

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.A.No.374 of 2017 (O&M)
R.A.No.475 of 2017 (O&M) &
C.W.P.No.6266 of 2003 (O&M)
Date of Decision: May 31, 2018

Sardari Lal & others

...Petitioners

Versus

Commissioner & Secretary, Rehabilitation Department, Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.V.K.Jain, Senior Advocate with
Mr.Ravi Kadian, Advocate,
for the applicant/respondents in RA No.374.

Mr.Sanjeev Sharma, Senior Advocate with
Mr.Gaurav Mohunta, Advocate,
for the applicant/petitioners in RA No.475 of 2017.

AMIT RAWAL, J.

CM No.1122 of 2018 in RA No.374 of 2017

Brief synopsis and list of dates and events is taken on record.

CM stands disposed of.

CM No.15074 of 2017 in RA No.475 of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 103 days in filing the review application is condoned.

CM stands disposed of.

RA No.374 of 2017 in CWP No.6266 of 2003

The present review application has been filed on behalf of

applicant-respondents No.4, 5, 7, 11 and 13 for review of the order dated 31.5.2017.

This Court, on the basis of the judgment dated 8.3.2017 rendered in Civil Writ Petition No.4430 of 2003 titled as “Vivek Gupta & others Versus State of Haryana & another”, decided the present writ petition on the premise that controversy involved was directly and substantially an issue vis-a-vis the claim in the other writ petitions.

I have gone through the writ petition and the order of mine and of the view that there is error apparent on record. The writ petition should not have been disposed of in terms of the order passed in CWP No.4430 of 2003, therefore, the order dated 31.5.2017 is recalled and the writ petition is restored to its original number.

RA No.374 of 2017 stands disposed of.

RA No.475 of 2017 in CWP No.6266 of 2003

Since I have already recalled the order dated 31.5.2017 in view of the order passed in RA No.374 of 2017, the present review application filed on behalf of the applicant/petitioners is rendered infructuous and disposed of as such.

CWP No.6266 of 2003

Petitioners, i.e., Sardari Lal Kochhar, Raj Kumar Kochhar (since deceased) represented by legal representatives and Vijay Kumar Kochhar filed the present writ petition for quashing of the part of the impugned order dated 7.2.2003 (Annexure P-12) passed by respondent No.1-The Commissioner and Secretary, Rehabilitation Department, Haryana (exercising the powers of Central Government under Section 33 of the Displaced Persons (Compensation & Rehabilitation Act, 1954 (for short

“the Act”) to the effect that the authorities had given findings against the petitioners qua eligibility and further a writ in the nature of mandamus for issuance of directions to the official respondents for deducting and adjusting the amount of ₹4423/- being taken from S.C.Mitra by the official respondents on account of the withdrawal of the area to the tune of 3 bighas 10 biswas with a further direction to the official respondents not to allot and dispossess the petitioners from the land measuring 14 bighas and 7 biswas by issuing direction to the official respondents to execute the conveyance deed in favour of the petitioners as entire auction amount stood paid and accepted by the Regional Settlement Commissioner, the competent authority on 12.4.1956 with a further prayer for declaring all the subsequent orders on account of re-allotment by the Rehabilitation Department to be null and void, without jurisdiction and authority.

It has been averred that the petitioners migrated due to ill fate and untimely division of India into Pakistan and had migrated to Karnal. Suhagwanti wife of petitioner No.1 participated in the open auction through petitioner No.1 and purchased a plot No.1 comprising of Khasra Nos.1393, 1394, 1405, 1406 and 1407 measuring 17 bighas and 17 biswas equal to 30 kanals 4 marlas (evacuee property) conducted by the Government auctioneer on 11.3.1956 for a sum of ₹32,000/-. It was averred that Suhagwanti was declared highest successful bidder for a sum of ₹32,000/-. She was directed to submit the indemnity bond and the aforementioned amount was deposited against verified claims.

