

203

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7567-2011 (O&M)
Date of decision : 20.03.2017

Rajinder Kumar Goel and others

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Jindal, Advocate
for the petitioner(s).

Mr. Amit Singh Sethi, Addl. A.G., Punjab.

AMIT RAWAL, J. (ORAL)

The petitioner(s) has knocked the door of this Court by seeking a writ in the nature of *certiorari* for quashing the letter dated 21.10.2010 (Annexure P-11) and letter dated 21.12.2010 (Annexure P-12) of the respondent No.2/Chief Engineer, Canals, Department of Irrigation, Punjab Mini Secretariat, Sector 9, Chandigarh, whereby the auction of the Canal Rest House bearing Khasra No.104 measuring 4.93 acres situated in Village:Mohan Ke Utar, has been cancelled, in essence, it has been cancelled almost after 12 years.

Mr. Ashok Jindal, learned counsel appearing on behalf of the petitioner(s) submits that the Standing Committee of the Officers prescribed in the order dated 25.03.1998 assigned a duty of holding an auction and the Superintending Engineer of Canal Administration was held to be a competent person for recording the approval of the cases vide office letter

dated 15.07.1998 (Annexure P-2). The land i.e. Canal Rest House bearing Khasra No.104 measuring 4.93 acres situated in Village:Mohan Ke Utar, was put to auction vide auction notice dated 14.12.1999 (Annexure P-3) having same terms and conditions i.e. 10% of the auction amount to be deposited immediately after the completion of the bid, 25% was required to be deposited within 60 days and remaining amount either in one installment or in four equal installments along with with interest @ 15% within a period of one year. The auction was held on 14.12.1999 and the petitioner(s) was held to be a highest bidder as he gave a bid of ₹ 16,80,000/- which fact is evident from the letter dated 02.02.2000 (Annexure P-6), whereby the Superintending Engineer, Ferozepur, Canal Officer CC, Ferozepur, had requested Executive Engineer, Eastern Canal Division, Ferozepur, to accord sanction of terms and conditions of the auction notice regarding surplus Government land including the building and the trees. In pursuance to the aforementioned sanction, a sale purchase agreement dated 18.01.2001 containing various terms and conditions particularly condition No.7, was entered into. The petitioner(s) vide letter dated 16.08.2014 (Annexure P-8) requested the Chief Engineer, Canal, for transfer of the ownership of the aforementioned land in favour of the petitioner(s). However, in this regard, Superintending Engineer, Ferozepur, Canal Officer, wrote a letter to Chief Engineer. The said matter continued, however, the petitioner(s) was astonished to receive the entire knowledge of the impugned letter *ibid* whereby, the auction of the aforementioned rest house has been cancelled without giving any opportunity of hearing to the petitioner(s), though, he had referred to the para No.3 of the letter dated dated 21.10.2010

(Annexure P-11), whereby the Superintending Engineer, expressed the existence of a legal problem owing to the sanction granted by the Officers, in essence, jurisdiction to cancel the auction belatedly. In this regard, he has drawn the attention of this Court to the order dated 27.09.2016 rendered in LPA No.489 of 2016, wherein an identical situation, an agreement had been entered into and this Court while accepting the Clause No.7 of the agreement has been held that the resumption/cancellation should be last resort, as the terms and conditions of the agreement entitles the State to charge penalty @ 2% per month in addition to 1.25% per month of the amount due from due date, thus, urges this Court for setting aside the impugned order, under challenge.

Per contra, Mr. Amit Singh Sethi, Addl. A.G., Punjab submits that Principal Secretary, Irrigation Department, Punjab, found number of irregularities pertaining to the auction and sale of the property of the Irrigation Department and certain Officers were also taken to task by conducting an inquiry as the auction of the rest house was not in the list approved by the Government. In the inquiry conducted by the Department, few officers, as indicated in the affidavit dated 30.12.2014 of Sukhvir Singh Mundi, Executive Engineer, Eastern Canal Division, Ferozepur/respondent No.4, were found to be guilty and charge-sheeted, in this regard.

He further submits that the sale could not be confirmed as there was no approval from the Council of Ministers. The Executive Engineer requested the Superintending Engineer to take up the matter for return of the amount, deposited by the petitioner(s), in essence, the respondent(s) are ready to return the money deposited by the petitioner(s), but the petitioner(s)

will not be entitled to any interest on amount because in lieu of the amount deposited by the petitioner(s), had actually been given the physical possession of the land, thus, urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and merit in the submissions of Mr. Ashok Jindal, for, an agreement between the parties had already been entered into. Had it been so, the remedy, if any, for the State was to approach the Civil Court by establishing the material on record in support of the stand taken in the impugned order. This Court had also an occasion to deal with the identical situation in LPA No.489 of 2016 and passed the following order:-

"The respondents, however, cancelled the allotment and resorted to resumption leading to the filing of the writ petition which has now been dismissed with reference to clause 7 of the agreement which we may extract even though it has been extracted in the impugned judgment itself:-

"Clause 7- in case the instalment is not paid by the 10th of the month following the month, in which it fall due, the Executive Engineer, Abohar Canal Division, Abohar shall proceed to take action for imposition of penalty charged @ 2% per month in addition to 1.25% per month of the amount due from the due date. In case non-payment of the instalment alongwith interest due thereon for a continuous period of 2 months, the whole or any part of the money paid in respect of the site shall be forfeited and the Executive Engineer, Abohar Canal Division, Abohar shall cancel the allotment and resume the site."

