

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.7159 of 2015
Date of decision:27.04.2017**

Hardev Singh

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J.S.Yadav, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl.A.G.Punjab.

AMIT RAWAL J.

Challenge in the present writ petition is to the order dated 12.12.2013 (Annexure P-24), whereby, the Executive Engineer Bathinda Canal Division, Bathinda intimated the petitioner of cancellation of the auction having not been approved by the office of Superintending Engineer, Sirhind Canal Officer, Ludhiana, has been assailed with a further prayer of mandamus for issuance of direction to the respondents to accept the balance amount/installments of bid money and resultantly, issue of sale deed/certificate of the land in favour of the petitioner.

Mr. J.S.Yadav, learned counsel appearing on behalf of the petitioner submits that the petitioner is in cultivating possession of land measuring 24 kanals 15 marlas bearing No.89//10/2(5-6), 89//11(3-12), 89//20/2(2-6), 90//6 (8-18), 90//15/2(4-13), total 5 pieces situated in village Nathana Hadbast No.179, Tehsil and District Bathinda through his father Shri Hari Singh son of Hazura Singh for more than 58-60 years. To reflect

the aforementioned fact, copies of khasra girdawaris for the year 1975-1980, 1985-1990, 1990-1995, 1995-2000, 2000-2005, 2005-2010 and 2010 to 2012 have been attached as Annexure P-1 to P-7 and jamabandi for the year 2009-2010 is also attached as Annexure P-8. An "Auction Notice" (Annexure P-10) of arable land measuring 24 kanals 15 marlas of village Nathana along with land of other villages was published by the respondents to be sold by auction on 24.01.2000 at 11.00 a.m at Canal Rest House Goniana on various terms and conditions.

He further submits that the petitioner completed all the formalities to deposit ₹10,000/- for becoming eligible and participated in auction on 24.01.2000 and was the highest bidder of the land in question by giving a bid of ₹6,02,000/-. Resultantly, deposited a sum of ₹60,200/- on the fall of hammer being 10% of the highest bid, in essence, the aforementioned amount was deposited in addition to sum of ₹10,000/-. The auction of land situated in various villages was held. The Executive Engineer, Bathinda, Canal Division, Bathinda, vide Annexure P-14 sought the sanction for auction of the agricultural land by the Superintending Engineer, Sirhind Canal Circle, Ludhiana. However, no action was taken. Resultantly, the petitioner made many requests in this regard which was reflected from Annexures P-15 to P-21. The petitioner had also shown the inclination of depositing of balance amount of the auction money and in this process, a period of 13 years lapsed, despite the fact that the land in dispute was in possession of the petitioner. The petitioner filed CWP No.7641 of 2013 which was disposed of, vide order dated 09.04.2013 (Annexure P-22) with a direction to the Executive Engineer, Bathinda Canal Division,

Bathinda to look into the matter and vide impugned order dated 12.12.2013, (Annexure P-24), the auction has been cancelled after a period of 13 years.

He further submits that action of the respondents is wholly erroneous, arbitrary, illegal much less contumacious. The petitioner wrote a letter dated 13.01.2014 (Annexure P-25) to the XEN to clarify that under what circumstances the reasoning given in the impugned order of having allegedly transferred the land to Forest Department but no reasoning has been assigned, rather it has been pointed out that surplus/vacant land of Irrigation Department had been transferred to the Forest Department, vide notification dated 03.05.1958 (Annexure P-29). The land cannot be said to be forest land as it is arable which fact is evident from khasra girdawaris and jamabandis. The action of the respondents in transferring the land to the Forest Department and on account of non-receipt of 'No Objection Certificate' from the Forest Department, the Government has not granted the sanction, that too after a gap of 13 years. Such action of the respondents is highly cryptic and fallacious.

In support of his contention, relies upon the judgment rendered by this Court in CWP No.10772 of 2010 titled as Bikkar Singh and others vs. State of Punjab and others decided on 14.02.2012, Annexure A-2 annexed with the miscellaneous application bearing No.8842 of 2016.

