

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.1873 of 2015 (O&M)

Date of Decision: 22.03.2016

Phool Kumar & Ors.

... Appellants

VS.

Rajinder Singh & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE P.B. BAJANTHRI

1. Whether Reporters of local papers may be allowed to see the judgment? yes

2. To be referred to the Reporters or not? yes

3. Whether the judgment should be reported in the Digest? yes

Present: Mr. Jai Vir Yadav, Advocate for the appellants

Mr. Sudhir Mittal, Advocate for respondents No.1 to 4

Ms. Kirti Singh, DAG Haryana for respondents No.5&6

Surya Kant, J.

(1) This Letters Patent Appeal is directed against the order dated 27.01.2015 whereby the learned Single Judge allowed the writ petition filed by respondents No.1 to 4 and after setting aside the impugned order dated 22.11.1985, has further directed the State of Haryana to consider “their case for allotment of the land in question as per the Package Deal Properties Rules” which were prevalent at the relevant time. Consequently, the auction of the subject-land has been set aside and respondent No.2 (since dead and represented by LRs – the appellants) has been permitted to seek the refund of the amount deposited by him being the highest bidder.

(2) The facts may be briefly noticed. The evacuee properties left by the Muslims who migrated to Pakistan at the time of Partition, were managed by the Custodian. The erstwhile State of Punjab enacted the East Punjab Act No.12 of 1948 to rehabilitate those displaced persons who migrated to India, leaving behind their agricultural land in Pakistan. The field was finally occupied by the Parliamentary legislation, namely, Displaced Persons (Compensation and Rehabilitation) Act, 1954. The entire evacuee property was taken over under the Act for settlement of displaced persons and the unsatisfied claimants from West Pakistan were allotted land under the Central Act.

(3) After the settlement of such claims, there were unallotted rural evacuee properties which was purchased by the State Government from the Central Government under a 'Package Deal'. For the allotment and management of such land under the Package Deal, the State Government formulated the "Package Deal Properties Rules, 1962".

(4) The land in dispute measuring 28 kanal 6 marla is also an evacuee property and is situated in the revenue estate of Village Matan Hail, Tehsil and District Jhajjar. The aforesaid land was allotted to displaced persons, namely, Sarvshri Devraj s/o Tara Chand, Om Parkash s/o Dhana, Ishar Das s/o Chokha Ram, Chanan Das s/o Chokha Ram i.e. total 11 persons in the year 1964.

(5) The father of respondents No.1 to 4 – Ran Singh s/o Sanwal was in physical possession of the land and claimed to have

been giving *batai* to the allottees from the year 1964 onwards. Said Ran Singh died in the year 1969 and after his death, respondents No.1 to 4 being his legal heirs came into the cultivating possession of the subject land “as tenants” under the allottees.

(6) One Ran Singh s/o Sheodhan (father of the appellants) is alleged to have impersonated and appeared before the authorities posing himself as Ran Singh s/o Sanwal i.e. the original tenant and father of respondents No.1 to 4. He is alleged to have made a statement on 25.10.1982 to the effect that the ‘allottees’ never took possession of the suit land and he was in its physical possession as a tenant without paying any rent. As the allottees failed to satisfy one of the mandatory condition of taking over physical possession of the allotted land, the authorities cancelled the allotment made in favour of Dev Ram s/o Tara Chand, Om Parkash s/o Dhana etc. etc.

(7) Thereafter, the suit land was decided to be sold by way of public auction which is one of the prescribed mode to dispose of the Package Deal Properties. The father of the appellants (Ran Singh s/o Sheodhan) was the highest bidder in the auction held on 04.01.1985. His bid of ₹25000/- was confirmed by the prescribed authority on 31.01.1985. The auction purchaser deposited the entire amount whereupon physical possession of the suit land was statedly delivered to him vide *Rapat Roznamcha* No.399 dated 02.06.1986.

(8) Notwithstanding the delivery of possession to the auction purchaser in papers, it appears that respondents No.1 to 4

continued to retain the physical possession. They filed a revision petition before the Chief Settlement Commissioner, Haryana challenging the auction held on 04.01.1985 or its confirmation made on 31.01.1985. Their revision petition was turned down vide order dated 22.01.1985, impugned by them in the writ petition filed in the year 1986 in which this Court vide order dated June 3, 1986 stayed their dispossession. Thereafter, on July 9, 1986, *status quo* with regard to possession as it existed on June 3, 1986 was directed to be maintained.

