

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP No.97 of 2009
Date of decision:22.10.2016

Dharam Singh @ Dharam Pal

...Petitioner

Versus

The Commissioner Ambala Division Ambala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Dinesh Ghai, Advocate for the petitioner.
Mr.Sandeep S.Mann, Sr.DAG, Haryana.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned orders dated 31.3.2008 (Annexure P-4) passed by the Commissioner, Ambala Division, Ambala-respondent No.1, whereby orders dated 21.9.2007 (Annexure P-3) passed by Settlement Officer, Ambala-respondent No.2 and the order dated 17.11.2006 (Annexure P-2) passed by District Revenue Officer-cum-Settlement Officer (Sales), Ambala-respondent No.3, were upheld, declining approval to the deposit of Rs.1,27,350/- by the petitioner towards his outstanding instalments as well as interest paid vide Annexure P-1, petitioner has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned orders.

Writ petition was admitted and status quo regarding possession was ordered to be maintained between the parties vide order dated 13.1.2009 passed by this Court. However, respondents did not file the reply. When the case was taken up for regular hearing, photocopy of written statement dated 9.7.2009 was supplied by the learned counsel for the State.

Facts are hardly in dispute. Petitioner participated in the restricted auction of the land measuring 21K-4M. Sale took place on 20.2.1991. Petitioner was found the highest bidder for an amount of Rs.67,500/-. He deposited an amount of Rs.8450/- at the time of auction. The auction proceedings came to be confirmed vide order dated 3.2.1992 by the Settlement Officer (Sales). The actual possession was delivered to the petitioner on 28.4.1992. Petitioner was to pay the remaining amount in 15 half-yearly equated instalments. When the petitioner was unable to pay the balance amount, he moved an application dated 16.8.1994, seeking 3-4 months' time for depositing the instalments. He was granted two months' time by the Joint Secretary of the respondent-department vide his order dated 15.9.1994. However, petitioner could not deposit the due instalments in time.

Finally, the sale by way of registered auction in favour of the petitioner was cancelled by Tehsildar (Sales), forfeiting his already deposited amount vide order dated 13.7.1995. Petitioner requested that he was willing for depositing all the instalments along with interest. This request made by the petitioner was found genuine and was accordingly accepted by Tehsildar (Sales). Consequently, petitioner deposited the amount of balance instalments along with interest on 25.8.2006 vide challan form (Annexure P-1). Said amount was accepted by the competent authority, without putting any condition or raising any protest. The total amount deposited by the petitioner vide Annexure P-1 was Rs.1,27,350/-, out of which Rs.59,050/- was towards the outstanding instalments and the remaining amount of Rs.68,300/- was towards the interest.

After depositing the above-said amount by the petitioner, which

was duly accepted by the competent authority without any protest vide Annexure P-1, petitioner moved an application for regularisation of the auction sale. However, the said application of the petitioner was dismissed by the District Revenue Officer-cum-Settlement Officer (Sales), Ambala vide impugned order dated 17.11.2006 (Annexure P-2). The petitioner filed his appeal which also did not find favour with the appellate authority, i.e. Deputy Commissioner-cum-Settlement Commissioner, Ambala, who dismissed the same vide impugned order dated 21.9.2007 (Annexure P-3). Revision petition filed by the petitioner also met the same fate, which was dismissed vide order dated 31.3.2008 (Annexure P-4) passed by the Commissioner, Ambala Division, Ambala. None of the above-said three officers ordered the refund of above-said amount to the petitioner, while passing their respective impugned orders.

Learned counsel for the State has submitted that Tehsildar (Sales) Ambala was not competent to accept the amount from the petitioner after inordinate long delay of more than 10 years. He further submitted that petitioner did not challenge the forfeiture order dated 13.7.1995 and in the absence of such challenge to the forfeiture order, his application was rightly dismissed. So far as non refund of the above-said amount in favour of the petitioner is concerned, learned counsel for the State would submit that it was only a bonafide lapse on the part of the respondent authorities but it did not grant an indefeasible right to the petitioner to pay the amount on account of outstanding instalments as per his own will, as and when he would wish to deposit the said amount.

