

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.30 of 2008 (O&M)
Date of Decision:06.03.2018

Omwati

...Appellant

Versus

State of Haryana and others

...Respondents

RSA No.230 of 2003

State of Haryana and another

...Appellants

Versus

M/s Bhasin International Pvt. Ltd. and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Ashwani Kumar Chopra, Sr.Advocate with
Mr.Akshit Chaudhary, Advocate for the appellant.
Mr.Ashok Singla, Addl. A.G., Haryana.
Mr.Sharad Aggarwal, Advocate for the respondent
in RSA No.230 of 2003.
Mr.Kanwal Goyal, Advocate.

ANIL KSHETARPAL, J.

By this judgment, two appeals one preferred by the plaintiff-appellant and second preferred by the State of Haryana-defendant shall stand decided as the facts and issues which need determination are common.

In the considered opinion of this Court, following substantial questions of law arise for adjudication:-

(i) *Whether the restriction on alienation/transfer of the immovable property purchased in a public auction can be*

validly imposed by the Government with retrospective effect without enabling provision in the Statute?

(ii) Whether an order, cancelling the allotment/sale, which results divesting the rights in an immovable property can be passed by the government officials, without service of personal notice to the owners?

(iii) What is the affect of non-disclosure of earlier writ petition pending between the parties, while filing a suit particularly when such fact has been disclosed, while filing the replication?

These appeals have been remanded back by Hon'ble the Supreme Court, while observing as under:-

“The High Court while recording such a finding has not examined the alleged violation of the condition incorporated in the sale certificate as to whether such condition on the basis of subsequent policy of the Government could have been incorporated in the Sale Certificate or not was required to be examined by the High Court and that on the alleged violation of the condition regarding non-alienation of the property sold in public auction in favour of the vendor of the first respondent, the alleged grant of land could have been cancelled and re-auctioned the said property.”

After remand, when the case was listed for hearing, the State Government was called upon to produce entire record with regard to clause providing for restriction on the alienation of the immovable property sold in public auction. In deference thereto, the Government counsel admitted that there is no statute providing for such restriction with respect to the power of the auction purchaser in a restricted sale (public auction restricted to only those persons who belong to Scheduled Castes or Scheduled Tribes).

Learned counsel for the State has produced before the court instructions issued by the Government dated 31.10.1967. Operative part of the instructions reads as under:-

“It has been decided that if any Harijan, who has purchased rural evacuee land in restricted auction tenders the balance price in lump sum instead in instalments, the amount should be accepted but the condition of sale/transfer/mortgage etc for ten years should continue and be enforced. In all such cases, the sale certificate already issued should be cancelled and revised sale certificate in the form enclosed issued.”

Along with the instructions, form under which sale certificate is issued to the auction purchaser provides as under:-

“The purchaser has paid the entire price in lumpsum on _____. He shall not be entitled to sell, transfer or mortgage the land till the expiry of ten years from the date of purchase and in the event of default of this condition, the land shall be liable to be resumed and the amount paid by the purchaser liable to be forfeited to Government.”

However, vide decision dated 27.8.1974, restriction on the sale of the immovable property purchased in a public auction was consciously omitted by the Government by issuing a fresh policy decision. It was provided that those purchasers belonging to the Scheduled Castes to whom the sale certificates have already been issued, amended sale certificate be issued omitting such clause. However, it was further provided that in case a purchaser belonging to Scheduled Caste category has not paid the amount of sale consideration, the restriction on the sale of the property would operate for a period of 20 years. However, it was further provided that the moment

entire sale consideration is paid, the restriction on the sale/alienation of the property shall stand omitted. Once again, the State Government revised its policy and vide circular dated 15.9.1981, the Government decided as under:-

“In order to curb this exploitation of the members of the Scheduled Castes by the affluent section, it has been decided by the Govt. that the restriction not to alienate the land for 10 years purchased in restricted auction may be imposed. This period of 10 years will be counted from the date of confirmation of the sale and this condition will be applicable in all these causes in which the sale-deeds are yet to be issued. Accordingly necessary entry to this effect, be made in all the sale certificates in respect of restricted auction.”

