

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.15073 of 2012
Date of Decision.22.03.2017

Chander Parkash Bhatia

.....Petitioner

Vs

Financial Commissioner and Principal Secretary and others

.....Respondents

Present: Mr. G.S. Bal, Senior Advocate with
Ms. Manju Sharma, Advocate and
Mr. Vipul Aggarwal, Advocate
for the petitioner.

Mr. R.K. Doon, AAG, Haryana.

Mr. Parvindra Singh Chauhan, Advocate
for respondent No.4.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner-auction purchaser is seeking quashing of the order dated 26.04.2012 (Annexure P-13) passed by respondent No.1, 18.11.2011 (Annexure P-12) passed by respondent No.2 and consequently restoring the order dated 24.02.2010 (Annexure P-9) passed by respondent No.3 on the premise that the respondent No.4-Nilokheri Kisan Co-operative Agricultural Society Ltd. had taken loan of ₹70,000/- from one Jodha Ram with rate of interest @2% per month i.e. 24% per annum, the amount swelled to a huge figure and to save the payment of high rate of interest, the Society passed a resolution dated 06.01.2002 (Annexure P-1) that its building i.e. a dilapidated godown be sold in auction and value of the property was fixed at ₹38,598.48.

Mr. G.S. Bal, learned Senior Counsel assisted by Ms. Manju

Sharma and Mr. Vipul Aggarwal, Advocates submits that in pursuance of

the aforementioned auction, the petitioner being the higher bidder in respect of the property, value of which was not more than ₹40,000/-, had given a bid of ₹6,80,000/-. The terms and conditions of the auction envisaged that the petitioner was required to deposit 25% of the total bid amount within a period of two days i.e. ₹1,70,000/- which was deposited by the petitioner on 14.01.2002.

He submits that after deposit of 25% of the amount, it was revealed that original documents of ownership/registered sale deed in favour of the petitioner were not transferred and in this regard, the Society vide resolution dated 14.01.2002 (Annexure P-3), admitted the factum of petitioner having given the highest bid, authorized its President to obtain the copy of registry through the help of Advocate. Vide Annexure P-4 dated 13.03.2002, the General Body and Managing Committee of the Society unanimously took a conscious decision that there was no share of the Government in the land/building sold in auction and the President was authorized to come present in Tehsil for purchasing stamp papers and furnishing of the documents for the purpose of execution of the sale deed.

He further submits that the Society observed that the bidder had deposited the balance amount through cheque and the same was ordered to be deposited in the account of the Society and rest of the amount was to be taken only after execution of the sale deed in favour of the purchaser. The President of the Society wrote a letter dated 01.03.2004 to the Assistant Registrar, Cooperative Societies, Karnal seeking permission for selling of the land and bhawan so that the society in future can be saved from incurring loss and the amount received to be paid in the form of dividend as per the shares of the members of the Society. Even resolution dated

08.03.2004 (Annexure P-7) had also been passed whereby Ram Narayan and Satya Bhushan were authorized to carry out the proceedings on behalf of the Managing Committee of the Society for taking appropriate action for doing the expenditure for showing the record of the Society, much less, other ministerial work. On 19.07.2004 (Annexure P-8), the President again wrote a letter to the Assistant Registrar, Cooperative Societies, Karnal intimating that the objections raised for selling of the land and bhawan had been met and the certificate dated 09.06.2003 with regard to the objection of court had also been obtained and deposited in the office, thus, sought permission for selling the land and bhawan at the earliest. However, since no permission was granted, the matter was referred to the Deputy Registrar, Cooperative Societies, Karnal under the provisions of Section 102 of the Haryana Cooperative Societies Act, 1984 with regard to dispute of ₹5,10,000/- and the Deputy Registrar vide order dated 24.02.2010 (Annexure P-9), after going into the detailed evidence, found that the Society had already received the amount of ₹1,70,000/- out of ₹6,80,000/-, an amount of ₹20,000/- having been paid in cash and regarding the payment of ₹4,90,000/-, the Society was directed to receive ₹4,90,000/- and execute registry of the land and building in favour of the purchaser and in case, no action taken, the purchaser shall initiate the proceedings as per the law.

