

**IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**

CWP No.3006 of 1986

Date of Decision:27.01.2015

Rajinder Singh and others

... Petitioners

Versus

Joint Secretary Rehabilitation, Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sudhir Mittal, Advocate for the petitioners.
None for the State of Haryana.
Mr. Jai Vir Yadav, Advocate for respondent No.2.

1. To be referred to the reporters or not?
2. Whether the judgment should be reported in the digest?

DEEPAK SIBAL, J.

Through the present writ, the petitioners lay challenge to order dated 22.11.1985 (Annexure P-3), cancellation of allotment in favour of the alleged landlords of the petitioners and the order putting the land in question to sale by auction.

The facts as pleaded by the petitioners are that their father Ran Singh son of Sanwal, since the year 1964-65 had been in cultivating possession of the land in question measuring 28 Kanals 6 Marlas situated in the revenue estate of village Matan Hail, Tehsil Jhajjar, District Rohtak. After the death of their father on 28.8.1969, the petitioners state that they are in possession of the land in question. It is further stated by the petitioners that the land in question was part of the Package Deal Property and had been allotted in the name of S/Shri Dev Ram son of Tara Chand and Om Parkash, Ishar Dass etc. The petitioners' further claim is that their father and after him, the petitioners were tenants at Will under the above said allottees. According to the petitioners as per the Press Notes issued by the erstwhile State of Punjab as well as by the State of Haryana under the

Package Deal Properties Rules framed by the State of Haryana, the petitioners being occupants on the land in question were and are entitled to the transfer of the same at reserved price. The petitioners further aver that the allotment made in favour of the abovesaid Dev Ram etc. had been cancelled on the basis of an alleged statement made by one Ran Singh s/o Sanwal on 25.10.1982 before the authorities to the effect that the land in question had not been occupied by the allottees and was under his occupation as tenant but he was not paying any rent to them. Finding the land to be in unauthorised possession, the authorities put the land to auction on 4.1.1985. According to the petitioners the auction was based on impersonation and fraud as their father i.e. Ran Singh son of Sanwal had died on 28.8.1969 and therefore, it was impossible for him to have appeared before the authorities on 25.10.1982. It is the case of the petitioners that in fact it was respondent No.2, who while impersonating their father appeared before the authorities, got the land in question cancelled, got the same re-auctioned and predictably emerged as the highest bidder. Thus, according to the petitioners, the auction of the land in question was a result of fraud and the auction proceedings were nothing but a sham.

It is on the above facts that the petitioners have challenged the cancellation of the allotment and the auction in which respondent No.2 emerged as the highest bidder. The auction took place on 4.1.1985 and immediately thereafter the petitioners had filed their objections to the auction which were rejected. They had then preferred a revision petition before the authorities which was also dismissed vide order dated 22.11.1985 (Annexure P-3) leading to the filing of the present petition.

On notice having been issued, both the State of Haryana as also

respondent No.2 have filed their respective written statements controverting the facts raised by the petitioners in the writ petition. The respondent-State defended its action by stating that on 25.10.1982, one Ran Singh son of Sanwal had appeared before the Tehsildar (Sales) Rohtak and had made a statement to the effect that the land had been allotted to certain persons but they had never taken possession of the land. It was further stated by Ran Singh son of Sanwal that he was a Gair Marusi on the land in question but he had not given any batai/rent to any person. On the basis of his statement, the State authorities had cancelled the allotment made in favour of the allottees and put the land to auction in which respondent No.2 i.e. Ran Singh son of Sheodhan emerged as the highest bidder and on his making deposit of the entire bid amount, sale in his favour was confirmed. The factum of death of Ran Singh son of Sanwal on 28.8.1969 was denied for want of knowledge. It is further stated in the written statement that the petitioners had applied for transfer of the land in question under the Package Deal Properties Rules for the first time in the year 1985 after the sale in favour of respondent No.2 had been confirmed.

Respondent No.2 also filed a written statement stating therein that the name of the petitioners did not appear in the revenue record. It was submitted that in case petitioners' father had died on 28.8.1969, the names of the petitioners should have been entered in the revenue record on or around that date but it was not so. The process of auction was defended by stating that the auction was conducted after following due process. Respondent No.2 being the highest bidder at the auction claimed the property in question.

I have heard learned counsel for the petitioner as also learned

counsel appearing on behalf of respondent No.2. There was no representation on behalf of the State of Haryana.

