

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.19471 of 2012
Date of Decision: April 03, 2017

Sultan

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Mukesh Yadav, Advocate,
for the petitioner.

Mr.Sandeep Singh Mann, Sr.DAG, Haryana,
for the State.

Mr.Ajay Jain, Advocate,
for respondent Nos.6 to 9.

AMIT RAWAL, J. (Oral)

As per office report, fresh dasti notices could not be served upon un-served respondents, i.e., 5(iii) and 5(iv) due to non-filing of correct address.

Since the estate of deceased Kishan Lal has been represented by one of the L.Rs, there is no need to serve the other respondents in view of the law laid down in **Sardara Singh & another Versus Harbhajan Singh and others, 1974 AIR (Punjab) 345.**

The petitioner has approached this Court for quashing the impugned order dated 16.1.1994 of the Joint Secretary (Rehabilitation)-cum-Settlement Commissioner, Haryana, Chandigarh dismissing the revision petition filed by the petitioner against the auction sale held on

2.7.1969 of land comprised in Khasra No.1095/302 min measuring 10 Bighas 4 Biswa situated in Pana Partal Mal (similar revenue estate) of village Siwani, District Bhiwani and its confirmation order dated 13.8.1969 in favour of Chander (since deceased) and setting-aside of the auction sale dated 16.1.1994 and its confirmation dated 13.8.1969 with a further prayer of issuance writ of mandamus directing respondent Nos.1 to 4 to regularise auction sale of property in question in favour of the petitioner or to transfer the said property to petitioner on reserve price, on the premise, that in the open auction, the petitioner had been found to be successful bidder and deposited Rs.125/- as earnest money and the sale was confirmed on 13.8.1979 by the Settlement Officer (Sales)-cum-Assistant Commissioner, Rehabilitation and the possession was delivered to him on 30.12.1970 as the auction was restricted to Harijans, who did not have more than 5 standard acres of land. The terms and conditions contemplated that the instalments of auction price would be 15 half yearly commencing from the lapse of one year from the date of confirmation and interest @ 6% on the overdue instalments would be charged.

The instructions dated 31.10.1967 (Annexure P-2) promulgated by the State envisage that in case of default of payment of instalments, any Harijan, who had purchased rural evacuee land in restricted sale by auction, tenders the balance price in lump sum instead of instalment, the amount will be accepted and revised sale certificate in prescribed form will be issued and in this regard, instructions laying down the aforementioned condition was also reiterated. The property in question was resumed by the Tehsildar (Sales) and amount deposited by the petitioner was forfeited vide order dated 20.6.1975. However, in the year 1978, i.e., on 28.8.1978 vide

Annexures P-2 and P-3, the petitioner deposited entire amount of overdue instalments as contemplated in the aforementioned instructions, but the Settlement Officer (Sales)-cum-Asstt.Settlement Commissioner, Haryana, Ambala, vide order dated 3.10.1978 (Annexure P-5), turned down the reference sent to him on the premise that the petitioner/defaulters was not interested in the land all along after the auction in his favour and ordered for deduction of the amount for use and occupation charges.

The aforementioned order was assailed before the Deputy Secretary (Rehabilitation)-cum-Settlement Commissioner, Haryana vide Case No.6/Appeal/DSR/SC/79 and the same was dismissed on 4.4.1979 (Annexure P-6). Thereafter, the petitioner preferred revision under Rule 11 of the Package Deal Property Rules against the re-auction dated 8.1.1980 and confirmation thereof dated 12.2.1980, which was, vide order dated 16.1.1994 (Annexure P-7), dismissed by the Joint Secretary (Reh.)-cum-Settlement Commissioner, Haryana. The aforementioned order was challenged by filing Revision No.1267 of 2001, i.e., after a gap of seven years before the Commissioner, Hissar Division, Hissar, which was, vide order dated 22.7.2009, also dismissed. Thereafter, the petitioner preferred review before the Commissioner against the order dated 22.7.2009, in which he could not succeed and the same was rejected vide order dated 19.3.2010 (Annexure P-9).

Mr.Mukesh Yadav, learned counsel representing the petitioner has relied upon the decision rendered by the single bench of this Court in **Civil Writ Petition No.3839 of 1990 (Dal Singh Versus The State of Haryana and others)**, decided on 8.5.2014 to contend that in the similar facts and circumstances, this Court had directed the State to provide

alternative site and, therefore, set-aside the auction by giving 16 weeks time to the parties.

Mr.Ajay Jain, learned counsel representing respondent Nos.6 to 9 submits that the aforementioned order dated 8.5.2014 was assailed by the effected party vide Later Patent Appeal No.999 of 2014 and the same stands admitted vide order dated 1.7.2014 and there is a stay order, but submits that the decision of the single bench cannot be read in parimateria to the facts and circumstances of the present case, for, no explanation for delay of seven years in assailing the order of 1994 in 2001 has been given, in essence, the writ petition is bereft of the aforementioned averment. The filing of revision and the review is nothing but an act of aggrandizement. Moreover, the petitioner had never shown his bonafides for almost three years before the amount of auction was forfeited. Deposit of the amount would not extend him separate cause of action/right as the fresh auction was held in 1980 and confirmed in 1982 and the petitioner challenged the same but could not succeed, thus, attained the finality and urges this Court for dismissal of the writ petition.

Similar is the argument of Mr.Sandeep Singh Mann, Sr.DAG, Haryana. In addition, he submits that the petitioner had challenged the order dated 16.1.1994 after almost 18 years and, therefore, the writ petition deserves to be dismissed on the ground of delay and laches.

I have heard the learned counsel for the parties and appraised the paper book.

The facts, noticed above, are not in dispute, i.e., regarding confirmation of the auction in favour of the petitioner, much less the order cancelling the allotment by forfeiting the amount. The auction held in 1980

and confirmed in 1982 is also not in dispute, though the petitioner had grievance against the order of 1975.

The matter with regard to the forfeiture of the amount when Harbans Singh Tehsildar (Sales), Bhiwani had sent the reference to the Settlement Officer (Sales)-cum-Assistant Settlement Commissioner, Haryana was re-agitated and after considering the aforementioned fact, it was, vide order dated 3.10.1978, turned down. Appeal preferred, as noticed above, has been dismissed in 1979 and thereafter the matter attained finality. The petitioner did not approach either of the authorities for setting-aside the cancellation, but followed another path by challenging the auction in favour of the private respondents, which fact is evident from Annexure P-7. The same was dismissed on 16.1.1994. Even the revision petition and review petition filed were also dismissed vide orders (Annexures P-8 and P-9). No explanation has come forth for not assailing the order of the cancellation and even the order and the auction confirmed in favour of the private respondents had attained finality. The orders of the authorities are indicative of the fact for refund of the entire amount after deducting the use and occupation charges. In my view, the petitioner defaulted in compliance of the terms and conditions, which were sacrosanct.

No doubt, the petitioner had availed the remedy, but the fact remains that he had, after 1979, remained silent and re-agitated the matter only with regard to the auction in favour of the private respondents. Once the order dated 4.4.1979 accepting the forfeiture has been attained finality, the petitioner had no cause of action/or grievance for assailing the auction in favour of the private respondents. There is no similarity in the order of the co-ordinate bench shown by the learned counsel for the petitioner during

the course of the hearing and, therefore, the question, in my view, has not been pondered upon and, therefore, cannot be relied upon for adjudication of the present writ petition.

In my view, the orders are legal and justified. The writ petition is wholly misplaced and vitiated being hit by doctrine akin to delay and laches. The same is hereby dismissed.

April 03, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No