He further submits that the aforementioned order was appealed before the Registrar under Section 114 of the Haryana Cooperative Societies Act, 1984, who vide order dated 18.11.2011 (Annexure P-12) set aside the order of the Deputy Registrar and revision filed against the same was also dismissed.

There is no dispute between the auction purchaser and the

Society. It was the Society, who had to take permission. The Society had already submitted the application. The Award itself reflects that there was an implied consent or permission granted as contemplated under Section 89 of the Act for selling of the land, thus, the authorities below were wholly misplaced and misdirected in giving a finding that the proper procedure with regard to conduct of the auction was not followed, therefore, the impugned orders are liable to be set aside.

Per contra, Mr. Chauhan, learned counsel appearing for the Society-respondent No.4 submits that except the payment of ₹1,70,000/-, the payment of ₹4,90,000/- had not been made. The terms and conditions of the auction envisaged that the Society, at any point of time, can cancel the bid. Since the Society had not obtained the permission, therefore, vide letter dated 10.03.2004, it had cancelled the auction. This fact is evident from paragraph 4 of the written statement, which reads as under:-

“4. That the contents of para No.4 of the captioned writ petition are correct. However, it is pertinent to mention here that the petitioner was very much in knowledge of the fact that the auction proceedings are subject to permission granted by the Cooperative Department and also one of the conditions for conducting the auction was that the auction can be cancelled at any time without giving any reason. Further, it is also pertinent to mention here that on 10.03.2004, the Society had cancelled the auction because of unforeseen reasons and it was also unanimously decided by the society that the above said building should be sold only after written permission from Assistant Registrar, Cooperative Societies, Karnal, so that

there is no legal impediment in getting the sale deed registered.”

Therefore, orders under challenge are perfectly legal and justified and are in consonance with the statutory provisions of law, thus, urges this Court for dismissal of the writ petition.

In rebuttal, Mr. Bal submits that for cancellation of the bid, there was no occasion for the Society to seek permission from the Assistant Registrar which is evident from letter dated 19.07.2004 (Annexure P-8).

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Bal.

Shorn of the facts, which are not in dispute, the fact remains that the Society in order to discharge its liability, had decided to sell the property. In pursuance thereof, the petitioner, being highest bidder, had been put in possession and even raised the construction. This Court while issuing notice of motion order, stayed the dispossession of the petitioner and at one point of time in February, 2014, had also directed the State counsel to seek instructions from the appropriate authority to apprise this Court whether the petitioner is still in possession and in that regard, affidavit of Deputy Registrar-respondent No.3 was filed on 28.04.2014 stating that the petitioner Chander Parkash Bhatia is residing in the disputed building. The relevant paragraphs No.2 and 3 of the aforementioned affidavit are reproduced as under:-

“2. That it was found that the petitioner Sh. Chander Parkash Bhatia is residing in the disputed building.

3. *That the disputed site is in the custody of the petitioner Sh. Chander Parkash Bhatia and he is residing in that property.”*

Had there been cancellation of auction on 10.03.2004, the President of the Society would not have written a letter dated 19.07.2004 (Annexure P-8) to the Assistant Registrar. The contents of the same reads as under:-

“From

*President,
Seal of the Nilokheri Kisan Co-op,
Agri. Service Society Ltd., Nilokheri.*

To

*Assistant Registrar,
Cooperative Societies, Karnal
(through proper channel)*

Sub: Regarding selling of land and bhawan.

Sir,

It is requested that in reference to the aforesaid matter time and again it is requested by this society vide 18.10.2001, 21.3.2002 and 1.3.2004 that for making the payments of the debts of this society permission is being sought for selling the bhawan/land of the society. All the objections raised by you have been met. The certificate dated 09.06.2003 with regard to the objection of court had also been obtained and deposited in your office.

