

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1029 of 2015

Date of Decision: April 07, 2016

Preeti Gupta & another

...Petitioners

Versus

Agya Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Amar Vivek, Advocate,
for the petitioners.

Mr.A.S.Tewatia, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

The petitioner-auction purchasers are aggrieved of the three impugned orders, i.e., Annexure P-1 dated 16.8.2013 dismissing the application seeking restoration of the execution petition, Annexure P-2 dated 10.12.2011 dismissing the execution petition in default and Annexure P-3 dated 26.11.2011 declining the permission to provide the assistance of government labour.

Mr.Amar Vivek, learned counsel appearing on behalf of the petitioners submits that the petitioners are the auction purchasers in pursuance to the execution of the decree dated 9.5.2000 of a property described in the auction notice dated 10.7.2003 with following demarcation, i.e.,

East: Road

West: Agya Kaur width both side is 15 karma (71.1/4 ft.)

North: Nirmal Bhatia

South: Bhupinder Singh length both side 26.5 karma
(12.5.1/2 ft.).

The aforementioned auction was confirmed and even the sale certificate dated 14.6.2005 was issued describing the following property:-

“This is to certify that Madan Lal S/o Shri Ram Kishan R/o House No.66, Darshani Bhag, Manimajra (U.T.), Chandigarh and Preeti Gupta w/o Sh.Kamal Gupta R/o House No.2, Yamuna Nagar, Haryana has been declared the purchaser at a sale vide public auction in respect of Land and Building comprising Khasra No.180/23 Khata No.20/37, H.B.No.115, measuring 1 bigas situated at village Rathpur Colo Abdullapur Pinjore, Tehsil Kalka District Panchkula, Shimla highway (NH-22) demarcation as under:-

East- Road

West- House of Agya Kaur

North- House of Bhatia

South- House of Bhupinder Singh

Total length 26.5 Karma surrounded by boundary wall and ½ constructed as shops and godown held on 10.7.2003 in execution of 9.5.2000 passed in complaint no.114 of 1999 titled Dr.K.C.Singla Vs Prop Rajesh Syal etc. by the Consumer Dispute Redressal Commission (U.T.) Chandigarh and the said sale has been duly confirmed by this Court.”

He further submits that numerous objections were filed, but the same were dismissed and despite dismissal of the objections, the third party chose to file the suit and even a revision petition invoking the superintending powers of this Court, wherein it was clarified that there is no dispute with regard to khasra No.180/23. The execution application was slated for 10.12.2011 and despite recording of the presence of the counsel for the decree-holder, the same was dismissed and one of the reasons for

dismissal of the same was that costs of ₹1,000/- imposed vide order dated 26.11.2011 had not been deposited. He submits that an application for restoration of the execution application was filed, but the same also met with the same fate vide impugned order Annexure P-1 on the premise that the application for restoration was not dismissed on account of the non-presence of the auction purchasers or their counsel but due to the failure on their part to receive the possession and the order dated 26.11.2011 declining the assistance of the government labour has not been assailed by filing an appeal. He submits that all possible attempts have been made to thwart the execution of the decree and the auction purchasers cannot be faulted in view of the perpetual filing of the objections and various suits. The property is enormous in size and, therefore, police help would be required for the purpose of taking possession, in essence the objectors are taking all possible steps to cause impediment and hindrance in execution of the decree.

Mr.A.S.Tawatia, learned counsel appearing on behalf of respondent No.2-objector submits that the orders under challenge do not suffer from any illegality and perversity. The party, which did not follow the directions or comply with the order of the Court, should be made to suffer. Since the auction purchasers did not deposit the costs, much less even did not take any effective steps to take the possession, rightly so the execution application and restoration thereof had been dismissed. There was no need of seeking assistance of the government labour as the auction purchasers were well aware of the status and nature of the property at the time of purchasing the same since the property had been sold at various stages and, thus, urges this Court for dismissal of the revision petition with exemplary costs.

I have heard the learned counsel for the parties and appraised the paper book.

It is a matter of record that the petitioner-decree holders are holders of certificate of sale, Annexure P-7, as extracted above in respect of a property described above, thus, there is no dispute with regard to the description/identification of the property.

Mr.Amar Vivek during the course of hearing, submits that his clients would deposit the costs of ₹10,000/- today itself, to be paid to the counsel opposite in the High Court for non-compliance of the directions or payment of ₹1,000/- to the counsel for the objectors in the trial Court. In my view, both the Courts below should not have dismissed the execution application for want of costs, particularly in the presence of the counsel for the petitioners but should have granted another opportunity. Be that as it may, even the Court dealing with the restoration application followed the same procedure as has been done by the Executing Court by holding that the order declining the application moved for providing the government labour has not been appealed and, therefore, the auction purchasers are not interested in seeking the execution. In my view, such a reasoning is not only erroneous but fallacious. The Executing Courts are required to see that the judgments and decrees of the Court are honoured and respected, much less executed and the auction purchasers or the decree-holders should not be thrown out in the manner and mode, as has been noticed in the impugned order.

Accordingly, the impugned orders dated 16.8.2013 (Annexure P-1) and 10.12.2011 (Annexure P-2) are hereby set-aside. The execution application is restored to its number. Since there is already order of police

help, I deem it appropriate to dispose of the present revision petition with the following directions to the trial Court:-

- a) Since the identity and description of the property is not in dispute, as has been noticed above, the trial Court shall issue warrant of possession and provide all possible help and assistance to the petitioners by issuing a direction to the SDM and Superintendent of Police concerned to be present at the time when the possession is being taken, so that there is no threat to the life and liberty of the inhabitants of the area, much less the auction purchasers or their labour;
- b) The entire process of taking over the possession shall be monitored by the SDM concerned, who shall ensure that the judgment and decree is executed and possession has been handed over to the auction purchasers. Thereafter, he shall submit his report to the concerned Executing Court for appropriate orders;
- c) The trial Court may also take the assistance of the revenue officer to pin point and identify the property as mentioned in the sale certificate at the time of execution of the warrant of possession.

Liberty is granted to the petitioners to move an appropriate application in case of certain contingencies, which may arise.

The parties, through their counsel, are directed to appear before the Executing Court on 2.5.2016.

April 07, 2016
ramesh

(AMIT RAWAL)
JUDGE