FACTS

In a public auction held on 30.3.1981 (open only to members of the Scheduled Caste community) Khem Chand purchased 40 kanals land. At the time of auction, the conditions which were announced did not contain any stipulation that there would be any restriction on the sale of the property by the auction purchaser. Bid-sheet, which is Ex.DW1/1, spells out ten conditions, but there was no such restriction on the sale for a period of 10 years. Auction in favour of Khem Chand was confirmed by the Government vide order dated 30.6.1981 Ex.DW1/2. Khem Chand-auction purchaser was delivered possession of the land on 12.9.1981. As per revenue record the land was transferred in favour of Khem Chand who paid the entire sale consideration on 29.7.1983 and sale certificate was issued on 2.8.1983. In the sale certificate, restriction on the sale of the property for a period of 10

years was incorporated in terms of instructions dated 15.9.1981 of the Government. However, in the revenue record, there was no entry to this effect. Khem Chand sold the property vide two registered sale-deeds. 2/5th share, i.e. 16 kanals, to Ashok Kumar, whereas 3/5th share, i.e. 24 kanals, to Chandgi Ram. Mutation of the sale-deeds were entered in the revenue record without any objection. These two plaintiffs in separate appeals (Omwati in RSA No.30 of 2008 and M/s Bhasin International Pvt. Limited in RSA No.230 of 2003) have purchased the property from Ashok Kumar and Chandgi Ram, the purchasers from the original owner through registered sale-deeds in the year 1989. The State Government without serving any notice to the plaintiff-appellant cancelled the auction vide order dated 6.6.1994. Initially when the owners were sought to be dispossessed, a writ petition was filed in this Court on 9.9.1994. Interim protection was granted. However, later on, two civil suits were filed giving rise to these two appellants, challenging the order dated 6.6.1994 passed by the Settlement Commissioner, cancelling the auction sale in favour of Khem Chand.

The learned trial court, after appreciating the evidence available on the file, decreed both the suits and held that the order dated 6.6.1994 is illegal as no opportunity of hearing has been given to the owners, before ordering resumption of the property sold in favour of Khem Chand, which has resulted in divesting the right of ownership of immovable property in favour of the plaintiffs. However, the learned first appellate court in one appeal filed by the State Government reversed the judgments passed by the

learned trial court. This Court vide a detailed judgment dated 8.1.2010 decided the appeal filed by one of the appellants Omvati. As noticed above, Hon'ble the Supreme Court has remanded the case back to this Court.

In second appeal bearing RSA No.230 of 2003 filed by the appellant-State of Haryana, the plaintiff M/s Bhasin International Pvt. Ltd. lost before the learned trial court. However, the learned first appellate court accepted its appeal. Against the judgment of the learned first appellate court, the State of Haryana has filed this appeal.

Now, the stage is set for examining the questions of law, extracted above.

(i) Whether the restriction on alienation/transfer of the immovable property purchased in a public auction can be validly imposed by the Government with retrospective effect without enabling provision in the Statute?

It has been noticed in the previous part of this judgment that admittedly there is no statutory provision, enabling the State Government to impose restriction on the sale/alienation of the property, which has been sold through public auction with retrospective effect. The restriction is based only upon policy instructions issued by the State Government from time to time. For the first time, restriction was decided to be incorporated vide policy instructions dated 31.10.1967. However, vide subsequent policy decision dated 27.8.1974, a conscious decision was taken not to put such restriction and it was decided that even the sale certificates which have already been issued as per the previous decision should be amended. The State Government decided that restriction would continue to operate only on

those auction purchasers who have not paid the entire auction amount. Once again, policy instructions were changed and Government decided to re-impose the restrictions on the sale of the property sold through public restricted auction for a period of 10 years. The policy instructions have already been extracted above. Policy instructions provided that in all cases where sale certificate has not been issued, such restriction be incorporated.

This Court has heard the learned counsel for the parties at length on this aspect.

Learned senior counsel for the appellant in RSA No.30 of 2008 has vehemently argued that in absence of any statutory provisions enabling the State Government to put restriction on the sale of the property with retrospective effect, the Government in exercise of its executive powers could not impose such conditions with respect to auctions which have taken place before the date of issuing of the instructions dated 15.9.1981.

On the other hand, learned counsel for the State has submitted that these restrictions are for the benefit of the auction purchasers who are generally from the weaker sections of the Society and, therefore, restriction on the property could be placed even with respect to retrospective effect. He has further submitted that auction purchaser paid the entire sale consideration only on 29.7.1983, i.e. after 15.9.1981, and therefore, restriction to sell the property was rightly added in the sale certificate, as per policy instructions.

This Court with the able assistance of the learned counsel for the parties has examined this issue in detail.

In the considered opinion of this Court, once it is not disputed that on the day, the property was auctioned through public auction, i.e. on 30.3.1981, the policy decision dated 15.9.1981 was not in existence and the conditions for sale as provided in the bid sheet did not contain any such restriction. The Government cannot make a provision for incorporating such condition with retrospective effect. Auction purchaser in the present case through public auction has purchased the property on particular terms and conditions. Purchaser purchased the property after examining the terms and conditions stipulated in the bid sheet. He is deemed to be in the knowledge of the statutory provisions. Later on once the auction has been held and sale by way of public auction has been confirmed, no fresh restriction on the transfer of property could be incorporated with retrospective effect. The owner of immovable property has right to deal with the property in any manner he likes subject to restrictions provided in the statute or policy instructions existing at the time of sale or conduct of auction.

