

237 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 10011 of 2016(O&M)

Date of decision : 18.05.2017

Ruhi Khan and others

..... Petitioners

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anand Chhibber, Sr. Advocate with
 Mr. Vaibhav Sahni, Advocate for the petitioners.

Mr.Rajbir Singh, AAG, Haryana.

AMIT RAWAL, J. (Oral)

Petitioners have impugned order dated 06.04.2011 (Annexure P-3) whereby the Financial Commissioner and Principal Secretary to Government of Haryana, Revenue and Disaster Management Department, exercising the powers under Section 9 of The Haryana Evacuee Properties (Management and Disposal) Act, 2008 has ordered to resume the land in favour of the State Government.

Brief facts of the case are that respondent No.3 auctioned land measuring 34 bighas 2 biswas in khasra No. 129 in village Ghata Shamshabad, Tehsil Ferozepur Jhirka, District Mewat (Nuh) on 25.06.1987 in which Harbux was the highest bidder. The said auction was confirmed and sale certificate was issued to the auction purchaser. After a period of 4 years 5 months the auction-purchaser sold 2/3rd of the land to Sh.Umda

(since deceased), father of respondent No.13-Aslam and 1/3rd to Khurshid-respondent No.14 for a total consideration of Rs.1,50,000/- vide registered sale deed and mutation was also entered in their favour. Aslam and Khurshid then sold the land to the petitioners vide Vasikha deed for Rs. 1,15,00,000/-. After a period of almost 23 years a reference was made by respondent No.3-Tehsildar (Sales), Gurgaon to respondent No.1 for setting aside the auction dated 25.6.1987 on the ground that the auction-purchaser had violated the Government instructions dated 15.09.1981. It is on the basis of said reference that the impugned order had been passed and the petitioners are before this Court challenging the same.

The contention of Mr.Anand Chhibber, learned senior counsel assisted by Mr.Vaibhav Sahni, learned counsel appearing on behalf of the petitioners is that such review power cannot be exercised unreasonably and has to be within a reasonable time. In support of his contention he has relied upon **DCM Limited v. The State of Haryana and others** , 2011(1) RCR(Civil) 122, **Loku Ram v. State of Haryana**, 2000(1) RCR(Civil) 141 and as well as in **Latoor Singh and others v State of Haryana and another**, 2016(4) RCR(Civil) 16. Even a registered document cannot be set aside in the manner as indicated above. In this connection he has relied upon **Satya Pal Anand v. State of M.P. And others** , 2016(4) RCR(Civil) 904. He further submits that the restriction imposed on the auction proceedings is in direct conflict with Sections 10 and 11 of the Transfer of Property Act. In support of his contention he has referred to judgment rendered by co-ordinate bench of this Court in **Sarbjit Kaur(Smt.) and others v. Mohinder Singh and another**, 2008(4) RCR(Civil) 458.

On the contrary Mr. Rajbir Singh, learned AAG, appearing on

behalf of the State submits that Tehsildar (Sales) made a reference to Financial Commissioner setting aside auction made in the year 1986 on the fact that there was a bar.

I have heard learned counsel for the parties and perused the paper book and am of the view that in view of the provisions of Section 10 and 11 of Transfer of Property Act such a restriction could not have been imposed in respect of the property sold in auction proceedings. Section 10 and 11 of the Transfer of Property Act read as follows:-

“10. Condition restraining alienation.--Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him; provided that the property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Restriction repugnant to interest created.-- Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the

beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof”.

Even otherwise in view of the ratio descendi culled out by this Court in Sarbjit Kaur's case (supra) the review powers have to be exercised reasonably and not at the drop of the hat. The officer was obliged to look into the matter as he was liable to ponder upon as to whether any third party rights have accrued or not. The facts revealed above show that third party rights had accrued long time back in 1991 in favour of respondents No. 13 and 14. This is what has been noticed by the Hon'ble Supreme Court in **Latoor Singh's** case(supra), the jurisdiction exercised by the Financial Commissioner is no jurisdiction in the eyes of law and is vitiated.

Resultantly the impugned order is set aside. Writ petition stands allowed.

(AMIT RAWAL)
JUDGE

May 18, 2017
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No