He further submits that the land cannot be termed to be forest land as the notification is 55 years old and there is change in the circumstances, much less the existing position at the spot. He also referred to the contents of the notification to point out that all strips of Government forest or waste land whether under the trees growth or not on either side of

the roads, canals and railways have been transferred but this land cannot be said to be fallen within the aforementioned expressions, referred to, in the notification and thus, urges this Court for setting aside the order under challenge.

Per contra, Mr.Yatinder Sharma, learned Additional Advocate General, Punjab appearing on behalf of the respondents-State has drawn the attention of this Court to the letter dated 16.06.1987 (Annexure R-4/1), whereby, the Executive Engineer Bathinda Division SC, Bathinda wrote a letter to the Divisional Forest Officer, Bathinda on the subject matter of transfer of surplus land belonging to Irrigation Department, wherein, the following khasra number has been mentioned:-

15.	Nathana	176	89/10/2 11 20/2 90/15/2 6	3.09 Acres
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and as well as contents of letter dated 03.04.2001 (Annexure R-4/3) which read as under:-

*“From: Divisional Forest Officer,
Bathinda.*

To

*Executive Engineer,
Bathinda Canal Division,
Bathinda.*

No. 3 Date 03.04.2001

Sub: Sale of Irrigation Deptt. Lands.

*Ref: This office letter No.12675 dt.01.03.2001 and your
letter no.8101/1-L dt.07.11.2000.*

According to your above referred letter the lands related to Forest Division, Bathinda of Bibiwala, Mehma Sirja, Amargarh, Nahinwala, Sivia, Nathana & Sema and 2.92 acres land of village Gurlabgarh (Naiwala) has been transferred in writing to Forest Department. So these lands should not be sold or given on lease without prior permission of Government of India, It's a violation of F.C.A-1980 u/s 2(3) and who so ever contravenes the provisions, shall be punishable with simple imprisonment u/s 3-A of this Act. So it is pertinent to mention here that the sale of these lands should immediately be cancelled, lands should be got vacated from the possession of the buyers & possession of these lands be immediately transferred to Forest Department after harvesting the crop of 'Rabi Season' and it should also be ensured that the purchasers of these lands should not sow the kharif crop after harvesting the crop of Rabi season, so that these lands could be brought under forestry as per rules, if due consideration is not given then this Department will be forced to take legal action.

*Sd/-
Divisional Forest
Officer, Bathinda.”*

and submits that in the absence of sanction from the Forest Department, auction can always be cancelled. He has also drawn the attention of this Court to the terms and conditions of the auction to contend that the authority has every right to accept the bid or reject the same or was subject to the approval of the competent officer, i.e., clause nos.4, 8 and 9 of the

terms and conditions of the auction and thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.J.S.Yadav. It would be apt to reproduce the conditions No.4, 8 and 9 of the auction:-

“4. After getting approval from the competent officer 25% of the bid money will have to be deposited within 60 days.

8. Committee/sanctioning officer deserves the right to accept the bid or to reject any bid without assigning any reason.

9. Highest bid will be considered the final bid after approval of the competent officer.”

The contents of letter dated 03.04.2001, Annexure R-4/3 and Annexure R-4/1, leave no manner of doubt that khasra numbers of the alleged land to which the petitioner was in possession as per khasra girdawari and jamabandi, had been transferred to the Forest Department for the Management and until and unless the 'No Objection Certificate' is not issued from the Forest Department, the auction in favour of the petitioner could not be finalized. It is in this backdrop of the matter, sanction was not granted. No doubt, in this process, a period of 13 years has been lapsed.

