

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

CWP No. 18178 of 2013
Reserved on: 20.09.2018
Date of decision: 17.10.2018

Jawahar Lal and anothers

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Som Nath Saini, Advocate,
for the petitioners.

Mr. Sudeep Mahajan, Addl. A.G., Haryana.

Mr. P.K. Mutneja, Advocate,
for respondent no. 3.

G.S.SANDHAWALIA, J.

The present writ petition has been filed under Articles 226 and 227 of the Constitution of India for directing the respondents to issue the sale certificate qua the land measuring 62 kanals 12 marlas comprising in Rectangle No. 97, Khasra No. 11/2, 12 to 19 situated at village Baholi, Tehsil Panipat. The claim is on the basis that the petitioners were successful auction bidders which was held on 22.05.1968 and approved by the competent authority on 26.06.1968 and the entire sale amount being deposited by 18.02.1977.

The pleaded case of the petitioners is that they had purchased 3 chunks of land in the auction proceedings and the sale certificates were issued qua the land measuring 80 kanals and 72 kanals in village Sithaha and they are Harijan in caste and fall in the category of Schedule Caste. A dispute had arisen as to the purchase to the extent of 172 kanals 17 marlas

and respondent no. 3-Tehsildar (Sales), vide communication dated 22.05.1968 to the Joint Secretary (Rehabilitation)-cum-Settlement Commissioner held out that there was excess land purchased to the extent of 1-12 standard acres, which was liable to be set aside. Resultantly, vide order dated 17.12.1986 (Annexure P-4), respondent no. 2 accepted the reference and directed respondent no. 3 to take further action for retrieving the excess land. The said order of cancellation was challenged in CWP No. 3563 of 1987 and dispossession of petitioner no. 1 was stayed on 10.06.1987. Eventually, the writ petition was allowed on 30.09.2010 (Annexure P-5) by holding that the issue of valuation as such of the land purchased by the petitioners has not been gone into and the valuation was only @ Rs.2.5 annas per acre and once the rights have been crystalized by way of auction and transfer, the order was not sustainable. The order reads thus:-

“This writ petition has been filed against the order dated 17.12.1986 (Annexure P-6) whereby the transfer of 1.12 standard acres of land (by way of auction) in favour of the petitioner has been cancelled. After the exercise under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 was over, the remaining land was transferred to the respective States concerned in a package deal by the Central Government. In 1962, the erstwhile State of Punjab made a scheme whereby evacuee land could be disposed of by the restricted auction in which only Harijans could participate, provided that no Harijan could purchase more than 5 standard acres of land. The petitioner purchased 172 kanals 17 marlas of land in three auctions. The specific averment in the writ petition is that at the time of auction, the land was

represented as having 2.5 annas valuation. Undisputedly, as per that valuation the land purchased by the petitioner was less than 5 standard acres. After about 15 years of the last auction, a reference was made by the Tehsildar (Sales) that the valuation of the land sold to the petitioner was 5 annas per ordinary acre and hence he had actually been transferred 6.12 standard acres of land. It is thereafter that the transfer was cancelled. Though many arguments have been raised by counsel for the petitioner, in my opinion, the clinching argument would be the unrebutted averment of the petitioner that at the time of auction, the respondents had themselves evaluated the land @ 2.5 annas per acre. Even during the course of arguments, counsel for the respondents has fairly conceded that he could not deny the assertion that at the time of auction, the land was evaluated @ 2.5 annas per acre. It is, however, his argument that a wrong valuation could not give right to a purchaser in a restricted auction to purchase more land than was permissible. In my opinion, this argument cannot be allowed to prevail. There is no allegation that there is maleficence on the part of the petitioner. Once the respondents are not in a position to deny their own valuation at the time of auction, they cannot now turn around after 15 years, and after huge improvements have been made by the petitioner in the land in dispute, to say that the auction purchase was more than the permissible area. Apart from this, it is also extremely doubtful if the respondents can take recourse to the specious alternative of a cancellation order once the rights had been crystalized by way of auction and transfer. In this view of the matter, the impugned order has to be quashed. Consequently, this writ petition is allowed and

