IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16542 of 2016 (O&M)
Date of decision: 09.09.2016

Ashwani Kumar

... Petitioner

Vs.

Financial Commissioner, Revenue & Disaster Management Department, Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

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RAMESHWAR SINGH MALIK, J. (ORAL)

CM No.10665-CWP of 2016

Applicant seeks permission to place on record the additional documents in the form of Annexures P-10 to P-13.

Application is allowed, as prayed for.

CM stands disposed of.

CWP No.16542 of 2016

Instant writ petition is directed against the orders dated 19.09.2013 (Annexure P-3) and 23.02.2016 (Annexure P-6), whereby the order dated 29.09.2011 (Annexure P-1) passed by Deputy Commissioner-cum-Commissioner (Sales), was upheld.

When the case came up for hearing on 17.08.2016, following order was passed by this Court: -

> *"Learned counsel for the petitioner seeks time to place on record the application moved by the petitioner, seeking withdrawal of the amount deposited by him, pursuant to the auction sale and before confirmation of the said sale by the competent authority. He shall also place on record the order passed by the competent authority on his application, whereby his right as an auction purchaser was saved, by specific order pointing out that withdrawal of deposited amount would not adversely affect his right as auction purchaser, in the event of confirmation of sale by the competent authority.*
>
> *On his request, adjourned to 9.9.2016."*

In compliance of the abovesaid order, petitioner has placed on record additional documents in the form of Annexures P-10 to P-13 by way of CM No.10665-CWP of 2016, which has been allowed today.

Heard learned counsel for the petitioner.

A combined reading of Annexures P-10 and P-11 would show that the amount, which was deposited by the petitioner pursuant to the auction proceedings, was withdrawn by him by moving a specific application dated 30.11.2011 (Annexure P-10). It was allowed by the competent authority vide order dated 03.01.2012 (Annexure P-11). Neither the petitioner reserved any of his right in this regard nor the permission for withdrawal was granted, protecting the right of the petitioner, to the effect that this withdrawal will not adversely affect his right, if the litigation is ultimately decided in his favour.

It was very well known to the petitioner that the order dated 29.09.2011 (Annexure P-1) had been challenged by him before the higher authorities but he did not think it appropriate to keep his right reserved in that regard nor any such right of the petitioner was saved by the competent authority, while granting permission to the petitioner for withdrawal vide order dated 03.01.2012 (Annexure P-11). Thus, the petitioner had long back lost his right, if any, by his own conduct.

Regarding the merits of the case, Commissioner, Rohtak Division-cum-Chief Commissioner (Sales), while passing the impugned order dated 19.09.2013 (Annexure P-3), found that it was a case of connivance, because of which the land could not fetch maximum price, during the auction proceedings. The relevant observations made by the Chief Commissioner (Sales), at page 51 of the paper book, read as under: -

> *"......No member panchayat/lambardar or any other respectable persons is present at the time of auction. The bid has been given at the time of auction while conniving with each other because the highest bid and the reserve price fixed by the Govt. are close to each other. The petitioners have purchased the Govt. land on lesser price while conniving with each other after forming groups with internal understanding. Therefore the order dated 29.09.2011 passed by the Deputy Commissioner-cum-Commissioner (Sales) Karnal in which he has set-aside the auction of the land is complete*

> *correct in which there is no error and it needs no interference. Therefore the present revision petitions are dismissed while finding no force in it as per circumstances."*

Financial Commissioner (Revenue), Haryana reconsidered the entire matter, while deciding the revision petition filed by the petitioner against the abovesaid order dated 19.09.2013 (Annexure P-3). As many as four issues, which fell for his consideration, were rightly framed by the Financial Commissioner and on the basis of cogent findings recorded thereon, all the four issues came to be decided against the petitioner. All the four issues and findings recorded thereon, which deserve to be noticed here, read as under: -

> *"I have heard the counsel for the petitioner and Government Pleader for the State. After going through the case file and hearing the arguments led by both the parties. I have concluded that the following are the points which are to be adjudicated for dispose of his petition: -*
>
> *(1) Can auction in favour of the revisionist be upheld?*
>
> *(2) Averments made by revisionist i.e. the petitioner has been heard or not?*
>
> *(3) Are orders of the both courts below are legal or not?*
>
> *(4) Are the orders of both the courts below are speaking or not?*
>
> *ISSUE NO.1*
>
> *In this case the perusal of the file shows that the revisionist in the present case have given an application for refund*

of his money vide application dated 30.1.2011 on the ground that the auction in his name has not been confirmed by the competent authority, therefore his earnest money may be refunded to him. In his application no other grounds has been taken by the applicant for refund of his earnest money as mentioned in application which is available on file. Accordingly the matter was processed and his amount was refunded by the department to the applicant on 05.01.2012 i.e. prior the order of Chief Commissioner (Sales). Therefore, keeping in view the fact that the applicant has got his money refunded. I see no justification is upholding the auction.

Accordingly the orders passed by both the courts below are upheld and issue No.1 is decided against the revisionist and in favour of the respondent.

ISSUE NO.2 to 4

The petitioner in his petition has made many averments e.g. that opportunity of being heard was not given to him and have challenged the findings of both the courts below as pointed out in their orders. In this case the fact regarding taking refund of his money by the revisionist have not been taken by the Chief Commissioner (Sales) in his order dated 19.09.2013. However, the revisionist has taken his refund on 05.01.2012 i.e. prior to orders of Chief Commissioner (Sales). Therefore, keeping in view the fact of refund of money by the revisionist the averments made by the

> *revisionist in their petition need not to be looked into as on date there is no contract between the State and revisionist due to refund of money. However, the orders passed by both the courts below are self-explanatory itself and speaking one. Accordingly issue No.2 to 4 are decided in favour of the respondent and against the revisionist."*

Since the petitioner did not place on record his application for withdrawal and order passed thereon, granting permission to him for withdrawal of the auction money, with the present writ petition at the time of its filing, learned counsel for the petitioner was directed to place the same on record, by passing the abovesaid order dated 17.08.2016.

After a careful examination of the matter, it becomes crystal clear that firstly it was a clear cut case of connivance, because of which the land which was put to auction, could not fetch maximum price. Further, in spite of the fact that the order dated 29.09.2011 (Annexure P-1) was under challenge before the higher authorities at the instance of the petitioner, he himself moved the application (Annexure P-10) without reserving his right. Said application for withdrawal was allowed vide order dated 03.01.2012 (Annexure P-11) without saving the right of the petitioner that such withdrawal shall not adversely affect his right pending consideration before the higher authorities. In such an undisputed fact situation, it can be safely concluded that whatever right the petitioner was having at that point of time, was taken away by himself, by withdrawing the auction money without any protest or without reserving any of his right. During the course of hearing, learned counsel for the petitioner could not substantiate any of his arguments in this regard. Further, once the petitioner himself lost the interest and withdrew his amount, no prejudice, of any kind whatsoever, has been shown, which might have caused to the petitioner, by passing the impugned orders, so as to enable this Court to exercise its writ jurisdiction under Article 226/227 of the Constitution of India.

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 the impugned orders passed by the respondent authorities 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]
09.09.2016 **JUDGE**
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No