After hearing learned counsel for the appellant we are of the

*opinion that the appellant has been visited with harsh consequences. The Hon'ble Supreme Court has repeatedly held that resumption and forfeiture are draconian features and should be resorted to only as a last resort being a drastic path. **Teri Oat Estates (P) Ltd vs. U.T. Chandigarh and ors** reported as (2004) 2 SCC 130 would be one such judgment while the others in this regard would be the followings:-*

- 1. **Sandeep Subhash Parate vs. State of Maharashtra** (2006) 7 SCC 501*
- 2. **Jitendra Kumar vs. State of Haryana** (2008) 2 SCC 161*
- 3. **Managing Director, Haryana State Industrial Development Corporation and others vs. Hari Om Enterprises and another** (2009) 16 SCC 208.*
- 4. **HUDA Panchkula vs. FC and another (P&H)** 2013 (4) PLR 531.*

We do not find that the default of the appellant was so significant so as to warrant such a measure, particularly, when he had paid substantial portion of the amount and defaulted only qua 3rd and 4th instalments which he also deposited, by submitting himself to the imposition of the penalty and interest. We would thus set aside the order of the learned Single Judge affirming the resumption/cancellation of the allotment in view of the aforesaid judgments deprecating the use of power of resumption and since the amount has already been paid, we would direct restoration of the allotment in favour of the appellant forthwith. Appeal stands allowed."

Though, it has been brought to the notice of this Court that an appeal on behalf of the similarly situated persons i.e. **SLP No.36890 of 2012** titled as **"Darshan Singh V/s State of Punjab"** is pending adjudication before the Hon'ble Supreme Court, but there is no interim

order. The next date of hearing is 17.04.2017.

Be that as it may, the fact remains that the State, at its own, cannot cancel the auction on the premise of having not obtained the sanction from the Council of Ministers in view of Annexure P-2 being the order dated 15.07.1998, whereby the Superintending Engineer was granted a competency to grant final approval. For the sake of brevity, the contents of the letter dated 15.07.1998 (Annexure P-2) reads as under:-

"The Punjab Govt. through the decision of the Council of Ministers dated 3.3.1998 decided to dispose of surplus lands/Rent Houses belonging to the Punjab Irrigation Department through public auction. To implement the decision, district level, standing Committee were constituted by the Govt. vide orders dated 25.3.1998, wherein the modalities and terms of reference were clearly set forth. The Govt. further approved the terms and conditions of the auction. In order to expedite the completion of auction process, within the time frame set forth in the terms and conditions. Superintending Engineers of the Canal Administration are hereby granted competency to record final approval of the cases relating to these auctions/including the agreements with the purchase."

In the instant case, an agreement also contains the similar clause No.7. The factum of execution of the agreement is not being denied. The factum of writing of a letter by the Executive Engineer to the Superintending Engineer regarding including of the rest house is evident from the letter dated 09.03.2010 (Annexure P-10). The contents of the same read as under:-

"Sub: For execution of sale deed in favour of Successful bidder of Mohan Ke Canal Rest House measuirng 4.93 acre."

Ref:- Your letter No.6570/283L dated 6.2.2008.

On the subjectd cited above, under reference to your office letter from Chief Engineer Irrigation Deptt., Punjab, Chandigarh letter No.8191 dated 11.10.2007 the observation raised are as under:-

- 1. Sanction from Standing Committee of the deposed Rest House was sought. The proposed lists Photostat copy (attested) is attached. In this list area of Canal Rest House Mohan Ke is also included.*
- 2. Superintending Engineer Ferozepur Canal Circule, Ferozepur vide his letter No.7049/283L dated 2.2.2000 had accorded sanction for auction and attested copy of the sanction is attached.*
- 3. The successful bidder had deposited from time to time in the Treasury in favour of Deptt. required amount. Attested photocopy of the challan are attached which are sent to you. Auction bidders had deposited the entire amount along with interest to the Deptt. and nothing is due towards him*

So after compliance of observations, the same is sent to the Chief Engineer, Irrigation Department, Punjab, Chandigarh, it is requested the necessary sanction for execution of the deed in favour of the successful auction bidder be sent. It is for your information and further appropriate action."