(9) The above-stated writ petition has now been allowed by the learned Single Judge in the terms as mentioned in the opening paragraph of this order.

(10) Learned Single Judge has held that since the father of respondents No.1 to 4, namely, Ran Singh s/o Sanwal had died on 28.08.1969, it was impossible for him to have appeared before the authorities on 25.10.1982 and made a statement against the allottees, on the basis of which the allotment was cancelled. Learned Single Judge has further held that since the very foundation of cancellation of allotment rests upon patently wrong facts, the subsequent auction held on 04.01.1985 or its confirmation are liable to be set aside. In addition, learned Single Judge has perused the record of auction and having found that though 14 persons are recorded to have participated in the bidding process but the bidding sheet mentioned only 3 persons, has further concluded that the bidding process was a sham and it was apparently a show

managed by the father of appellants, namely, Ran Singh s/o Sheodhan. On the basis of this very finding, learned Single Judge has also rejected the plea that the private respondents ought to have filed objections against the auction within 10 days along with deposit of a sum equivalent to the highest bid plus 20% earnest money as was required under the Rules.

(11) The appellants who are the heirs of highest bidder and are aggrieved by the order of the learned Single Judge, have filed this Letters Patent Appeal. The private respondent – writ petitioners are on caveat. Upon notice, counsel for the State of Haryana has also put in appearance and supported the appellants. Learned counsel for the parties were heard at a considerable length. The record has also been perused.

(12) Having considered the rival submissions, we find that the following issues need to be determined:-

- (i) Whether the allotment of subject-land made in favour of the displaced persons like Dev Ram s/o Tara Chand, Om Parkash s/o Dhana etc. was erroneously cancelled?
- (ii) Whether the auction held on 04.01.1985 or its confirmation on 31.01.1985 was justified in law?
- (iii) Whether any indefeasible right accrued in favour of the predecessor-in-interest of the appellants (Ran Singh s/o Sheodhan) – he being the highest bidder in the above-stated auction?

- (iv) Whether respondents No.1 to 4 are eligible for allotment and conferment of ownership rights under the Package Deal Rules?
- (v) If question No.(iv) is answered against respondents No.1 to 4, whether they are entitled to retain the possession of suit land?
- (vi) If questions No.(iv) & (v) both are answered against respondent No.1 to 4, what is the permissible mode of disposal of the land in dispute?
- (13) As regard to question No.(i), namely, the cancellation of allotment made in favour of displaced persons, we find from the averments made in para-3 of the written statement filed by official respondents No.1&3 that as per the office record, Ran Singh s/o Sanwal Ram appeared before Tehsildar (Sales), Rohtak on 25.10.1982 *“and deposed that he was a ghair mauroosi of the land in question and that he had not given any batai to any person and that the land was allotted to eleven persons who did not visit the village and that according to khasra girdawari the land was in his possession.”*. It is further averred that *“on knowing that the allottees never took possession of the land and some others were using the land unauthorisedly the allotment was rightly cancelled and it was for the allottees to challenge the same if they were aggrieved...”*. Thus, it stands admitted that the allotment was cancelled solely on the basis of the statement purportedly made by ‘Ran Singh s/o Sanwal Ram’ on 25.10.1982 whereas the said Ran Singh s/o

Sanwal Ram had died on 28.08.1969 as is evident from the death certificate (P2). The very factual foundation being contrary to the record, learned Single Judge has rightly held that the authorities grossly erred in cancelling the allotment.

(14) The fate of questions No.(ii) & (iii) depends upon answer to question No.(i). Once it is held that the allotment in favour of displaced persons was illegally cancelled, it has to be held that the land in dispute was not available for disposal through public auction held on 04.01.1985. That apart, learned Single Judge has found as a matter of fact that the auction in question was not held in a transparent and fair manner inasmuch as 14 persons were claimed to have participated in the bidding process but actually only 3 persons had made the bid. The mere confirmation of auction, which was *per se* illegal, does not confer any enforceable right in favour of the predecessor-in-interest of the appellants. The order passed by learned Single Judge in annulling the auction is thus just and fair and calls for no interference.