The aforementioned auction proceedings were sent to the office of Regional Settlement Commissioner, Rehabilitation, Jalandhar, which were affirmed and accepted in favour of Suhagwanti vide letter dated

12.4.1956 Annexure PE. Municipal Committee, at the time of finalization of the Town Planning Scheme No.624/58, categorically left out the area duly purchased in auction by Suhagwanti from the aforementioned Town Planning Scheme and when the Town Planning Scheme was reviewed and renumbered as 1075, the area/land of Suhagwanti was left out. Official respondents favoured one S.C.Mitra, who had been unsuccessful bidder in the auction without any authority and jurisdiction or following any law by re-allotting the land in favour of S.C.Mitra, Harbhagwan Nanda and Kamla Rani. Managing Officer-cum-Tehsildar did not have any jurisdiction and power to reallocate the land by ignoring and superseding the orders of the Regional Settlement Commissioner, already confirmed and accepted the auction, as legal and valid.

Under the bonafide advice and mistaken belief, the petitioners challenged the re-allotment in favour of S.C.Mitra. Predecessors of private respondent Nos.3 to 6 and Kamla Rani etc. also simultaneously submitted a request to the authorities for issuance of cancellation order vide application dated 7.6.1965 (Ex.PH). The official respondents, in reply to the aforementioned application, stated that no such order was passed on the file, therefore, for all intents and purposes, there was no order of cancellation of the auction. Since property No.1 duly purchased in auction by the wife of the petitioner had been in the possession, management and control of the petitioners as respondent No.2B-Municipal Committee assessed the property tax, which had been paid vide receipt, Annexure PK. The auction amount was paid partly in cash and partly by adjustment against the verified claims of her own and various other persons, namely, Ram Ditta, Ramji Dass, Guranditta Ram, Hari Singh and Sardari Lal Kochhar.

All the aforementioned necessary documents were submitted in the office and it was discovered that a sum of ₹400/- was due from the predecessors of the petitioners vide letter dated 8.10.1959 in this regard of the Assistant Settlement Commissioner (Sales), Karnal, Annexure P-1. On receipt of the aforementioned letter, the predecessor-in-interest of the petitioner submitted a representation to the authorities for giving details of the persons through whom the claims were to be adjusted and subsequently also, Suhagwanti represented to the authorities that she was prepared to pay the entire balance amount of the purchase price in cash instead of associating other persons claim.

The predecessor-in-interest of the petitioners received letter dated 24.11.1964 (Annexure P-2) intimating that the auction in favour of Suhagwanti had been cancelled and auction area was transferred to S.C.Mitra, Harbhagwan Nanda and Kamla Rani his wife. The aforementioned persons staked their claims for transfer of the land in dispute being lessees of the land in terms of Rule 34-C of 1955 Rules, which was inserted for the first time in the year 1960 but the land in dispute had already been disposed of by way of auction in the year 1956, therefore, the transfers in their favour were not legally sustainable. The earlier applications of Harbhagwan Nanda and Kamla Rani Nanda were rejected vide order dated 17.6.1961, which had become final.

Aggrieved by the impugned orders of transfer and cancellation of the sale, predecessor-in-interest of the petitioner assailed the order dated 8.1.1964 passed in favour of S.C.Mitra by filing an appeal before the Chief Settlement Commissioner, which was accepted and the transfer was set-aside. The matter was remanded to the Managing Officer to determine the

question of eligibility qua said S.C.Mitra after hearing the predecessor-in-interest of the petitioners. In remand proceedings, the Managing Officer, vide order dated 21.4.1966, held the sale in favour of the predecessor-in-interest of the petitioners to be void on the ground that the same was conducted prior to the promulgation of the Rules in the year 1960. However, the said Managing Officer recommended the transfer of 4 bighas and 2 biswas in favour of S.C.Mitra comprised in Khasra Nos.1405 and 1406 and made recommendations that the case of the predecessor-in-interest of the petitioners be referred for transfer of the balance area for ₹32,000/- (-) ₹4430/- the price of the land to be transferred to S.C.Mitra, but ultimately, allowed the transfer of area measuring 3 bighas 10 biswas vide order dated 21.4.1966 (Annexure P-5). The Managing Officer held that S.C.Mitra was eligible to the extent of 3 bighas 10 biswas and the sale in favour of the predecessor-in-interest of the petitioners to that extent, was set-aside. The aforementioned order was challenged by the predecessor-in-interest of the petitioners by filing an appeal before the Regional Settlement Commissioner, but the same was dismissed vide order dated 7.9.1966. Revision petition was also dismissed being time barred. Civil Writ Petition No.7846 of 1976 was filed in this Court, which was dismissed as withdrawn on 23.2.1977.