So it is requested that permission for selling the land and bhawan be granted at the earliest because due to delay the condition of the bhawan is deteriorating and society is incurring more losses.

*Enclosure
1 to 6*

*sd- & seal
Satya Bhushan
President
The Nilokheri Kisan Co-op
Agri. Service Society Ltd.
Nilokheri
Dated 19-7-2004”*

Even the Arbitrator, after having examining the issue threadbare and *in extenso*, found that the petitioner was not at fault. It was basically the ministerial work on the part of the authorities to accord permission and in this regard, letter dated 19.07.2004 was written. Even prior to that letter, letter dated 01.03.2004 (Annexure P-6) seeking permission to sell the land was also written to the Assistant Registrar, which reads as under:-

“From

*President,
Nilokheri Cooperative Society,
Agri. Service Society Ltd., Nilokheri.*

To

*Assistant Registrar,
Cooperative Societies,
Karnal*

Sub: Regarding selling of land and bhawan.

Sir,

With regard to aforesaid matter this office had requested vide letter dated 27-5-02 and 28-10-02 for selling the land and Bhawan of the society. The department had raised an objection that the copy of stay in appeal and its decision be supplied. So regarding this society made efforts. The Cooperative Department Chandigarh had given in writing that this society had filed an appeal in 1987 and the file of decision is not available, whose copy is attached herewith. Department had given the certificate in writing.

For the last 20 years the society is not doing any transaction nor the govt. had done any expenditure on the land and bhawan. It is the money of members. So now by passing a resolution unanimously permission for selling this bhawan and land is made for. The case has been sent to your office after completing all the appropriate process in all respects. Now on the basis of the enclosed letter permission kindly be granted

for selling the land and bhawan so that the society in future can be saved from incurring loss and the amount received be paid in the form of the dividend as per the shares of the members of the society. Regarding which all the members are putting pressure time and again. It is hoped that in the interest of society, the decision of this case may kindly be taken at the earliest possible.

*Enclosure
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*sd-
Satya Bhushan
President”*

Rather, the contents of letter dated 19.07.2004 (Annexure P-8) reveal that the objection raised is meted out but the Assistant Registrar is silent about what were the circumstances in passing a decision on the application granting permission. In my view, it is a case of implied permission as there was a dispute and in this backdrop of the matter, the matter was referred to the Deputy Registrar for settlement of the same under Section 102 of the Haryana Cooperative Societies Act, 1984. The Arbitrator after examining the situation, had passed the following order:-

“Therefore, I, Karnail Singh, Deputy Registrar, Cooperative Societies, Karnal, after hearing the case, direct that the Society had already received an amount of ₹1,70,000/- out of ₹6,80,000/- which the purchaser has a receipt. An amount of ₹20,000/- has been given in cash. Sh. Chander Parkash shall pay ₹4,90,000/- and the Society is directed to receive ₹4,90,000/- and shall execute registry of the land/building in favour of the purchaser. The expenses of the registry shall be borne by the purchaser. If the President of the Society does not act according to the decision, then the

purchaser may initiate proceedings as per the law. The decision was kept reserved on 15.2.2010 and today on 24.2.2010 is being pronounced. The concerned parties be informed of the decision.”

All the aforementioned facts lead to irresistible conclusion that the petitioner was not at fault in depositing ₹1,70,000/- and an amount of ₹4,90,000/- had also been deposited in pursuance of the Award which has been directed to be refunded as indicated in the impugned order of the Registrar, Cooperative Societies. The whole idea of putting the property to auction was to defray the loan liability of the society, which admittedly was under debt.

In my view, the authorities while passing the orders under challenge have not taken into consideration the aforementioned aspects objectively and pragmatically. The impugned orders are bereft of the reasoning, therefore, are not sustainable and hereby set aside and the order of the Deputy Registrar dated 24.02.2010 is restored.

The writ petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

March 22, 2017
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No