

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.16069 of 2003
Date of decision: 17.10.2016

Soran

... Petitioner

Vs.

The Commissioner, Rohtak Division, Rohtak, Camp Court at Karnal and
others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Dinesh Ghai, Advocate
for the petitioner.

Mr. S.S. Mann, Sr. DAG, Haryana.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the order dated 22.08.2002 (Annexure P-4A), whereby revision petition filed by the petitioner was dismissed by the Commissioner, Rohtak Division, Rohtak and the order dated 26.02.1997 (Annexure P-3) as well as order dated 04.05.1982 (Annexure P-1), cancelling the sale by way of restricted auction and forfeiture of deposited amount, were upheld.

Notice of motion was issued by a Division Bench of this Court vide order dated 16.10.2003. Respondents filed their written statement and thereafter, petitioner filed his replication. Respondents also filed their reply to the replication filed by the petitioner. The writ petition was admitted for regular hearing vide order dated 17.10.2006. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

Learned counsel for the petitioner submits that it was the restricted auction and case of the petitioner was covered by relevant instructions issued by the respondent State vide communication dated 20.06.1973 (Annexure P-6) and also by instructions dated 11.03.1981 (Annexure R-7). He further submits that out of total 19 installments, 14 had already been paid by the petitioner. He defaulted in making the payment of remaining installments in time, because the land purchased by the petitioner came under river action in the year 1975. He also submits that as and when the land was sought to be re-auctioned, petitioner would request the respondent authorities to permit him to deposit the remaining amount but to no avail. In such a situation, the impugned orders were patently illegal and the same are liable to be set aside. He prays for setting aside the impugned orders, by allowing the present writ petition.

Per contra, learned counsel for the State submits that after making the payment of 14 installments, petitioner abruptly stopped paying the remaining installments. The stand taken by him was not only wrong but it was self-contradictory as well. Petitioner has never shown any inclination to deposit the outstanding amount, at any point of time, before or after the land was sought to be re-auctioned. None of the instructions issued by the State help the petitioner, because his case is not covered under any of the instructions. He prays for dismissal of the present writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that since the petitioner has not been found to be a bonafide litigant, nor

he ever shown the true intention to pay the outstanding amount, besides taking contradictory stands at different times as per his own suitability, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its writ petition. The impugned orders deserve to be upheld, for the following more than one reasons.

Facts are hardly in dispute. The land in question was put to restricted auction in the year 1966. Petitioner was the successful bidder. Accordingly, his bid was accepted and as a consequence thereof, deed of conveyance dated 30.04.1966 (Annexure P-5) was executed in favour of the petitioner. He deposited the initial amount of Rs.600/- on 08.09.1966. Petitioner was supposed to pay the remaining amount in six monthly 19 installments. Petitioner paid 14 installments and thereafter, he stopped paying. The only reason pointed out by the petitioner for non-payment of remaining installments was that in the year 1975, the land came under river action.

He did not pay any installment till the impugned order dated 04.05.1982 (Annexure P-1) was passed, resuming the land sold to him in the restricted auction and forfeiting the already deposited amount of Rs.3910/-. However, this stand taken by the petitioner was found to be factually incorrect and self-contradictory by Joint Secretary (Rehabilitation)-cum-Settlement Commissioner, Haryana, while passing the impugned order dated 26.02.1997 (Annexure P-3). It was observed that petitioner made representation to the Deputy Commissioner, Karnal as well as to the then Chief Minister, contending that the land came under river action in the year 1978 due to floods.

Even if the abovesaid self-contradictory stand taken by the petitioner is ignored, he admittedly did not make any payment towards outstanding amount

of installments upto 1982, when the impugned resumption order came to be passed. The plea raised by learned counsel for the petitioner in this regard, referring to the jamabandis, pointing out the nature of land as Sailab (river bed) subject to river action, has been found wholly misplaced, for the reason that similar type of land situated on the western bank of Yamuna river right from Yamuna Nagar to Palwal in the State of Haryana, had always been subject to river action. However, it would never mean that the land in the possession of the petitioner was under the water throughout. It is not even his own pleaded or argued case before this Court. In fact, the word Sailab recorded in Column No.8 of the jamabandis, would show only the nature of land. As a matter of fact, such land is very fertile and one gets good production with less cost.