Learned counsel for the petitioners while relying on the death certificate (Annexure P-2) stated that their father Ran Singh son of Sanwal had died on 28.8.1969 and therefore, there was no question of him appearing before the Authorities on 25.10.1982 to bring to their notice the factum that the allottees had not taken possession of the land in question. Learned counsel submitted that in fact respondent No.2 Ran Singh son of Sheodhan by impersonating their father had appeared before the Authorities as Ran Singh son of Sanwal and sought and got the cancellation of the allotment. That being so, according to the learned counsel the entire process of cancellation of allotment on the basis of such statement and the consequent auction was liable to be set aside as the same was based on fraud. Learned counsel referred to the record of the auction proceedings to say that as per the record at one place 14 persons were stated to have participated in the bidding process whereas another document put the figure at 25 to 30 persons. However, as per the bidding sheet only three persons had actually made the bid for the land in question. The contradiction in figures of persons having allegedly participated in the auction and the bid having been made by only three persons was sought to be highlighted by the learned counsel for the petitioners to bring home his charge that the entire auction proceedings were a sham.

Per contra, learned counsel appearing on behalf of respondent No.2 submitted that the petitioners had not challenged the cancellation of the allotment in question and once the cancellation of allotment was not under challenge, the auction which was result of such cancellation could not

also be challenged. It was submitted that it is only the allottees who could challenge the cancellation of allotment and not the petitioners. Learned counsel would further submit that though the petitioners had alleged that they were in possession of the land in question as tenants, there was no document placed on record to prove such claim. The revenue record so appended by the petitioners, at the most depicted their father to be in possession but not the petitioners. It was submitted that once it was the case of the petitioners that their father had died in the year 1969, there was no revenue record to show that after the alleged death of their father, the names of the petitioners had ever been entered in the revenue record pertaining to the land in question. Learned counsel would further submit that there was no proof of rent having been paid by the petitioners or their father to the allottees. Learned counsel would further rely on Rule 9 of the Rules for Sale of Surplus Rural Properties to say that the objections, if any, by the petitioners could have been made only within 10 days of the date of the auction and that too accompanied by a sum equivalent to the higher bid plus 20% as earnest money. According to the learned counsel as none of these two conditions were satisfied by the petitioners, they could not be allowed to maintain the present writ petition. To buttress his submissions, learned counsel for respondent No.2 relied upon the following judgments of this Court in CWP No.4953 of 1974 decided on 4.10.1979; Jog Ram v. State of Haryana and others and LPA No.1155 of 2012 decided on 29.8.2013; Gurmukh Singh v. State of Punjab and others.

Undisputedly the cancellation of allotment in favour of the allottees and the consequent auction of the land in question is solely based on the alleged statement made on 25.10.1982 by Ran Singh son of Sanwal

who as per the State Authorities had appeared before the Tehsildar (Sales) Rohtak and stated that the allottees of the land in question had never taken possession of the land and though he was a tenant under the allottees, he had not paid any rent to them. It is the categoric stand of the petitioners that their father namely Ran Singh son of Sanwal had died on 28.8.1969. To prove such a fact, they have placed on record and relied upon his death certificate duly issued by the Additional District Registrar, Deaths and Births and Deputy Chief Medical Officer, Rohtak. This certificate has not been specifically denied by either of the respondents. What surprises me is that though this certificate has been duly issued by the Health Department of the Government of Haryana, without verifying or disputing the same, the State of Haryana in its written statement have stated that the factum of death of Ran Singh son of Sanwal is denied for want of knowledge. The record reveals that the petitioners had taken the stand that their father died on 28.8.1969 immediately after the auction, i.e. at the very first instance showing that the same was not an after thought. Further I am not willing to believe that an occupant over a piece of land for over two decades would voluntarily appear before the authorities and made a statement which would lead to his eviction from the same land when the same is put to auction particularly when he does not even participate in such auction.

In this context the bona fides on the petitioners' case are further clear from the fact that they had even requested the revisional authority to compare the thumb impressions of the person who had allegedly made the statement on 25.10.1982 with the thumb impressions of respondent No.2. It was the simple exercise for comparison of the thumb impressions and I fail to understand so as to why the revisional authority, in the facts of the case in

hand, did not undertake the same.

As observed earlier, a person who is in possession of the land and entitled to the transfer of the same on the basis of such possession in his right senses would not appear before any authority and make a statement which would result in divesting him of the property in question. Still further, neither of the respondents have placed anything on the record of the case to show that the father of the petitioners had not died on 28.8.1969.

