

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Civil Writ Petition No.22913 of 2013 (O&M)

Date of Decision: 15.05.2015

Gian Kaur

..... Petitioner

Vs.

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. S.D.Sharma, Senior Advocate assisted by
Mr. Anupam Sharma, Advocate and
Mr. Rakesh Kumar, Advocate for the petitioner.

Mr. Yatinder Sharma, Addl. A.G., Punjab
for respondent Nos.1 to 3.

Mr. Sunil Chaddha, Senior Advocate assisted by
Ms. Poonam Josan, Advocate for respondent Nos.4 to 6.

JASWANT SINGH, J. (Oral)

The petitioner is the widow/L.R. of one Joginder Pal, who was the successful bidder in a auction, held by the Tehsildar (Sales), Kapurthala on 17.10.1975 against reserve price of ₹ 1620/- qua land measuring 73 Kanals and 12 Marlas situated in Village Hamira, Tehsil and District Kapurthala. The auction was conducted, after due notice and participation of so many persons, by the Tehsildar (Sales) qua the land being a *surplus rural evacuee property*. The said Joginder Pal offered the highest bid of ₹ 17,800/- and he deposited the earnest money of ₹ 890/- being 1/20th of the total price and was further to pay the remaining price by way of 19 biannual installments as per the terms and conditions of auction. The sale was confirmed by the Addl. Sales Officer, vide order dated 05.12.1975 (**Annexure P-1**).

The occupant of the land, namely, Dhanna Singh challenged the confirmation of the

auction by filing a revision and the said revision was dismissed, vide order dated 30.07.1976 (**Annexure P-2**).

Dissatisfied, the said Dhanna Singh filed a second revision under Section 10 of the Punjab Package Deal Properties (Disposal) Act, 1976 (for short "1976 Disposal Act") before the Chief Sales Commissioner, Punjab and the same was dismissed, vide order dated 06.06.1978 (**Annexure P-3**). The said Dhanna Singh thereafter filed another revision under Section 15 of the 1976 Disposal Act, which was also dismissed, vide order dated 06.08.1984 (**Annexure P-4**) and thereafter the aforesaid orders were challenged by him by filing CWP No.4196 of 1984, which was finally dismissed on 11.01.2012 (**Annexure P-6**) by learned Single Judge of this Court. Since Dhanna Singh by that time had died, his LRs i.e. Joginder Singh and others (private respondent Nos.4 to 6 herein) filed LPA No.732 of 2012 (O&M) and the same was also dismissed on 22.05.2012 (**Annexure P-7**). The orders were then taken to the Hon'ble Supreme Court and the SLP (CC) No.7936 of 2013 (**Annexure P-11**) was dismissed on 16.04.2013.

It is conceded that respondent Nos.4 to 6 being successors-in-interest of Dhanna Singh have continued in unauthorized possession.

The present writ petition has been filed by the successor-in-interest of the said Joginder Pal seeking a mandamus directing the official respondents to take necessary steps i.e. execution of Conveyance Deed and grant of possession consequent to the allotment of land and deposit of the entire amount of the sale price.

Upon notice, the official respondents have filed their reply dated 25.07.2014 through Sh. Pawan Kumar, Tehsildar, Sale-cum-M.O., Kapurthala, *inter alia*, stating that the present writ petition has become infructuous since the

Conveyance Deed/Sale Certificate has already been issued on 19.02.2014 in favour of said Joginder Pal. However, with regard to handing over of vacant possession as obligated in the light of provisions of Rule 7 of 1976 Disposal Act, there is no averment.

A separate written statement has been filed by the private respondent Nos.4 to 6, who are successors of Dhanna Singh, who had lost till the Hon'ble Supreme Court regarding the land in dispute.

It is stated that the allotment in favour of Joginder Pal stood cancelled, vide order dated 18.10.2006, therefore, no subsisting right exists with the petitioner. It is also stated that the Sale Certificate could not be legally issued due to the failure of deposit of the installments in due time in terms of the allotment. The Sale Certificate dated 19.02.2014 has been challenged before the Appellate Authority in the light of Section 8 of the 1976 Disposal Act and the said Certificate has since been cancelled, vide order dated 21.08.2014 (**Annexure R-1**). The present petitioner has challenged the said order before the Revisional Authority and the same is pending.

At the time of hearing today, a supplementary reply by way of affidavit dated 12.05.2015 of Sh. Rajdeep Singh Brar, SDM-cum-Sales Commissioner, Kapurthala and other documents as **Annexures R-1 to R-4** have been filed by the State raising a new stand that the land in dispute being *Shamlat Patti* vested with the Panchayat and could not be put to sale by auction treating it as *surplus rural evacuee land*. It is also stated that no prior approval for making the payment of arrears of installments after 38 years was obtained. Similar averment qua cancellation of the Conveyance Deed dated 09.02.2014, vide order dated 21.08.2014 (**R-1**) by the Appellate Authority has been asserted. Reply along with

documents are taken on record.

Learned Counsel for the petitioner has argued that outstanding amount of ₹ 1,5,311/- along with interest has been duly deposited. He further submits that the issue of land in dispute is vested with the Panchayat and, therefore, not liable to be sold by auction has been considered by the Authority, learned Single Judge of this Court in its judgment and Hon'ble Division Bench in the previous round of litigation.

On the other hand, learned Counsel for the respondents have argued as per the stand in their written statement.

After hearing learned Counsel for the parties and perusing the paper-book, it is evident that the ground regarding the land being vested with the Panchayat and not liable to be sold is totally untenable. First of all, the land was put to sale by auction being a *surplus rural evacuee property* and the issue having been considered by the Authority/Courts and on having attained the finality, it cannot be now racked up in the second round of litigation. Even otherwise from the perusal of noting dated 16.10.2006 (**Annexure R-3**), it is apparent that the issue of *Shamlat Patti* having been vested in the Panchayat was decided by the Hon'ble Supreme Court on 09.07.1985 and, therefore, would have prospective application. In the present case, apart from the land being recorded and considered as a *surplus rural evacuee property*, assuming for the sake of argument was *Shamlat Patti*, the right got crystallized much before 1985 on confirmation of the sale in the year 1975, on the basis of the doctrine of relating back. Therefore, this Court in view of the fact that said Joginder Pal and his successors-in-interest have been litigating for their legitimate claim for almost 45 years, is of the view that the entire action of the Authorities suffers from legal *mala fide* and bordering on being contemptuous.

Accordingly, this petition is disposed of with the directions to the respondent-Authorities to take necessary steps for compliance for executing the Sale Deed and handing over the possession as per 1976 Disposal Act.

May 15, 2015
Gagan

(JASWANT SINGH)
JUDGE