the bid amount, i. e. Rs. 30,000/- which was duly accepted and the said amount was deposited in the bank by the Tehsildar on 28.1.1988 and in pursuance of the auction, respondent No. 4 had intimated the petitioner to take possession of the property in dispute and lock the premises. In view of the facts and circumstances the learned counsel contends that the auction was conducted in terms of conditions of the auction notice, the bid of the petitioner was accepted and 1/10th of the bid money was paid and the petitioner had become the owner of the property in dispute and the same could not be re-auctioned . As such, the order of the Commissioner is arbitrary and against all canons of justice.

4. In the written statement of respondents 1 to 4 it has been admitted that proclamation for sale of the property in dispute was issued on 12.1.1988 and the auction was conducted on 27.1.1988. The only plea of the official respondents and of the Financial Corporation is that property in dispute was auctioned at a lower price and the auction proceedings were subject to final approval As such, there was neither any illegality nor impropriety in the cancellation of the impugned auction.

5. Learned counsel appearing for the Haryana Financial Corporation has relied upon a Division Bench Judgment of this Court in C.W.P. No. 3699 of 1992 *Assandh Rice Mills v. State of Haryan* (1993-1) 103 P. L. R. 322.

6. After hearing the learned counsel for the parties and perusing the case file, I have reached the conclusion that this writ petition deserves to be allowed.

7. In this case, there is no dispute that public notice for the auction of the property in dispute was issued which appeared in the Daily Punjab Kesari on 12.1 1988 in which the date of auction and premises to be auctioned had been duly disclosed. It is not the case of the respondents that there was any illegality or irregularity conducted in the auction proceedings. As many as four persons had participated in the auction proceedings. The petitioner was the highest bidder. The bid offered by him was duly accepted by the officer who was conducting the auction proceedings. In terms of the auction, a sum of Rs. 30,000/- was paid at

the spot and some amount was paid on 22.2.1988. The money paid by the petitioner was accepted and even deposited in the State Bank of India. It is not the case of the respondents that the petitioner was not a bonafide purchaser of the property in dispute. If the number of the participants were not sufficient or the bid given by the petitioner was low the proper course open to the respondents was to have the auction withheld. The mere fact that Ms. Pushpa Rani had offered to purchase the said property at some higher rate was not sufficient ground to cancel the auction held in favour of the petitioner. It is interesting to note that even no reserve price was fixed with regard to the property in question. In this case, proclamation of sale was issued with the sanction of the Commissioner. The auction could only be set aside if there was no sanction of the competent authority. The auction in this case was in accordance with the procedure as contemplated u/s 79 of the Act. The aggrieved party is to satisfy of having sustained substantial injury by reason of irregularity in the procedure followed for conducting sale. Further, the auction proceedings could be cancelled if the person who had been declared to be the highest bidder failed to deposit the requisite amount at the time of auction or subsequently. A valuable right to acquire the property is vested in the person who purchases the property in and auction If any order which is detrimental to the petitioner is to be passed, he should have been afforded an opportunity of hearing

8. The plea of the learned counsel for the Haryana Financial Corporation that the money deposited by the petitioner has been refunded is of no consequence as the same was taken by the petitioner under protest

9. Taking into consideration all the pros and cons of the matter, I am of the considered view that the petitioner was purchaser of the property in dispute being the highest bidder. Due publicity for auction was also given. Inadequacy of the price fetched in the auction is not a valid ground for the cancellation of the auction proceedings. The ratio of the decision rendered in C. W. P No. 3699 of 1992 would not be applicable in the case in hand. In that case, the value of the property was stated to be not less than Rs. 20,00,000/- whereas the same property was given to respondent No, 4 for Rs. 4,00,000/- by negotiations at a throw away price and the amount was to be paid by the instalments.

10. In view of what has been said above, both the writ petitions are allowed and impugned orders copies Annexures P-6 (in C. W. P. 2543-1988) and P-7 (in C.W. P. 2546-1988) are quashed.

11. No order as to costs.