In the considered opinion of this Court, policy instructions issued by the Government, in exercise of its executive power, cannot be made operative with retrospective effect without enabling power to this effect available to the Government under a statute.

In view of the discussion made above, question (1) is answered in favour of the appellants.

(ii) Whether an order, cancelling the allotment/sale, which results divesting the rights in an immovable property can be passed by the government officials, without service of personal notice to the owners?

The learned trial court in the case of Omvati has recorded a finding of fact that no notice was served upon the appellants before cancelling the auction and the sale of the property in favour of Khem Chand. The learned trial court noticed that proclamation was conducted in Village Harsaru, however, the official examined on behalf of the State Government admitted that no summons were sent to Nathupur, where the plaintiff Omvati resides. Even no proclamation was carried out in village Nathupur. The learned first appellate court has noticed that no personal service was effected. However, the appellate court has held that since the proclamation has been carried out in the village, where the property is situated, such proclamation is a sufficient notice to the owners.

In the considered opinion of this Court, an owner of the property cannot be deprived of the ownership without giving proper opportunity. This is the fundamental principle of natural justice. In the present case, no personal service was effected. Proclamation was also carried out by beat of drum in Village Harsaru and the adjoining villages. Proclamation carried out in the village where the property is situated would not be sufficient once it is to the knowledge of the officials that owners do not reside in that village. If the Government was of the considered view that personal service is not possible, it should have served through publishing a notice in the newspapers.

In view thereof, the view taken by the learned first appellate court is found erroneous. Hence, question No.2 is answered in favour of the plaintiffs.

(iii) What is the effect of non-disclosure of earlier writ petition pending between the parties, while filing a suit particularly when such fact has been disclosed, while filing the replication?

The learned first appellate court has held that non-disclosure of filing of the previous writ petition in the plaint amounts to concealment of fact and therefore, the suit is liable to be dismissed. The learned first appellate court has relied upon the provisions of Order 7 Rule 1 (j) added by the local amendment.

Order 7 Rule 1 as it exist in the States of Punjab and Haryana, reads as under:-

1. Particulars to be contained in plaint— *The plaint shall contain the following particulars:—*

- (a) the name of the Court in which the suit is brought ;*
- (b) the name, description and place of residence of the plaintiff;*
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;*
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;*
- (e) the facts constituting the cause of action and when it arose;*
- (f) the facts showing that the Court has jurisdiction;*
- (g) the relief which the plaintiff claims;*
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and*
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.*
- (j) A Statement to the effect that no suit between the same parties, or between parties under whom they or any of them*

claim, litigating on the same grounds has been previously instituted or finally decided by a Court of competent jurisdiction or limited jurisdiction, and if so, with what results.”

Clause (j) was added vide amendment dated 15.3.1991. Order 7 Rule 1 CPC provides the particulars to be contained in the plaint. Clause (j) provides that the plaintiff should disclose in the plaint that no suit between the same parties or between the parties under whom they or any of them claim, litigating on the same grounds has been previously instituted or finally decided by a Court of competent jurisdiction or limited jurisdiction, and if so with what results. Order 7 Rule 1 CPC does not provide that in absence of such disclosure or as a result of non-disclosure, the plaint should be liable to be rejected or the suit would be required to be dismissed.

Still further, statement has to be made in respect of a previous suit. In the present suit, there was no previous suit. A writ petition was filed and then a suit was filed and thereafter the writ petition was withdrawn. It is further not in dispute that in the written statement, it was disclosed by the State Government. In the replication, the plaintiff only stated that it is a matter of record. The writ petition had not been decided on merits. The provisions of Order 7 Rule 1 (j) CPC strictly did not apply. Further, the court would be required to examine in each case whether the non-disclosure was intentional and material in the facts and circumstances of the suit or not. The court before taking any adverse view shall be required to evaluate whether the facts not disclosed, were brought on record subsequently or not.

In view thereof, the learned first appellate court committed an

error in reversing the judgment of the learned trial court on this count.

In view of the discussion made above, the third question of law is answered in favour of the appellants.

Hence, RSA No.30 of 2008 filed by the plaintiff Omwati is allowed. The judgment and decree passed by the learned first appellate court is reversed and the judgment and decree passed by the learned trial court is restored. RSA No.230 of 2009 filed by the State is dismissed. Pending application, if any, shall also stand disposed of.

06.03.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No