The above-said arguments raised by the learned counsel for the State were emphatically denied by the learned counsel for the petitioner,

contending that once the amount was duly accepted by the competent authority without raising any kind of protest, the petitioner was not required to challenge the forfeiture order separately and the respondent authorities were duty bound to allow the application of the petitioner for regularisation of the auction sale in favour of the petitioner. He would further submit that the respondent authorities were using the amount deposited by the petitioner for the last more than 10 years and it was never ordered to be refunded to the petitioner at any point of time by any of the respondent authorities.

Learned counsel for the petitioner would next contend that that if the amount deposited by the petitioner was wrongly accepted by Teshildar (Sales), Ambala, then the higher authorities were expected to initiate appropriate action, but no action was ever initiated against any such officer or official of the department and rightly so, because the amount deposited by the petitioner was a bonafide act on the part of the petitioner and it was also rightly accepted by the competent authority, without there being any kind of connivance or ulterior motive. He prays for setting aside the impugned orders, by allowing the instant 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 amount deposited by the petitioner towards outstanding instalments as well as interest @ 12% for the delayed payment was duly accepted without any protest vide Annexure P-1, no fault can be found with the petitioner.

After receiving the payment from the petitioner vide Annexure P-1, the respondent authorities failed to appreciate the true fact situation as

well as the valuable right of the petitioner, who was a bonafide auction purchaser. Had the true facts been appreciated in the correct perspective by the respondent authorities, there was no scope for passing the impugned orders. Further, had any of the respondents authorities ordered refund of the amount deposited by the petitioner, which might have been received by the petitioner, matter would have been altogether different. However, it is not fact situation in the present case. Having said that, this Court feels no hesitation to conclude that all the respondent authorities proceeded on wholly misconceived and perverse approach, while passing the orders, contained in Annexures P-2 to P-4 and the same cannot be upheld.

In fact, a manifest injustice has been done to the petitioner, while passing the impugned orders. He was a bonafide purchaser, who was found the highest bidder in the restricted auction. Bonafide of the petitioner was also established from another material fact that he moved an application on 16.8.1995, seeking extension of four months' time for depositing the amount towards outstanding instalments. On this application, a detailed report dated 2.9.1994 was sent by the field staff to the Head Office at Chandigarh. After careful perusal of the said report, Joint Secretary of the respondent-department further granted two months' time to the petitioner vide order dated 15.9.1994. Still further, after passing of the forfeiture order, as and when petitioner was in a position to pay the outstanding amount, he expressed his willingness to deposit the total amount towards the outstanding instalments.

He further expressed his willingness to show his bonafide to pay the amount towards balance instalments along with interest @ 12%. In such a situation, no allegation can be levelled against Tehsildar (Sales),

Ambala, who found the request made by the petitioner to be genuine and accepted the amount deposited by him vide Annexure P-1. Had the petitioner not shown his bonafide on more than one occasions noticed hereinabove, he might not have been found entitled for the discretionary relief, at the hands of this Court. However, since the petitioner has deposited the total amount towards outstanding instalments along with interest @ 12% which was duly accepted by the competent authority vide Annexure P-1, petitioner has been found entitled for the relief claimed by way of instant writ petition.

In view of what has been discussed hereinabove, all the three impugned orders contained in Annexures P-2 to P-4 passed by the respondent authorities have been found suffering from patent illegality and the same are liable to be set aside.

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 all the three impugned orders have been found suffering from patent illegality and perversity, the same are liable to be set aside. Accordingly, the impugned orders P-2 to P-4 are hereby set aside. The writ petition deserves to be accepted.

Resultantly, with the above-said observations made, the present writ petition stands allowed, however, with no order as to costs.

22.10.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No