

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

CWP No.1885 of 1998
Date of decision : 08.05.2017

Madan Lal and others

...Petitioners

Versus

State of Haryana through Commissioner and Secretary and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. S.S. Kharb, Advocate for petitioners.

Mr. Indresh Goel, Addl. A.G. Haryana.

AMIT RAWAL, J. (Oral)

The grievance of the petitioners in the present writ petition is that in the year 1984 i.e. on 03.08.1984, land in dispute was auctioned and the petitioner-Madan Lal was highest bidder. The auction was conducted by Tehsildar-Sales, Naraingarh, Ambala which on 22.08.1984 confirmed by the Settlement Officer, Sales. The petitioner had made payment of all the installments and the letter of sale was issued in the year 1990 in favour of the petitioner-Madan Lal.

Learned counsel for the petitioner submits that land in question was purchased by petitioner Nos.2 and 3 from petitioner No.1 through registered sale deed dated 09.11.1995. On 19.09.1996, the Joint Secretary, Rehabilitation-cum-Chief Settlement Commissioner Haryana while taking suo motu reference without hearing the petitioner No.1 or petitioner Nos.2

and 3, despite the fact that the case was numbered as State Vs. Madan Lal and Dharamvir i.e. in the absence of compliance of principles of natural justice, set aside the auction in favour of the petitioner No.1 holding that the land was reserved for Forests.

The aforementioned order was assailed before FCR and the appeal also met with the same fate and thus submits that order under challenge is not sustainable in the eyes of law being bereft of the compliance of the principle of natural justice. In support of his contention, he has also relied upon Three Bench Judgment of Hon'ble Supreme Court in *Satya Pal Anand Vs. State of Madhya Pradesh and others, 2016(4) RCR (Civil) 904* to contend that registered document cannot be set aside in the manner and mode above, thus urges this Court for allowing the writ petition.

On the Contrary, as per the written statement, factum of the land having been sold in open auction is not in dispute. It has been stated that it has been auctioned by treating it as an evacuee property whereas land belongs to Forest Department. The factum of the issuance of sale certificate in favour of the auction purchaser on 22.10.1990 has also not been denied but stated that the Settlement Commissioner is competent to pass appropriate order as it may deem fit in the facts and circumstances of the case. Impugned order dated 19.09.1996 was, thus, rightly passed after giving due opportunities of hearing to the parties.

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

No doubt suo motu action had been taken almost five years after the date of confirmation of the sale and issuance of sale certificate but

in the instant case, the vendee of the petitioner Nos.2 and 3 Madan Lal who is stated to have represented by one Karan Singh Saini, Advocate, who filed Vakalatnama and apprised that land has been purchased by petitioner Nos.2 and 3 but the Secretary did not issue notice to them or gave any opportunity to appear particularly when the Advocate did not appear on such date and were proceeded ex parte. Such a stringent Act without giving an effective opportunity to the concerned effected parties is not acceptable. Even lapse of the counsel has held to be prejudicial to the interest of the litigant in view of ratio decidendi culled out in *Rafiz and another Vs. Munshi and another*, AIR 1981 Supreme Court 1400. The impugned order does not deal with the revenue record except for mutation that the land was forest. The entire jamabandi preceding to the auction, much less, khasra girdawri was required to be seen to form opinion whether the nature and character of the land was forest or not. Even otherwise, valuable right had accrued in favour of the petitioner No.2 by registered document and same cannot be set aside until and unless aggrieved party has availed the remedy.

The aforementioned view of mine is derived from the ratio decidendi culled in the judgment cited (Supra) i.e. Satya Pal Anand's case. Para No.22 and 23 of the same reproduced hereas under:-

“22. The procedure for registration of documents is spelt out, inter alia, in part VI of the Act of 1908. Section 32 of the said Act reads thus:

PART VI

OF PRESENTING DOCUMENTS FOR REGISTRATION

“32. Persons to present documents for registration.- Except in the cases mentioned in 24[sections 31, 88 and 89], every document to be registered under this Act, whether such

registration be compulsory or optional, shall be presented at the proper registration office-

- (a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or*
- (b) by the representative or assignee of such a person, or*
- (c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.”*

23. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the Extinguishment Deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitly to cause loss and harm to the other party to the Deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the Act of 1908 enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the Act of 1908 can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the Civil Court.”

Resultantly, impugned orders dated 19.09.1996 (Annexure P-1) and 25.02.1997 (Annexure P-2) are not sustainable and are hereby set aside.

Writ petition is allowed in the aforementioned terms.

When this Court had taken the cognizance of the matter, while issuing notice of motion on 10.02.1998, also granted status quo as to the possession, same is ordered to be maintained.

08.05.2017

Pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No