*the order dated 17.12.1986 (Annexure P-6) is set aside.
No order as to costs. As the main petition has since
been allowed, all the pending civil miscellaneous
applications, if any, also stand disposed of.”*

During the pendency of the writ proceedings, a proposal for establishment of the Indian Oil Refinery was going on in village Baholi for which big chunk of land was required and a request had been made to the Rehabilitation Department for transfer of the evacuee land. Resultantly, 1247 acres 1 kanal and 5 marlas of land situated in village Baholi was transferred to the Indian Oil Corporation (in short 'IOC') which has now been impleaded as respondent no. 4 during the pendency of the present writ petition vide order dated 09.10.2015. Resultantly, transfer of the above said land was made on 02.01.1986 for a consideration of Rs.11,46,28,898.75/- which included the land which had been allotted to the petitioners measuring 62 kanals 12 marlas and dispossession of which had been stayed.

In spite of the stay granted by the Division Bench on 10.06.1987 in CWP No. 3563 of 1987, the sale deed had also been issued in favour of the IOC on 19.09.1994 which established equipment and raised boundary walls and set up its establishment on the said land. After the writ petition was allowed on 30.09.2010 vide the order as reproduced above, the petitioners requested for issuance of the sale certificates on which it was revealed that the same had been executed in favour of the IOC, on the basis of which, the writ petition has now been filed claiming issuance of the sale certificate.

The stance of the IOC as such is that it was bona fide purchaser and was not aware of the pendency of the writ petition and had made huge improvements in the land in question by providing a world class petroleum

dispensing centre for filling up trucks with various petroleum products and crores of rupees has been spent upon the said infrastructure as they were in possession since 1994 and were using the land for the last 19 years and, therefore, objected to the relief claimed. Apart from that the issue of delay and laches was also raised by them.

The factual aspect having been thrashed out, it is ,thus, apparent that there is negligence on the part of respondents no. 1 to 3 who were party to the earlier round of litigation wherein, the order dated 17.12.1986 had been challenged whereby the allotment to the extent of 1-12 standard acres of land was subject matter of challenge. In spite of the said stay granted, the land was transferred in favour of respondent no. 4-the IOC and, therefore, the petitioners cannot be prejudiced on this account. It is not disputed that the petitioners were successful auction purchasers and the land in question which was auctioned under The Punjab Package Deal Properties (Disposal) Act, 1976 and, thus, being a statutory right, the petitioners are entitled for the benefits of the same as it is not disputed that the dispute if any stands finalized and the cancellation has been set aside. The fact, however, is that on account of the intervening circumstances, as noticed above, since the IOC has set up an oil refinery on a larger chunk of land including the land in question, the respondents are, thus, handicapped as such to issue the sale certificate of the land already auctioned. The IOC is also bona fide purchaser as such of the land in question and, therefore, the petitioners cannot be held entitled as such for possession of the said land which, as noticed, has seen major improvement by way of industrial infrastructure coming up.

In such circumstances, this Court is of the opinion that the

argument which has now been raised that the respondents should allot alternative land in lieu of the same considers acceptance. Counsel for the State has though vehemently submitted that the amount can be ordered to be refunded, which in the opinion of this Court, is not adequate compensation or adequate relief to the petitioners who were, as noticed, genuine auction purchasers and on account of an objection being raised when the sale certificate was being asked for, the allotment itself was wrongly set aside. The plea which is taken that the property was resumed for non-payment of the amount also is without any basis in as much as admittedly, after resumption, the order was set aside on 08.12.1971 and the forfeiture order dated 08.12.1971 was set aside on 12.07.1976 as the amounts were duly deposited by the auction purchasers. Thereafter, the cancellation had taken place in the year 1986, which was subject matter of litigation.

Accordingly, in view of the cumulative facts, respondents no. 1 and 2 shall take steps to identify land measuring 62 kanals and 12 marlas out of the available pool and allot the land to the petitioners. Efforts will be made to allot land closest to the area of village Baholi, Panipat as the other two allotments as such of the petitioners are also in the same district in village Sithana. The said exercise be completed within a period of 6 months from the date of receipt of certified copy of the judgment.

The writ petition stands allowed accordingly.

17.10.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No