An application under Section 33 of the Act, against the order dated 10.1.1973 passed by the Chief Settlement Commissioner was entertained by the delegatee of the Central Government, but was dismissed on the ground that the sale of the land in dispute in favour of the predecessor-in-interest of the petitioners was hit by the ratio contained in

Sohan Lal etc. Versus Central Government etc., 1972 PLR 749. In the

meantime, Harbhagwan Nanda and Kamla Rani Nanda obtained another order of transfer at the back of the predecessor-in-interest of the petitioners out of the auctioned land. The aforementioned order was challenged by the predecessor-in-interest of the petitioners by filing a revision under Section 24 of the Act regarding the transfer of the land comprised in Khasra No.1393 min and 1394 min measuring 6 bighas 9 biswas in favour of Harbhagwan Nanda for ₹11,932/- and land comprised in Khasra No.1407 min measuring 7 bighas 18 biswas in favour of Kamla Rani Nanda for ₹12,967-50P. The aforementioned revision, vide order dated 23.6.1973, was consigned to the record by the Chief Settlement Commissioner as the record was not available. The aforementioned order, consigning the case, was assailed by the predecessor-in-interest of the petitioners before the Financial Commissioner and vide order dated 3.11.1981 (Annexure P-6), the petition was accepted and the case was remanded to the Chief Settlement Commissioner with a direction that the case should be decided without further delay. In the aforementioned order, it was made clear that the applicant therein was not entitled to claim relief against S.C.Mitra as the applicant failed to obtain relief against his rights upto this Court.

The Chief Settlement Commissioner, vide order dated 5.7.1982 (Annexure P-7), remanded the case to Tehsildar (Sales)-cum-Managing Officer, Karnal to ascertain the eligibility regarding transfer of land to Harbhagwan Nanda and Kamla Rani Nanda. The aforementioned order was assailed by Kamla Rani Nanda and others by filing a petition under Section 33 of the Act before the Financial Commissioner, which was dismissed vide order dated 20.8.1985.

In compliance of the order of the Chief Settlement

Commissioner dated 5.7.1982 (Annexure P-7) and the Financial Commissioner dated 20.8.1985 (Annexure P-8), the Tehsildar (Sales)-cum-Managing Officer, vide order dated 10.2.1986 (Annexure P-9), rejected the claim of Kamla Rani Nanda and her husband Harbhagwan Nanda for transfer of land, but did not declare the predecessor-in-interest of the petitioner as a rightful purchaser of the land in dispute by holding that the auction of the land in favour of the predecessor-in-interest was beyond the scope of the remand order.

A revision petition was preferred before the Chief Settlement Commissioner and vide order dated 15.7.1987 (Annexure P-10), claim of the predecessor-in-interest was rejected as the auction money had not been deposited nor any conveyance deed was issued, but simultaneously it was held that Kamla Rani Nanda and her husband Harbhagwan Nanda were not eligible. The aforementioned order (Annexure P-10) was challenged by Suhagwanti by filing a petition under Section 33 of the Act before the Financial Commissioner and the private respondents have filed Civil Writ Petition No.5878 of 1987 before this Court. The revision preferred by the predecessor-in-interest was adjourned sine-die. However, vide order dated 25.10.2002 (Annexure P-1), the aforementioned writ petition was disposed of by this Court directing the Financial Commissioner to decide the revision petition within two months. The Commissioner and Secretary, Rehabilitation Department dismissed two petitions vide order dated 7.2.2003 (Annexure P-12). It is in these circumstances, the impugned orders have been assailed.

Respondents No.1 to 4 filed written statement and raised numerous preliminary objections regarding maintainability of the writ

petition etc. It was alleged that vide order dated 23.2.1977 (Annexure R-1/1), the writ petition bearing No.7846 of 1976 preferred by the predecessor-in-interest of the petitioner Suhagwanti in respect of part of land in question was dismissed as withdrawn. Predecessors could not seek the transfer of the plot allegedly purchased the same in auction, but the same did not materialize as neither the full money was paid nor the conveyance deed was issued. The auction was conducted on 11.3.1956, in which Suhagwanti was recorded as highest bidder for a sum of ₹32,000/-, but ultimately it was cancelled and the purchaser was informed vide letter dated 24.11.1964 (Annexure R-2).

No documentary evidence had been brought on record to show that the entire payment of auction money was made partly either by cash or partly by adjustment of verified claims. The other claims could not be adjusted towards the balance consideration of auction money as the aforementioned persons had already utilised refund certificate somewhere else. All these findings have been recorded in the order dated 15.7.1987 passed by the Chief Settlement Commissioner.