(15) Adverting to questions No.(iv) & (v) together, it may be mentioned that “Rules for the Sale of Surplus Rural Properties” have been formulated for the disposal and management of surplus evacuee property as defined in Rule 1(a) which reads as follows:-

“(a) *Surplus Evacuee Property means the acquired rural evacuee property which is not required for allotment to unsatisfied claimants and which has been purchased by the State Government from the Central Government under a Package Deal.*”

(16) Rule 2 of these Rules empowers the State Government to appoint Settlement Commissioner and other Officers “for the disposal of surplus rural evacuee property”. Rule 3 deals with the Mode of Sale and it reads as follows:-

“3. Mode of Sale Property. *Any surplus evacuee property purchased by the State Government may be disposed of in any of the manners set out below:-*

(i) By public auction;

(ii) By inviting tenders;

(iii) By transfer to such class of occupants and at such price as the State Government may be general or special order specify.

(iv) By transfer at agreed price to other Government Departments, Local Bodies including Panchayats, Block Samities and Zila Parishads, Industrial concerned, Companies and other Private Institutions for public, Industrial and any other common purposes.”

(17) While Rule 5 prescribes the procedure for sale of property through public auction, Rule 6 provides such procedure for sale by way of tender. Rule 7 contains “Procedure for the transfer of surplus evacuee property at fixed rates”, namely, the procedure for the mode of sale of surplus evacuee property under Rule 3(iii) of the Rules reproduced in para-16 above.

(18) According to Clause (a) of Rule 7, any person claiming to be entitled to transfer of surplus evacuee land at a fixed price under any general or special order of the Government, is required to apply within the prescribed period and as per clause (b), the eligibility of

such applicant shall be determined by Tehsildar (Sales) “strictly in accordance with the entries in the Revenue record and no oral evidence with regard to the possession of the applicant shall be allowed to be adduced”. If Tehsildar (Sales) concludes that the applicant is not eligible, he will reject the application with brief reasons as per Clause (c) and his order is appealable under Clause (d). If the applicant is found eligible, Clause (e) enables the Tehsildar (Sales) to pass order for the transfer of land at the price payable for the same.

(19) It would be apt at this stage to notice that in purported exercise of its powers under Rule 3(iii) read with Rule 7(a) of these Rules, States of Punjab and Haryana have from time to time issued policy decisions for the sale of surplus evacuee properties at fixed rates “in favour of unauthorized occupants of such land”. One of the such policy was issued by the erstwhile State of Punjab on June 2, 1963, followed by a revised policy issued by State of Haryana on August 25, 1981. Under this policy, the unauthorized occupants of agriculture land since Kharif 1975 or earlier and who were in possession before January 1, 1982 were held entitled to purchase the land under their unauthorized occupation on payment of nominal price. These policy decisions were substituted/replaced/revised by one after the other set of instructions dated July 11, 1988, March 20, 1989, April 17, 1997 and November 1, 2001.

(20) The above-stated later policy decision(s) issued by State of Haryana came to be challenged before this Court in public interest in CWP No.2272 of 2003 (Dalmer Singh vs. State of Haryana & Ors.) and other connected petitions, mostly by the people belonging to marginalized sections of society, asserting that these policy decisions amounted to giving premium to musclemen who were in unauthorized occupation of the Government land(s). A Division Bench of this Court vide order dated November 22, 2010 allowed the writ petition and quashed the Government policy holding as follows:-

“In view of facts, mentioned above, we are of the opinion that the policy dated November 1, 2001, (P-3) is against the public interest and violates the principle of rule of law. Further it also violates equality before law and protection of law as enshrined under Article 14 of the Constitution of India. As such it cannot be sustained.”

(21) It was further directed that:-

“The State Government is directed to initiate proceedings against the unauthorised occupants to retrieve the public property and thereafter, if need be, it be sold either in public auction or otherwise as per law.”

(22) In yet another matter pertaining to similar policy decision taken by State of Punjab, a Division Bench of this Court, to which one of us (Surya Kant, J) was a member in LPA No.402 of 2012 (Mohinder Singh vs. State of Punjab & Ors.) decided on

30.11.2012 quashed the similar policy under challenge and that decision stands upheld by the Hon'ble Supreme Court.

