

In the High Court of Punjab and Haryana at Chandigarh.

**CWP No. 11250 of 1988 (O&M)
Decided on 19.8.2015**

Bashambar Lal (now deceased) and others

--Petitioners

Vs.

The Financial Commissioner, Revenue, Punjab and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.A.K.Jain, Advocate, for the petitioners

Mr. Yitender Sharma, Addl. A.G, Punjab

Mr. Vinay Saini, Advocate, for
Mr.G.S.Nagra, Advocate,for respondent No.3.

Rakesh Kumar Jain,J: (Oral)

CM No.4770 of 2013

This application is filed by the applicants/petitioners for impleading the legal heirs of Chaman Lal. Application is allowed as prayed for subject to all just exceptions.

CWP No.11250 of 1988

The petitioners have challenged validity of the order dated 28.12.1983 (Annexure P-4) passed by Deputy Secretary (Rehabilitation) -cum- Chief Settlement Commissioner, Punjab and the order dated 30.8.1988 (Annexure P-5) passed by the Financial Commissioner, Revenue and Secretary to Government of Punjab, Rehabilitation Department with

delegated powers of Central Government under Section 33 of the Displaced Persons (C& R) Act, 1954.

Brief history of the case is that father of the petitioners, namely Nanak Chand was in possession of a plot No.1124-A-II-SA/405, Mohalla Mori Bari, Khanna, District Ludhiana, which was an evacuee property vested in the custodian. Father of the petitioner was claiming the said property being an occupant and applied for its transfer to him on reserve price under the provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short, 'the Act'). Respondent No.3 was also claiming transfer of the said plot and had been approaching the Rehabilitation Authorities since 1967. Respondent No.3 filed C.W.P.No.1794 of 1970 titled as Wadhawa Singh Vs. Union of India etc. which was allowed by this Court on 29.4.1980 with the following order:-

“In view of the fair stand of both the learned counsel for the parties, I need not give the detailed facts of this case. They are agreed that both the parties are in possession of different parts of the property in question i.e. plot No.1124-A-II-S/405 in Khanna, District Ludhiana and in view of that factual position and the legal provisions contained in Rule 22 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, the property is not allotable to either of them and has necessarily to be put to auction. Therefore, the orders Annexures 'D' and 'E' saying to the contrary that the property should be transferred in favour of the respondents, are set aside.

Consequently, I allow this petition and direct the respondent authorities to put the above mentioned property to auction. I, however, pass no order as to costs”.

In the year 1976, the Punjab Package Deal Properties (Disposal) Act, 1976 and the Punjab Package Deal Properties (Disposal)

Rules, 1976, came into being for the disposal of the surplus evacuee properties, vesting in the custodian/Central Government, were taken over by the State Government. In terms of the decision of this Court on 29.4.1980, the property in dispute was put to auction in the month of September, 1981. According to the petitioners, auction notice was given in accordance with the rules and the auction took place on 16.9.1981, but it could not be carried out because number of the bidders were found less by the auctioneer and the auction was adjourned to 22.9.1981 and was ordered to be held at a different place i.e. Guru Teg Bahadur National High School. In the said auction held on 22.9.1981, petitioner No.1 was the highest bidder for a sum of ₹21,000/- against the reserved price of ₹18360/-. The sale was confirmed and the petitioner was issued Sale Certificate under Rule 6 (6) XIV of the Rules of 1976 on 07.7.1982 by the Tehsildar (Sales) -cum- M.O. Ludhiana and petitioner No.1 was declared to be the purchaser of the said property from 12.4.1982. That after the purchase of the plot, petitioner No.1 got the site plan approved from the Municipal Committee, Khanna, for the construction of his house on the plot.

Respondent No.3 did not challenge the auction, rather filed a civil suit in March, 1983 against the petitioners when they were raising construction, sought permanent injunction on the ground that he is in possession of the plot for the last more than 20/25 years and the said plot is otherwise not owned by the petitioners as it belongs to the Custodian.

In the written statement filed in the suit, the petitioners specifically pleaded that they have become owner of the plot in dispute by way of purchase on 22.9.1981 against a valid consideration. Temporary injunction was declined by the Court on 19.5.1983 and thereafter,

respondent No.3 filed objections after more than one and half year under Rule 93 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 before the Settlement Commissioner, Rehabilitation Department, Mohali, but the objections were dismissed on 03.10.1983, being hopelessly time barred.

Respondent No.3 challenged that order in appeal before the Deputy Secretary, Rehabilitation- cum- Chief Settlement, Commissioner under Section 23 of the Act of 1954 and the appeal was allowed on 28.12.1983.