Mr.Sanjeev Sharma, learned Senior Counsel assisted by Mr.Gaurav Mohunta, Advocate appearing on behalf of the petitioners submitted that the impugned orders are not sustainable in the eyes of law as the Chief Settlement Commissioner did not appreciate the fact that the amount of sale already stood deposited in favour of the department. Plea of non-payment of auction money was never raised by respondent Nos.4 to 8 nor the department throughout the period of litigation between the parties spanning over 22 years. In case there was any short fall for one reason or the other, the petitioners were entitled to receive notice under Rule 90 (13)

of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, therefore, the impugned orders are liable to be set-aside, for, the auction proceedings were not void.

It was next contended that the withdrawal of the previous writ petition cannot be treated against the interest of the petitioners as there is no order available on record regarding cancellation of the allotment. Kamla Rani Nanda had filed a petition under Section 33 of the Act before the Financial Commissioner, which was dismissed, therefore, that could not affect the claim of the petitioners to the land in dispute. The order of the Financial Commissioner is result of non-application of mind, for, the balance outstanding amount against Suhagwanti was only of ₹400/- and, thus, prayed for setting-aside the impugned orders.

Mr.V.K.Jain, learned Senior Counsel assisted by Mr.Ravi Kadian, Advocate, representing the respondents submitted that the auction in favour of Suhagwanti was cancelled on 24.11.1964. Suhagwanti filed Civil Writ Petition No.7846 of 1976, which was withdrawn vide order dated 23.2.1977. The conveyance deed dated 18.1.1964 regarding land of Khasra No.1407 min (7 bigha 11 biswa) was executed and registered in favour of Kamla Rani Nanda. Another conveyance deed regarding Khasra Nos.1393 min (2 bigha 15 biswa) and 1394 min (4 bigha 11 biswas) was executed and registered in favour of Harbhagwan Nanda. The aforementioned conveyance deeds have been upheld by this Court in the judgment dated 8.3.2017 passed in CWP No.4430 of 2003 titled as Vivek Gupta and others Versus State of Haryana and another. Thus, for all intents and purposes, subject matter of the auctioned property has already been decided in favour of S.C.Mitra, Kamla Rani Nand and Harbhagwan Nanda and no part remained with the

State of Haryana or the Union of India, which can be transferred to the heirs of Suhagwanti. Auction price was ₹32,000/-, but Suhagwanti and her predecessor-in-interest had not deposited the said amount. The persons, who had verified claim, disassociated from Suhagwanti. The legal heirs of Ram Kumar Kochhar had preferred LPA No.1356 of 2017 against the judgment dated 31.5.2017.

He drew the attention of this Court to the copies of the conveyance deeds. The aforementioned Letters Patent Appeal was withdrawn vide order dated 26.9.2017 with liberty to agitate the matter before this Court. The possession of the property had been with the private respondents and not with the successor-in-interest of Suhagwanti. Kamla Rani Nanda and Harbhagwan Nanda were the lessees of the suit property. The Managing Officer, while noticing Rule 34 (C) of the Rules, observed that where the land had been leased to a displaced person and such land consist of one or more khasra numbers and was valued at ₹15,000/- or less, the said land would be allotted to the lessee. Application for transfer of the land was submitted on 30.1.1961. No documentary evidence was placed on record that the auction purchaser came into possession of land at any stage. The order dated 21.4.1966 dismissing the writ petition and subsequent orders had been upheld. Suhagwanti did not file any appeal or revision against the order dated 5.7.1982 passed by the Chief Settlement Commissioner. The matter was only remanded as to whether Harbhagwan Nanda and Kamla Rani Nanda were eligible for transfer of land but not with regard to the re-consideration of the claim of Suhagwanti, who failed to pay the balance amount of auction money.

I have heard the learned counsel for the parties, appraised the

paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioners, for, the order dated 5.7.1982 (Annexure P-7) of Chief Settlement Commissioner remanding the case to the Managing Officer was with regard to eligibility of Harbhagwan Nanda and Kamla Rani Nanda. It was clearly mentioned that the order would not give any effect on the cancellation at any occasion in favour of Suhagwanti. The operative part of the order reads thus:-

“In view of the above discussion, I allow this revision petition and remand the case to the Managing Officer Karnal with the direction that he should ascertain the eligibility for transferring the land to Harbhagwan (now deceased) and Kamla Rani. However, the land already transferred to Shri S.C.Mitra will remain as intact. This order will also not give any effect on the cancellation of the auction made in favour of the petitioner.