This fact was also verified from the letter dated 11.10.2007

(Annexure P-9). The contents of the same reads as under:-

"Sub: Transfer of Land of Mohan Ke Rest House located in District Ferozepur in the name of Sh. Rajinder Kumar resident of Village Guru Hershai.

Reference subject cited above.

- 2. Before the issue transferring of title of the land of*

Mohan Ke Rest House located in District Ferozepur in the name of Rajinder Kumar be examined, you are requested kindly to furnish the following informations:-

- i) In a meeting of the Council of Ministers held on 3.3.98 it was decided to dispose of total 62 Rest Houses of the Irrigation Department which were found abandoned. Based upon the record it may be intimated if the Rest House of Mohan Ke was one of the proposed Rest House, which was to be disposed of on in an open auction;*
- ii) The Superintending Engineer, Canals were granted competency to approve auction and auction price of the land proposed to be dispose of before getting approval of the competent authority land in question had not to be disposed of. Necessary record may be located an placed on the file; and*
- iii) Copies of Treasury Challans duly attested vide which the installments collected from the purchase were deposited in the Treasury may be placed on the file."*

In my view, the respondent(s) has not been able to deny the contents of the aforementioned letter, in essence, the entire written statement does not rebut the contents of the letter, much less, its contents. Had there been any justified/plausible ground regarding the contentions, this Court would have pondered upon the stand taken in the written statement. The cancellation of the sale deed on the premise that the rest house was not included is neither here and there and is not backed by any cogent reasons, in essence, the respondent(s) have been remiss in not explaining the exact reasons. The cancellation of the auction after almost 12 years, has on the preposterous reason of non-grant of the sanction of the area of the rest house by the Standing Committee. For the sake of brevity, the relevant

paragraph of the impugned letter dated 21.10.2010 (Annexure P-11) reads as under:-

"But due to non-grant of sanction of the area of above Rest House in the Standing Committee execution of deed is rejected and the amount deposited by the bidder is returned. The sanction is rejected of this bidder on the below mentioned terms."

However, the decision of the Standing Committee has not seen the light of the day.

It is very strange that the authorities at the helm of the affairs are taking such decision without any foundation. They are obliged to give cogent reasons while taking into auction. Even otherwise, the law of limitation would have also come to play, had they approached the civil court for setting aside the auction as the agreement to sell as per the Contract Act had been entered into would have been barred. For setting aside the aforementioned agreement, remedy, if any, was to file a civil suit that to within a period of 3 years, but not in the manner and mode, as indicated above and that to that at the back of the petitioner(s).

There is another aspect of the matter that vide Annexure R-4/T dated 13.10.2014 at one point of time, a decision was taken to lodge an FIR, which was reviewed and it was explained that the rest house, in question, was auctioned by the Government constituted committee, vide letter dated 25.03.1998 and the concerned Executive Engineer/Area SDM and Block Development and Panchayat Officer which included the following officers:-

"1. Shri Shukwinder Singh, Chief Engineer (Retired)

through Chief Engineer (Canal) Irrigation Workds, Punjab, Chandigarh.

2. Shri Gursham Rehal, Executive Engineer (Retired), H.No.108, Sector 28, Chandigarh."

In fact since it was auctioned by the independent Committee, the decision to lodge FIR was reverted and the charges on the concerned officers are dropped. The decision, aforementioned, was taken after approval of the Irrigation Minister. The contents of the letter reads as under:-

"Sub: Civil Writ Petition No.7567 of 2011 – Rajinder Kumar V/s Punjab State.

In the matter of Govt. letter No.9/174/2012-Irrigation Ka (3)/3670 dated 23.07.2014 and your Officer letter No.2014/Canal(7)/15232 Dated 24.09.2014.

2. Decision taken to lodge FIR vide referred letter was reviewed and it is explained that Mohan Key Rest House was auctioned by the Govt. Constituted Committee vide letter No.4/58/97-1 W/6491 dated 25.03.1998. It includes concerned Executive Engineer, concerned Area SDM and Block Development and Panchayat Officer. Thus, it w as auctioned by an independent Committee, hence the decision to lodge FIR is reviewed and the charges on the concerned retired Officers are dropped herewith.

3. This decision is taken after getting approval from Irrigation Minister."

The contents, aforementioned, leads to an irresistible conclusion that the Government in 2014 realized that the actually the rest house, in question, was put to auction by the Govt. constituted Committee.

Keeping in view the aforementioned facts, the impugned order

under challenge is not sustainable in the eyes of law being opaque and arbitrary, much less, vitiated and the same is hereby set aside. Accordingly, the present writ petition stands allowed.

The respondent(s)/State is directed to execute the sale deed within a period of three month from the date of the receipt of the certified copy of this order.

20.03.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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