The ratio decidendi culled out by this Court in the judgment relied upon by Mr. Yadav in Bikkar Singh' case (supra) does not apply to the facts and circumstances of the present case as it was a clear cut case of admission and no reasoning had been assigned in the impugned order dated

12.12.2013 (Annexure P-24) while cancelling the auction. For the sake of brevity, the contents of the impugned order (Annexure P-24) read as under:-

“No.9223

Dated 12.12.2013

Bathinda Canal Division Bathinda

That Sh. Hardev Singh s/o Late Sh. Hari Singh s/o Sh. Hazara Singh village Nathana, Tehsil and District Bathinda (Punjab) has filed CWP No.7641 of 2013 in Hon'ble Punjab & Haryana High Court, vide its order dated 09.04.2013 Hon'ble Punjab and Haryana High Court has passed the following direction:-

“The Executive Engineer, Bathinda Canal Division, Bathinda – respondent No.3 is directed to look into the matter, consider the grievance of the petitioner raised vide his representation dated 07.08.2011 (Annexure P-20) and decide the same, at an early date by passing an appropriate order thereon, in accordance with law, but in any case within a period of three months from the date of receipt of a certified copy of this order.

It is further directed that respondent No.3 shall keep in mind his communication (Annexure P-14) issued to Superintending Engineer, Sirhind Canal Circle, Ludhiana, seeking his sanction, while passing a speaking order.”

That the petitioner Sh. Hardev Singh s/o Sh. Hari Singh vide his representation (referred to above as Annexure P-20) has requested that in the auction of canal Department land situated at village Nathana, he has offered the highest bid of

Rs.6,20,000/- and deposited 10% of bid money at the time of fall of hammer. He has further requested that balance amount may please be received from him and a receipt be issued for the same.

That as per available record, Sh. Hardev Singh s/o Sh. Hari Singh village Nathana, had given the highest bid of Rs.6.02 lacs. His bid was recommended by auction committee unanimously for sanction to the Superintending Engineer, Sirhind Canal Circle, Ludhiana (Through latter referred above as Annexure P-14) upon which, the Superintending Engineer, Sirhind Canal Circle, Ludhiana asked to get no objection certificate from the Forest Department before the bids are approved, but the forest department intimated to this office that the said land has been transferred to Forest Department & asked to cancel the sale auction. As explained above, the auction has not been approved by the office of Superintending Engineer, Sirhind Canal Circle, Ludhiana. Clarification regarding the case has been received from higher office on 07.12.2013. As per the Government instructions undersigned is not competent to grant approval to this auction.

Hence without approval of the bids from competent authority, balance amount cannot be got deposited.

Sd/-

Executive Engineer,

Bathinda Canal Division
Bathinda.”

which reveal that the Forest Department in view of the intimation received from the Forest Department, the auction has not been approved and therefore, suggested for cancellation of the same. The petitioner cannot dictate the terms of accepting the auction. At the best, he would be entitled to refund of earnest money with interest, in essence, cannot insist upon the authority to affirm the auction in his favour or issue sale certificate/transfer letter as it was subject to the approval.

As per letter dated 16.06.1987 (Annexure R-4/1) in view of the notification dated 3.5.1988, the land of various villages by giving the description of khasra numbers and its measurement had been transferred to the Forest Department. Even if the nomenclature is being used as surplus, the petitioner cannot take the benefit of having the land being an arable but the fact remains that it has been given for the Management of the Forest Department. Once the Forest Department has refused to give 'No Objection Certificate', the petitioner cannot assist the authority for affirmation of the auction in his favour. The terms and conditions of the auction were in the knowledge of the petitioner and he took the risk of giving the bid. Once the approval has not been granted, the Court cannot bring its opinion by exercising the doctrine akin to judicial review by calling upon the respondents to affirm the sale.

Accordingly, the order under challenge is upheld. The petitioner is entitled to refund of earnest money along with interest @ 9% per annum from the date of deposit till its realization within a period of one

month from the date of receipt of a certified copy of this order, failing which, it would entail another interest @ 3% per annum and all 12% per annum.

Accordingly, the writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

April 27, 2017

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No