To be communicated.”

The aforementioned order was never assailed by Suhagwanti. Vide order dated 10.2.1986 (Annexure P-9), the Managing Officer held that Harbhagwan Nanda and Kamla Rani Nanda were not eligible for transfer of land and remanded the matter to the Chief Settlement Commissioner, which vide order dated 15.7.1987 (Annexure P-10), recorded the finding regarding Suhagwanti and noticed that there was no occasion for Suhagwanti to deposit the auction money, for, no evidence had been brought on record for payment of the balance auction money and found that the order of the Tehsildar (Sales) determining the eligibility of Harbhagwan Nanda was correctly passed.

Against the order dated 15.7.1987 (Annexure P-10), Suhagwanti filed a petition under Section 33 of the Act. Contesting

respondents preferred Civil Writ Petition No.5878 of 1987 and this Court, vide order dated 25.10.2002 (Annexure P-11) directed the contesting respondents to file petition under Section 33 of the Act before the Commissioner. The Commissioner and Secretary to Government of Haryana, Rehabilitation Department dismissed both the petitions of Suhagwanti and the contesting respondents and noticed the fact that the file did not reveal that Suhagwanti ever paid the balance amount till date and this fact had also been acknowledged by the department by filing the reply. The petitioners, thus, cannot seek the transfer of the land under Rule 87 of 1955 Rules, which laid down the mode of sale of the property and subsequent transfer thereof.

Auction did not materialize for want of deposit of the balance amount. This Court had already, vide order dated 8.3.2017, allowed Writ Petition No.4430 of 2003 by setting-aside the impugned orders, for, the registered documents/conveyance deeds obtained in favour of the private respondents could not be cancelled by the order of the Managing Officer as they were required to be challenged in the competent court by relying upon the ratio decidendi culled out in CWP No.4430 of 2003. For the sake of brevity, the operative part of the same reads thus:-

“All the authorities have not taken into consideration the aforementioned facts and position of law and therefore, the impugned orders under challenge are not sustainable in the eyes of law. A valuable right had accrued in favour of the vendees by virtue of the sale deeds dated 18.01.1964 (Annexures P-21 & P-22). Smt. Suhagwanti had an independent right for establishing her case viz-a-viz non-

*adherence to the terms and conditions of the auction, but could not have moved an application in the manner and mode, as indicated above, to the authorities for the purpose of cancellation of the conveyance deeds. If at all, she had any grievance, could have approached the competent court of law. Even that application of 1972 kept pending for a period of 10 years, which was decided by the Chief Settlement Commissioner vide order dated 05.07.1982 (Annexure P-23). The ratio decidendi culled out by the Single Bench Judgment of this Court rendered in **CWP No.2604 of 1977** titled as **"Govind Ram V/s State"**, heavily relied upon by the Managing Officer that khasra number cannot be sub-divided, had already been set aside by the Division Bench Judgment of this Court rendered in **LPA No.424 of 1987** titled as **"Krishan Lal and others V/s State of Haryana and others"** decided on 18.01.1993, whereby the allotment in favour of the similarly situated persons was held to be valid i.e. legal heirs of Gobind Ram.*

There is another aspect of the matter that identically Sh. S.C.Mitra, was also in possession of some pieces of land of the same very khasra number and his sale deed had already been upheld as he was arrayed as respondent in a writ petition preferred by Smt. Suhagwanti i.e. CWP No.7846 of 1976 and the sale deed, aforementioned, has already in his favour.

All these facts were required to be gone into. The quasi judicial authorities are obliged to apply their judicial mind and

in case, at some points, are not able to discern, they can always seek an opinion from the concerned Advocate General for the purpose of arriving at a fair and effective decision, in essence, the outlet cannot be said to be without jurisdiction.

For the foregoing reasons, the impugned orders under challenge are hereby set aside and resultantly, the present writ petition is allowed.”

Therefore, relief sought in the present writ petition in view of the fact that the conveyance deeds have already been upheld, cannot be granted. Resultantly, the writ petition is devoid of merit and, therefore, is dismissed.

May 31, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No