Even if it is assumed that Ran Singh son of Sanwal has made the statement referred to above before the authority even then the authority after cancellation of allotment of the allottees should have first considered the case of Ran Singh son of Sanwal under the applicable rules for allotment of the land to him on the basis of his possession on reserved price under the Package Deal Properties Rules before putting the land to auction.

The record of the auction has been seen by me. In one document pertaining to the auction, it has been recorded that 14 persons participated in the bidding process. In another document, it has been stated that 25 to 30 persons had taken part in the auction. When the bidding sheet was seen by me, it was found that only three persons had actually made a bid for the land in question.

In view of the above facts coupled with the documents of the auction as seen by me, I conclude that the entire bidding process was a sham. It is apparently clear that the entire episode had been orchestrated at the behest of and to benefit respondent No.2-Ran Singh son of Sheodhan.

I do not intend to go into the issue so as to whether it was respondent No.2, who shared the same name as the petitioners' father, who appeared before the Tehsildar (Sales) Rohtak or not.

The objection raised by learned counsel appearing for respondent No.2 that the petitioners have not challenged the cancellation of the allotment is factually incorrect. A perusal of the prayer made by the petitioners shows that such prayer has been made by them in the writ petition. Irrespective of the same, since the cancellation of allotment could be challenged only by the allottees, I do not intend to interfere with the order of cancellation. According to me, for the reasons recorded above, the auction which took place after the cancellation of allotment was illegal as according to me before such auction the case of the petitioners on the basis of their possession over the land in question should have been considered under the Package Deal Properties Rules.

The other submissions made by the learned counsel appearing on behalf of respondent No.2 that as per the Rules for sale of surplus rural properties, the objections to the auction could only be filed within 10 days and had to be accompanied by a deposit of a sum equivalent to the highest bid plus 20% as earnest money are submissions to be considered only to be rejected.

As per the Rules, the objections were to be filed within 10 days of the date of auction. According to the petitioners, they came to know about the auction on 2.3.1985 and on that very day, they filed their objections without any delay. There is nothing brought to my notice that the petitioners were aware of the auction prior to 2.3.1985. Therefore, according to me, there was no delay on the part of the petitioners in filing their objection to the auction. The impugned sale in favour of respondent No.2 was confirmed on 31.1.1985 and in just about a month thereafter, on coming to know of the sale, the petitioners had filed their objection on

2.3.1985. As observed earlier, there is nothing on record to show that the petitioners had become aware of the auction prior to 2.3.1985. Thus, according to me, there was no delay on their part. Even otherwise, it is settled law that fraud vitiates everything. In this context, I find support from the following observations of the Apex Court in **R. Ravindra Reddy and others v. H. Ramaiah Reddy and others**; (2010) 3 SCC 214:

“As far as fraud is concerned, it is no doubt true, as submitted by Mr. Ramachandran, that fraud vitiates all actions taken pursuant thereto and in Lord Denning's words “fraud unravels everything”.

In view of the observations made by me earlier, I am not willing to accept the above submissions made by the counsel for respondent No.2 that the objections to the auction could have only been filed within 10 days of the auction, as according to me, this submission is hypertechnical in nature and in the light of the fraud committed needs to be rejected.

So far as the objection with regard to deposit of the sum equivalent to highest bid plus 20% as earnest money alongwith objections is concerned, that, according to me, would apply only when a co-bidder was to challenge the auction. In the case in hand, as observed earlier, the petitioners through their objections have challenged the very basis of the auction in addition to the proceedings of the auction.

Thus, in my view, both these objections would not apply to the facts of the case in hand and in any case since I have returned findings of fraud having been played leading to the impugned auction, I am not willing to interfere on account of these hypertechnical objections.

I have gone through the judgments cited by the learned counsel appearing on behalf of respondent No.2 and find that the same have been rendered on entirely different facts than the ones in the case in hand. Thus,

these judgments would have no application to the facts of the case in hand.

In view of the above while allowing the writ petition, I set aside the impugned order dated 22.11.1985 (AnnexureP-3) and declare the action of the State of Haryana of putting the land in question to auction to be an illegal act on its part.

Without commenting on the eligibility of the petitioners, the State of Haryana is directed to consider their case for allotment of the land in question as per the Package Deal Properties Rules which were prevalent at the time when the auction took place, in accordance with law. Respondent No.2 through his LRs would be entitled to the refund of the amount so deposited by him as a result of the auction which is being set aside by me.

**(DEEPAK SIBAL)
JUDGE**

**27.01.2015
rajeev**