

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

C.W.P.No.4907 of 1996 (O&M)

Date of Decision: January 27, 2017

Phool Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr.Amit Jain, Advocate,
for the petitioner.

Mr.Sandeep S. Mann, Senior Deputy Advocate General,
Haryana for the State.

AMIT RAWAL, J. (Oral)

CM No.950 of 2017

Prayer in the application is for impleading the L.Rs of petitioner Phool Singh, who is stated to have died during the pendency of the present writ petition.

Allowed subject to all just exceptions.

CWP No.4907 of 1996

The writ petition is of the year 1996. With the consent of learned counsel for the parties, the same is taken on board for final disposal.

The petitioner is aggrieved of the impugned orders, Annexures P-5 and P-6, whereby suo-motu cognizance taken by the Tehsildar (Sales), Karnal was received by the Joint Secretary (Rehabilitation)-cum-Settlement Commissioner, Haryana with regard to the auction held on 29.8.1989.

Mr.Amit Jain, learned counsel representing the petitioner submits that the auction aforementioned was conducted on 29.8.1989 and the petitioner was declared highest bidder in respect of the land measuring 16 kanals 7 marlas, situated in village Brass, Tehsil and District Karnal for a sum of Rs.1,54,000/-. The petitioner, being a member of the scheduled caste community, was eligible for participation in the bid in view of the Scheduled Caste Certificate dated 16.11.1989 issued by the Sub Divisional Officer (Civil), Karnal. Copies of the Scheduled Caste Certificates of the petitioner and as well as his son are annexed with the petition as Annexures P-1 and P-2.

He further submits that one Dharam Pal-respondent No.4 moved an application before the Deputy Commissioner, Karnal disputing the status of the petitioner being Harijan/Scheduled Caste and on the basis of the aforementioned complaint, an ex-parte enquiry was held by the Deputy Commissioner, whereby the petitioner was declared to be belonging to backward class category. It is in this backdrop of the matter,, the impugned reference was received by the Joint Secretary.

He further urges that the petitioner was never associated or called upon to put across his case and the documents placed before the Joint Secretary in pursuance to the suo-motu notice, have not been considered, much less no reasoning has been assigned. The orders under challenge are primarily based on the ex-parte enquiry report, which could not be the basis as the authorities were required to pass the order uninfluenced with the ex-parte enquiry proceedings and, thus, are not sustainable. There is no compliance of the provisions of natural justice, much less the orders are lacking reasons.

Mr.Sandeep S.Mann, learned Senior Deputy Advocate General, Haryana representing the State submits that as per the enquiry conducted by the Deputy Commissioner, it was found that the petitioner is belonging to 'Baddi' caste, which is not falling in any of the scheduled caste category, but backward class. The auction was conducted only for promoting the scheduled caste category, thus, rightly so the auction proceedings have been set-aside by declaring the petitioner as backward class candidate. He further submits that the orders under challenge, i.e., the acceptance of reference and setting-aside the auction, are perfectly legal and justified and do not call for any interference.

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

For the sake of brevity, the operative part of the order dated 29.2.1996 of the Joint Secretary (Rehabilitation)-cum-Settlement Commissioner, Haryana reads thus:-

"2. I have heard the parties, gone through the record and have considered the matter. The facts given in the above mentioned reference clearly show that Shri Phool Singh s/o Sh.Molu Ram has purchased the land in question 'restricted auction' meant for Harijans only by obtaining a false scheduled caste certificate. The enquiries made by the Sub Divisional Officer (Civil), Deputy Commissioner Karnal as well as the report/order of Tehsildar (Sales) Karnal has proved this factum and it leaves no doubt to me that Sh.Phool Singh has purchased this land fraudulently. During the course of hearing the Ld.counsel for the respondent/auction purchaser has miserably failed to prove that the auction purchaser belongs to scheduled caste. The evidence, i.e.the affidavits of some persons, copy of instructions for Presiding and Polling Officer, 1988 and the statements of some persons to the effect

that he belongs to scheduled caste, are not applicable in the present case. The authority competent to issue such certificate are the Sub Divisional Officer (Civil) or the Deputy Commissioner and as per their reports the auction purchaser do not belong to scheduled caste.

Keeping in view the totality of the facts, I accept the reference, set aside the auction dated 29.8.89 of the land in question from the name of the auction purchaser Sh.Phool Singh. The order of the A.S.O. (S) confirming the said auction is also set aside. The land in question be retrieved from the auction purchaser/respondent immediately and it be disposed of as per rules and instructions of the department. This reference is accepted accordingly.”

The aforementioned findings do not conform to the test of reasonability as primarily the same are based upon the report, which was conducted ex-parte against the petitioner. The petitioner ought to have been given opportunity. Even no reasons have been assigned to the statements of the persons examined by the petitioner and the documents placed on record at the time of filing of the reference, whereas there should have been a ponderance or decision and in the absence of the same, in my view, the orders are not liable to be sustained. The authorities should have considered the documents and passed the orders by knowing that the enquiry conducted by the Deputy Commissioner was at the back of the petitioner.

It is the conceded position on record that sale certificate had already been issued and the petitioner has been put in possession of 13 kanals 3 marlas out of 16 kanals 7 marlas.

In view of what has been noticed above, the impugned orders, Annexures P-5 and P-6, are set-aside. The authorities concerned are directed to grant opportunity of hearing to the petitioner and decide the case in a

most pragmatic and reasonable manner. The petitioner shall also be given chance to produce all the documents to belie the ex-parte enquiry report. The authorities will not be influenced with the ex-parte enquiry proceedings. Let this exercise be done within a reasonable period of six months from the date of receipt of certified copy of this order.

In case, the authorities find that the petitioner is eligible for participating in the auction, no orders are required to be passed and the auction will be deemed to have been confirmed.

Writ petition stands disposed of.

January 27, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No