The petitioners assailed the validity of the said order before respondent No.1 in revision but the said revision was dismissed on 30.8.1988 . Hence, the present writ petition

It is submitted by learned counsel for the petitioners that suit for permanent injunction filed by respondent No.3 was dismissed up to this Court in RSA No.3983 of 1985, meaning thereby that respondent No.3 failed to prove his possession over the plot in dispute as suit for permanent injunction was dismissed up to this Court and the order passed in the RSA became final.

After notice, the respondents filed their separate written statements. In the reply filed by respondent Nos. 1 and 2, it is averred that in compliance of the order passed by this Court dated 29.4.1980, the then Naib Tehsildar (Sales) issued Munadi Notice dated 25.8.1981 to Circle Patwari Khanna regarding auction to be held at the Rest House on 16.9.1981 at 10. a.m and copy of that notice is Annexure R-1. It is further submitted that the Circle Patwari got conducted munadi in Khanna and copy of said notice and the report dated 27.8.1981 is Annexure R-2. Terms and

conditions of the auction are Annexure R-3. Since there was less gathering on that date i.e. 16.9.1981, so the auction of the plot was postponed to 22.9.1981 and a notice to this effect was given in Form III. Copy of fard auction is Annexure R-4.

Respondent No.3 has taken the stand that as per the decision of this Court dated 29.4.1980, the Naib Tehsildar (Sales) should have given notice for the auction as he was in possession of the property in dispute. This plea has been accepted by respondent No.2. in revision. Respondent No.3 has also observed that since auction was postponed from 16.9.1981 to 22.9.1981, it was incumbent upon the Sales Officer i.e. the Naib Tehsildar (Sales) to issue fresh proclamation for the said auction.

Learned counsel for the petitioners has submitted that in the objections, which are attached as Annexure P-2, respondent No.3 has categorically mentioned that he is in possession over the property in dispute from the last 20 years and that he did not even mention that he had no knowledge about the auction which took place on 16.9.1981 or 22.9.1981 but alleged that the auction was held in clandestine manner and no mushtri munadi was made in the locality.

It is submitted by learned counsel for the petitioners that the documents attached with the reply of respondent Nos. 1 and 2 as Annexures R-1/T to R-5/T would show that proper procedure has been adopted by the Naib Tehsildar (Sales) in regard to the auction of the property in dispute and insofar as the question of fresh auction is concerned, it is submitted that as per Section 6 (viii) of the Punjab Package Deal Properties (Disposal) Rules, 1976, The Tehsildar (Sales) or Naib Tehsildar (Sales) may, if the situation so demands, for reasons to be recorded in writing, adjourn the sale

to a specific date and hour and an announcement to that effect shall be made at the time of adjournment of the sale.

Provided that where the sale is adjourned for a period exceeding fifteen days, a fresh notice shall be given.

It is further submitted that insofar as the specific date is concerned, it is mentioned in Annexure R4/T that when auction was postponed/adjourned, no fresh notice was required because the auction was adjourned only for a week i.e. from 16.9.1981 to 22.9.1981. Had it been beyond a period of two weeks, it was incumbent upon the said authority to have issued fresh proclamation.

After hearing the learned counsel for the parties and perusing the record, I am of the considered opinion that the impugned order Annexure P-4 passed by respondent No.2. is patently illegal and is liable to be quashed. Respondent No.2 has reeled under wrong impression of the High Court order dated 29.4.1980. A perusal of the said order shows that it was passed in the presence of both the parties. Therefore, it cannot be inferred from the said order that personal notice was to be given to respondent No.3 by the Tehsildar (Sales) Ludhiana at the time of conducting auction.

As regards the possession of respondent No.3 is concerned, the same is illegal because revision of the petitioner has been dismissed on the ground that auction was postponed from 16.9.1981 to 22.9.1981, therefore, the Tehsildar (Sales) was required to give fresh proclamation.

From Rule 6 (viii) of the Rules, 1976, it is quite evident that fresh notice is required in case the sale is adjourned for a period exceeding fifteen days and notice is not required in case sale is not adjourned for more

than 15 days. Since the auction was postponed/adjourned for a week, therefore, there was no mistake on the part of the Tehsildar (Sales) to have issued a fresh proclamation for the purpose of said auction.

In view of the aforesaid discussion, this writ petition is allowed. The orders Annexures P-4 and P-5 are found to be patently illegal and are ,thus, quashed. No order as to costs.

19.8.2015
rr

(Rakesh Kumar Jain)
Judge