IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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LPA No. 114 of 2006
Date of decision : 1.3.2017

Financial Commissioner Revenue and Secretary to Government Punjab

..........Appellant

v.

Doaba Nirmal Mandal (Regd.), Allwalpur and others ....Respondents

CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present:- Mr. Gaurav Garg Dhuriwala, DAG, Punjab
for the appellant

Mr. Tushar Sharma, Advocate, for the respondents

MAHESH GROVER, J. (Oral)

This appeal is directed against the judgment of learned Single Judge dated 1.3.2006, allowing CWP No. 5120 of 1983 filed by respondents No. 1 and 2.

Briefly noticing the facts, some evacuee land measuring 2 kanals 2 marlas was sold to respondent No.1 by negotiation on concessional rates, as per the Scheme of the Government, on an application made by respondent No.2. This sale was concluded on 2.8.1979 in favour of respondent No.1. Subsequently, another chunk of land measuring 22 kanals 7 marlas was sold on 27.1.1981.

Respondent No.3 challenged the sale of land measuring 2 kanals 2 marlas to respondent No.1, on various grounds by invoking the

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provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as "the Act").

We need not elaborate the channels adopted to reach the Financial Commissioner, who after examining the records commented upon genuineness of the sale made in favour of respondent No. 1. We may extract the reasoning of the Financial Commissioner as under :-

> 4. I have given my careful consideration to the submissions made by the counsel for the parties have also seem the file containing application of respondent No.2 for the transfer of the land in dispute in the name of respondent No.1. It is evident from the application dated the 27.7.1976 that the land in dispute has been occupation of Sant Hari Singh and respondent No.2 posing herself to be Cheli of the deceased Sant secured, its transfer. It is surprising that no efforts were made by the rehabilitation authorities to verify the genuineness of the demand made by respondent No.2. The financial position of the institution was also not verified through the District authorities. The petitioner having brought to the notice of the authorities in 1978 that the land in dispute has been in their possession. (This fact is also supported by the revenue record) and a part of it has been occupied by respondent No.2, un-authorized it should have verified the antecedents of respondent No.1 before making as offer for the sale of the land by negotiation. I am also of the view that market price of the land has also not been properly calculated. It is clear that the benefit of the concession given to the so called religious institution has gone to an un-authorised person. The State representative has brought to my notice that Gurcharan Singh, General Secretary of the Doaba Nirmal Mandal, Alawalpur has executed a registered sale deed in respect of the land in dispute in favour of respondent No. 2 on 8.6.1981 for ₹ 17,000/- only. It is surprising that 24 kanals 9 marlas of urban evacuee land purchased from Government against consideration of ₹ 20001/-has been sold by respondent No.1 to respondent No. 2 for ₹ 17,000/-only. The conveyance deed issued by the Tehsildar (S)-cum-Managing Officer, Hoshiarpur had been duly registered in the office of the Sub

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Registrar, had he been vigilant enough less to the State Exchequer as a result of undervaluing the sale deed could have perhaps have been advised.

5. Since the land in dispute was offered to respondent No.1 for a religious purpose, its General Secretary had no authority to sell it to respondent No.2. In order to ensure that benefit of the concession given to the religious and charitable institutions was not misutilised, an embargo should have been imposed in the memorandum of offer that in the event of the land being put to any other use, the sale would stand annulled.

6. For the reason given above, it is clear that the concession granted by Government has been misutilized in this case, the petition succeeds and all orders offering and transferring land in favour of respondent No.1 are set aside. Immediately steps should be taken to restrive the land from respondent No.2. Action should also be initiated against the Revenue Officer who registered the sale deed dated 8.6.1981 and the official/officer of the Rehabilitation Department who failed to scrutinize the request of respondent No.1 in a proper manner."

The learned Single Judge noticed that the Financial Commissioner had exceeded his jurisdiction in commenting upon the sale qua 22 kanals 7 marlas, in the absence of any challenge to it and observed that the entire process amounted to violation of principle of natural justice and principle of audi alteram partem, to set aside the impugned order.

Before us, learned counsel for the appellant has contended that Financial Commissioner had exceeded his jurisdiction, which necessarily has to be examined considering that the fact suggests some element of manipulation to derive undue advantage in favour of religious/charitable trust, to obtain valuable urban land for a petty sum and further selling it to respondent No.2 for a lesser amount than the one what was allotted, raising a complete suspicion about the entire transaction.

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After hearing learned counsel for the parties, we are of the opinion that though the learned Single Judge was right in setting aside the order impugned in writ proceedings on the ground that sale qua 22 kanals 7 marlas was also set aside without the affected persons being on notice, but he ought to have remanded back the matter to Financial Commissioner for decision afresh, considering that the reservations and apprehensions voiced by the said authority were valid on facts, which were not denied by the appellant i.e. sale in favour of respondent No.2 for a sum of ₹ 17,000/- as against the official allotment price of ₹ 19,966/- (₹ 14593+3058+2315) and the fact that the sale by the Government was in favour of charitable organization, but it was alienated soon thereafter in favour of respondent No.2.

We would, thus, only add a modification to the judgment of the learned Single Judge to hold that even though the order of the Financial Commissioner was justifiably set aside, yet the matter should have been kept open for re-determination by ordering a remand of proceedings to the Financial Commissioner, which we now do to conclude the matter.

Ordered accordingly.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

1.3.2017
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Speaking/Reasoned Yes/No
Reportable Yes/No

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