

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 1003 of 2014 (O&M)
Date of Decision: August 11, 2017

M/s. Panchsheel Seeds ..Petitioner(s)

Versus

State of Haryana and others ..Respondent(s)

with

CWP No. 1004 of 2014 (O&M)

Kanwar and others ..Petitioner(s)

Versus

State of Haryana and others ..Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Sanjay Mittal, Advocate
for the petitioner in CWP 1003 of 2014 &
for respondent no.4 in CWP 1004 of 2014.

Mr. S.P. Chahar, Advocate
for the petitioners in CWP 1004 of 2014 &
for respondents no.4 to 39 in CWP 1003 of 2014.

Mr. Saurabh Mohunta, DAG, Haryana.

RAKESH KUMAR JAIN, J (oral).

This order shall dispose of two writ petitions bearing CWP
No.1003 of 2014 and CWP No.1004 of 2014 as according to learned
counsel for the parties the issue involved therein is identical.

CWP No. 1003 of 2014

This petition is filed by a proprietorship firm engaged in the business of production, processing and sale of certified agriculture seeds. The petitioner applied for loan from Indusind Bank Ltd., Hisar and also purchased seeds from the farmers of nearby villages. One FIR No.539 dated 23.08.2012 under Section 420, 406 IPC at Police Station Jhajjar was registered against the proprietor, namely, Rajpal Singh, son of Ram Bhagat at the instance of the farmers who had sold the seeds to the petitioner with the allegations that their payment has not been made by him. The petitioner applied for anticipatory bail in the Court of Additional Sessions Judge, Jhajjar vide application No.190 of 2012 in which order dated 06.10.2012 (Annexure P-2) was passed.

It was found by the Court that the petitioner has to pay loan not only to the bank but also to certain individuals. The anticipatory bail was sought assuring the Court that the petitioner was bonafidely trying to repay the borrowings. It was observed that the local administration was approached by the aggrieved persons upon which the District Magistrate ordered to keep all the godowns and other stocks of the petitioner under lock & key and directed the Deputy Director, Agriculture as well as the local police to put the stock in the lock and seal. It was projected before the Court that if a Committee is constituted to prepare inventory of assets and liabilities then the matter would be resolved. Keeping in view the said peculiar facts and circumstances, the District Magistrate was directed to

constitute a Committee to undergo this task by joining the complainant and five other aggrieved persons as well as the bank representatives. It was further observed that the Committee shall not dispose off any of the assets without due permission of the District Magistrate, however, the District Magistrate may order for sale of perishable items as an interim measure. It was further observed that on finalization of the list, District Magistrate would be within his domain to order for sale of assets and proportionately disburse the proceeds for the satisfaction of all the aggrieved persons.

The Indusind Bank also filed a writ petition bearing No.20065 of 2012 in order to challenge the order of Deputy Commissioner, Jhajjar dated 27.08.2012 executed by the Deputy Director by putting seal and the lock on all the godowns of the petitioner. The said petition was disposed of by the Division Bench of this Court on 07.11.2012 by giving certain directions. The said directions are as under:-

- i) The Deputy Commissioner, Jhajjar shall ensure that the stock of foodgrains lying in the godowns of respondent no.7, inventory of which had already been prepared on 10.9.2012 (Annexure P-11) shall be sold by public auction after proper advertisement and publicity which shall be held on 30.11.2012.*
- ii) The petitioner-bank and respondent no.7 through its proprietor shall be associated with the auction proceedings along with the representatives of the aggrieved farmers. The sale proceeds of the items sold shall be deposited in the Treasury and thereafter, the amount due to the bank as per its demand inclusive of interest till the date of disbursement shall be paid to*

- the bank within ten days from the receipt of its demand.*
- iii) The committee formed by the Deputy Commissioner, Jhajjar shall ascertain the claims of aggrieved farmers and recommend payment out of balance auction amount, if any, left to the said farmers after verifying the claims made. The said payment shall be disbursed to the farmers by 31.12.2012.*
- iv) The balance of the auction amount shall be disbursed to respondent no.7 within one week after 31.12.2012 after deducting the expenses incurred on the auction proceeding.*

Thereafter, the main bail application was allowed. It is not in dispute that the interim anticipatory order of bail continued for about six months and since the petitioner was not showing any bonafide, therefore, vide order dated 25.09.2013, his bail application was allowed on the condition that he will not sell/dispose of his movable or immovable assets without the permission of the Court and will remain sincere to the farmers.