So far as the material fact that the land in question remained adversely affected by flood, it was to be shown and established by the petitioner, referring to any particular crop or year either by way of special girdawari or by any appropriate representation in this regard. However, he miserably failed to discharge this obligation. This Court has tried its level best to find out something in favour of the petitioner, while carefully perusing the relevant record, but was unable to find any supporting material in favour of the petitioner. In fact, petitioner has not been found to be a bonafide litigant. After paying 14 installments, he abruptly stopped making further installments, as if he was not under legal obligation to do so, thereby leaving himself totally dis-entitled for any kind of relief, at the hands of this Court.

It is also not the pleaded or argued case on behalf of the petitioner that he was not granted due opportunity of being heard at every relevant stage of the litigation. As and when the land was sought to be put to re-auction, notice

would be issued to the petitioner. He received numerous notices issued by the respondent Department, including Annexure R-2 dated 13.01.1982. This was the notice duly received by the petitioner before three months, when the first impugned order (Annexure P-1) was passed on 04.05.1982. It was made crystal clear to the petitioner that despite there being inordinate long delay on his part in making the payment of remaining installments, for a period of more than seven years, he must deposit the amount within 15 days, failing which the auction sale shall be cancelled and the amount deposited by him shall be forfeited. However, petitioner did not take any care in this regard and did nothing. Neither he deposited the amount nor he expressed his willingness to do so, because of which the competent authority was left with no other option except to pass the order (Annexure P-1).

Again, petitioner challenged the impugned order (Annexure P-1) by way of his revision petition dated 30.10.1995 i.e. after more than a period of 13 long years, as if there was no law of limitation applicable to the petitioner. This revision petition filed by the petitioner was dismissed by the revisional authority vide impugned order dated 26.02.1997 (Annexure P-3), by passing a self-contained order. Each and every relevant aspects, including the merits of the case, were discussed and appreciated in the correct perspective. Second revision petition of the petitioner also came to be dismissed by the Commissioner, Rohtak Division, Rohtak vide his impugned order dated 22.08.2002 (Annexure P-4A).

The land in question was put to re-auction thrice. Firstly, it was put to re-auction on 11.07.1988 and then on 20.07.1991, but no bid was recorded. Thereafter, the land was put to re-auction on 19.04.1995 for an amount of Rs.80,000/- in favour of one Smt. Bala Devi who deposited the amount of

Rs.10,000/- as earnest money. However, this sale was not confirmed, because the amount of consideration was not found to be reasonable.

So far as the petitioner was concerned, he never came forward to deposit the outstanding amount to show his bonafide in this regard. Notices, which were duly received by the petitioner, were Annexure R-2 received on 02.02.1982 and Annexure R-3 dated 05.05.1982 duly informing the petitioner that his land has been resumed. Similarly, notice dated 03.07.1991 (Annexure R-4) was issued, again informing the petitioner that his auction has been cancelled and the land shall be put to auction on 20.07.1991. Next notice issued to the petitioner was dated 19.04.1995 (Annexure R-5) and thereafter, notice dated 17.08.1995 (Annexure R-6), which was again received by the petitioner. However, he did nothing in this regard, despite having received numerous notices.

As far as the Govt. instructions on the subject, including Annexure P-6 dated 20.06.1973 as well as Annexure R-7 dated 11.03.1981 are concerned, none of these instructions is of any help to the petitioner, because under both these instructions, the maximum number of installments covered thereunder were two installments. In the present case, it was a case of consecutive four installments, which were not paid by the petitioner. Even if said aspect is to be ignored in favour of the petitioner, he did not pay even a single penny after 1975 till 1982 when the order of resumption (Annexure P-1) was passed.

The stand taken by the petitioner for non-payment has been found to be factually wrong and self-contradictory, which has clearly established on record that petitioner was not intending to pay the remaining amount of installments. Having said that, this Court feels no hesitation to conclude that it

was the conduct of the petitioner himself, which rendered him totally dis-entitled for the relief sought.

In view of what has been discussed hereinabove, petitioner has not been found entitled for any kind of sympathy, at the hands of this Court. It is so said because in such a situation, sympathy would do more harm than any good. The view that has been taken by this Court also finds support from judgment of the Hon'ble Supreme Court in **M/s Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and others, 2004 (2) SCC 130.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders passed by the respondent authorities have been found factually correct and legally justified, the same deserve to be upheld. The writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present writ petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

17.10.2016
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No