(23) Having pondered over the scheme of the Rules read with the consistent view taken by this Court that the Government land cannot be gifted to unauthorized occupants at concessional rates, we have no reason to doubt that the mode of sale of surplus evacuee property under Rule 3(iii) has become redundant and it cannot be misused as a windfall in favour of unauthorized occupants. The expression "occupant" contained in the said clause cannot include an "unauthorized occupant" so as to encourage lawlessness and give a free hand to anti-social elements who are defiant to follow the rule of law.

(24) As a result of the above discussion, it has to be held that respondents No.1 to 4 or their predecessor-in-interest cannot claim allotment of the land in dispute under Rule 3(iii) on the plea that they were/are in its unauthorized occupation since the year 1964 or prior thereto.

(25) Similarly, it is not the case of respondents No.1 to 4 or their predecessor-in-interest that they are 'displaced persons' and entitled to allotment of the land in lieu of any agriculture property left by them in Pakistan while migrating to India.

(26) Likewise, it is neither pleaded nor proved by respondents No.1 to 4 that their predecessor-in-interest was 'inducted' as a 'tenant' through any bilateral act or that such tenancy has, in due course of time, matured into 'ownership rights'.

The Rules in question relied upon by them do not recognize any tenancy rights.

(27) Having held that, we find that since respondents No.1 to 4 have failed to establish any indefeasible right to seek allotment of the land in dispute in their favour or its sale to them at a fixed rate, learned Single Judge is not right while holding that they are entitled to be considered *“for allotment of land in question as per the Package Deals Properties Rules which were prevalent at the time when auction took place, in accordance with law”*.

(28) The only direction that could be issued by the learned Single Judge was for giving an opportunity to respondents No.1 to 4 to make out their case as to under which provision of the Rules or law they are entitled to the allotment of the subject-land. It needs no emphasis that the land in dispute cannot be allotted or sold to respondents No.1 to 4 on the plea that they are in its “unauthorized occupation”. Further, if respondents No.1 to 4 fail to make out a case for allotment or sale of the subject-land in accordance with law, it is imperative upon the authorities to dispose of the same by way of public auction, after dispossessing respondents No.1 to 4 in accordance with law.

(29) In the light of the above discussion, we allow this appeal in part. The order dated 27.01.2015 passed by learned Single Judge is modified and the writ petition is disposed of in the following terms:-

- (i) The cancellation of allotment of the subject-land in favour of displaced persons, namely, Sarvshri Devraj s/o Tara Chand, Om Parkash s/o Dhana, Ishar Das s/o Chokha Ram, Chanan Das s/o Chokha Ram i.e. total 11 persons is held to be illegal and is set aside.
- (ii) The official-respondents are directed to issue show cause notice to the allottees and re-determine whether their allotment is liable to be cancelled for their alleged failure to take possession of the allotted land.
- (iii) If the allotment is cancelled, yet the auction purchaser, namely, the appellants have no right to claim the land in dispute as the auction held on 04.01.1985 was totally illegal and uncalled for. They are entitled to seek refund of the amount along with interest as may be admissible under the Rules/law.
- (iv) No allotment or sale of the land in dispute shall be made in favour of respondents No.1 to 4 on the plea that they are its unauthorized occupants.
- (v) Respondents No.1 to 4 shall, however, be given an opportunity within a period of two months from the date of receipt of copy of this order to establish their entitlement for 'allotment' or 'sale' of the subject land on the plea that their predecessor-in-interest was a lawfully inducted tenant and such tenancy is entitled to confer 'ownership rights' on them.

- (vi) If the claim of respondents No.1 to 4 under direction No.(v) above is not accepted, they shall be liable to be dispossessed in accordance with law.
- (vii) Once the land in dispute is vacated by respondents No.1 to 4, the respondent-authorities are directed to dispose of the same by way of 'public auction' to be conducted in a transparent manner with wide publicity. The auction shall be conducted within a period of three months from the date the land is vacated.
- (30) A compliance report shall be submitted to this Court.

(Surya Kant)
Judge

22.03.2016
vishal shonkar

(P.B. Bajanthri)
Judge