Like the Indusind Bank, the individuals to whom the petitioner owe money, they also filed a CWP No.21688 of 2013 titled as Chandan Singh and others Vs. State of Haryana and others for direction to the Deputy Commissioner for sale of the property. The writ petition was, however, disposed of by this Court with a direction to the Deputy Commissioner to look into the matter and after considering the grievances of the petitioners, raised vide their legal notice and decide the same as early as possible. Failing to carry out the direction of this Court dated 30.09.2013, notice of auction dated 16.01.2014 was issued, as per which the agricultural land and

godown of the petitioner was put to auction on 23.01.2014 at 11:00 AM. The petitioner has thus challenged the said auction by way of this petition. At the time of issuance of notice, this Court vide order dated 22.01.2014 stayed the operation of the impugned notice of auction.

Learned counsel for the petitioner has vehemently argued that there was no order of auction much less any sort of decree etc. on the basis of which this property has been put to auction. It is also submitted that the DC/SDM had no jurisdiction to pass the order of auction and therefore, the auction notice was bad in law. Counsel for the petitioner further submitted that there was no direction of this Court even vide order dated 30.09.2013 to put the property of the petitioner to auction.

On the other hand, learned counsel for the private respondents has submitted that the auction proceedings have been initiated in terms of the order passed by the Additional Sessions Judge, Jhajjar who had authorized the Deputy Commissioner to constitute a Committee, in which he was asked to join both the borrowers, namely the bank and five other aggrieved persons and then to sell assets and to distribute the sale proceeds amongst the aggrieved persons. It is also submitted that the auction notice has been issued pursuant to the order passed by this Court in 30.09.2013 because this Court had directed the Deputy Commissioner to look into the grievances of the respondents which was basically for the recovery of the amount due. It is also submitted by the counsel for

the respondent that the petitioner did not challenge the correctness of the order of the Additional Sessions Judge and also gave the list of the borrowers himself.

I have heard learned counsel for the parties and perused the record.

The issue involved in this case is as to whether the immovable property of the petitioner can be put to auction without there being any order? In this case, the petitioner in order to avail anticipatory bail made a statement before the Court, dealing with his bail application that he is ready and willing to pay and therefore, the Court had found that it is in the interest of justice to seal the stock and the godowns of the petitioner and to constitute a Committee which would associate the borrowers, namely, the bank and some persons from the individuals/farmers and then the Deputy Commissioner was authorized to sell the perishable items as an interim measure and after taking into consideration the stock and the immovable property, he was further directed to sell the items and also distribute the proceeds amongst the borrowers. The very fact that this order attained finality and not challenged by the petitioner is sufficient to hold that the petitioner was satisfied with the said order and thus when the Deputy Commissioner did not react to the order passed by the Additional Sessions Judge, the respondents had to file the writ petition in this Court with a grievance that the Deputy Commissioner is not listening to them and then this Court directed the Deputy Commissioner to look into their grievances and decide

the matter expeditiously. Perhaps, realizing his mistake for not reacting to the requests made by the farmers, the Deputy Commissioner swung into action and decided to issue notice for the purpose of auctioning of the land for releasing the amount for disbursement to the borrowers. There were some more directions issued by this Court in a writ petition filed by the bank including auction.

All the above said facts indicate that there was a direction by the competent Court of law for the purpose of putting immovable property of the petitioner to sale by way of auction in order to realize the sale proceeds for the purpose of disbursement to the borrowers. As a result thereof, I do not find any merit in their petition and the same is dismissed.

Now I would refer to the other writ petition titled as Kanwar and others Vs. The State of Haryana and others.

This petition is filed by the borrowers/farmers who had sold their food grains/raw seeds to the petitioner. They had prayed that a direction may be issued to the respondents to sell the property of the petitioner, in the first petition, by way of auction.

Mr. S.P. Chahar, Advocate, counsel for the petitioners has submitted that since the CWP No.1003 of 2014 has been dismissed and the date of auction has already expired because of the stay order of this Court, therefore, appropriate direction may also be issued to the concerned Deputy Commissioner to put the property mentioned in CWP No.1003 of 2014 to auction as early as possible.

The prayer made appears to be logical. This petition is thus, disposed of with a direction to the concerned Deputy Commissioner to re-auction the immovable property of M/s. Panchsheel Seeds, Village Silana, District Jhajjar, in accordance with law as early as possible, in compliance of the order passed by the Additional Sessions Judge, Jhajjar.

**(RAKESH KUMAR JAIN)
JUDGE**

August 11, 2017
Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No