

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

1. RSA No.191 of 2015 (O&M)
Date of decision : 10.12.2018
Inder Singh (deceased) through his LRs and another ...Appellants
Versus
Hatti Singh and others ...Respondents
2. RSA No.610 of 2015 (O&M)
Date of decision : 10.12.2018
Ajit Singh ...Appellant
Versus
State of Haryana and others ...Respondents
3. CWP No.4907 of 2006 (O&M)
Date of decision : 10.12.2018
Hatti Singh and others ...Petitioners
Versus
State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Nagra, Advocate for the appellants
(In RSA Nos.191 ad 610 of 2015)

Mr. Brijender Kaushik, Advocate for the petitioners.
(In CWP No.4907 of 2006)
for respondents No.1 to 5 (In RSA No.191 of 2015)
for respondent Nos. 3 to 7 (In RSA No. 610 of 2015)

Mr. Saurabh Girdhar, AAG, Haryana
for respondent Nos.1 to 3 (In CWP No.4907 of 2006)
for respondent Nos.1 and 2 (In RSA Nos.191 and 610 of 2015)

Mr. Bhag Singh, Advocate for respondent No.4
(In CWP No.4907 of 2006)

ANIL KSHETARPAL, J. (ORAL)

By this judgment, RSA Nos.191 and 610 of 2015 and CWP
No.4907 of 2006 shall stand disposed of as the parties to the dispute are
almost common and dispute is inter-connected.

CWP No.4907 of 2006 (O&M)

Competing interest of two auction purchasers, one who purchased in the year 1979 and second who purchased in the year 1987 are required to be adjudicated upon.

The petitioners have filed this writ petition seeking issuance of a writ of certiorari for quashing of order passed by the Settlement Commissioner-cum-Deputy Commissioner, Ambala dated 21.09.2005 and letter dated 16.09.2003 (Annexures P-7 and P-6, respectively).

Before discussing the merits and demerits of the competing parties, it would be appropriate to notice a brief background of the case. Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereafter to be referred as “the Act of 1954”) was enacted for settlement of the claimants who had migrated to India from the area which now forms part of Pakistan. Legislature provided that the persons who have lost their land or other immovable property on account of migration would be resettled. For better enforcement of the Act, the Central Government made the Rules i.e. the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter to be referred as “the Rules of 1955”). Simultaneously, the Administration of Evacuee Property Act, 1950 was also enacted, declaring certain properties to be evacuee which was owned by persons who had migrated to Pakistan from the area which now forms part of India and the land so left and declared as evacuee property, were allotted to the displaced persons who had migrated from the area which now forms the part of Pakistan.

After the settlement of the claims of the displaced persons, the

surplus property which was left out was given to the State Government under the Package Deal. This property was also known as the surplus evacuee property. For the management of the aforesaid surplus evacuee property, the policy decision was taken and the instructions were issued by the State of Punjab, the then joint Punjab, which includes States of Punjab, Haryana, Himachal and Delhi. These were known as the Rules For Sale Of Surplus Rural Properties, 1962 (hereinafter to be referred as “the Rules of 1962”).

As per the Rules of 1962, the auction took place in the year 1979 and Inder Singh-respondent No.4 herein was declared highest bidder with respect to the land measuring 6 kanals 9 marlas including the land comprised in Rectangle No.62, Khasra No.7/3 (Area 5 kanals 6 marlas). Pursuant to the aforesaid auction, Inder Singh deposited the entire sale consideration i.e. ₹10,100/- and the sale was confirmed. After confirmation of the sale, the warrants of possession were issued and Inder Singh was put in possession of the property sold. Daily Diary Report of Patwari No.202 dated 14.02.1980 bears the testimony of the same. However, the sale certificate was not issued by the authorities which is the main reason why this litigation has arisen. This property i.e. comprised in Rectangle No.62, Khasra No.7/3 (5 kanals 6 marlas) was once again put to auction alongwith certain other land and the writ petitioners Hatti Singh and others who are all sons of Sh. Jai Singh purchased in open auction held in the year 1987. The auction was confirmed and the sale certificate was also issued in favour of Hatti Singh etc.

The dispute arose as on the one hand, Inder Singh claimed that he has better right being auction purchaser prior in point of time, whereas on the other hand, Hatti Singh etc. writ petitioners claimed that they have purchased the property as sold by the State Officials and sale certificate has been issued in their favour. Hatti Singh etc. also claimed that they have been delivered possession of the land.

Once this controversy came to the notice of the officials, they suo motu referred the matter to the Settlement Commissioner-cum-Deputy Commissioner, Ambala for adjudication. The Settlement Commissioner vide order dated 21.09.2005 has held that Inder Singh has better right being prior auction purchaser and, therefore, merely because the sale certificate has not been issued or proper entry of the sale has not been made in the revenue record, the rights of Inder Singh are superior to the rights of Hatti Singh etc. This order is under challenge in the present writ petition.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the paper book and the relevant provisions of the Act and the Rules, as also the policy decision.

Learned counsel appearing on behalf of the petitioners while making reference to the Sub Rule 15 of Rule 90 of the Rules of 1955, has submitted that once the sale certificate has not been issued, sale in favour of Inder Singh was not complete. He has also referred to the various judgments passed by the Courts interpreting as to when the title passes under the Rules of 1955. He further submitted that as per the Rule 92 of the Rules of 1955, the sale made by public auction could be questioned within 7 days from the date of the acceptance of the bid and in the present case, the powers have

been exercised by the Settlement Commissioner after a period of 14 years. Hence, the order is liable to be set aside. He further submitted that Inder Singh had not challenged the auction and, therefore, the department officials did not had any locus standi. He further submitted that no notice before passing the impugned order was personally served upon the petitioners. He submitted that the notice is alleged to have been issued to Hatti Singh only and without issuing notice to other auction purchasers, the order has been passed. It is the case of Hatti Singh also that no notice was received.

On the other hand, learned counsel appearing on behalf of the private respondent-Inder Singh has drawn the attention of the Court to the order passed by the Settlement Commissioner which records that he has heard both the parties. He further submitted that in the present case, the Rules of 1955 would have no application as the property was auctioned as the surplus evacuee property under the instructions which are known as Rules of 1962. He further submitted that in the present case, there is no dispute that the property was put to auction by way of public auction and Inder Singh was declared highest bidder. The sale in his favour was approved by the competent authority and Inder Singh deposited the entire auction amount. He submitted that thereafter even the possession was delivered. Hence, he submitted that the issuance of the sale certificate was only the executive act as per the procedure laid down in the Rules of 1962 stood fulfilled and title passed on to Inder Singh.

Learned State Counsel has also adopted the arguments of the learned counsel representing the private respondent-Inder Singh.

In the present case, there is no dispute that Inder Singh

purchased the property in dispute by way of public auction. It is the case of the State that the property is a surplus evacuee property and, therefore, the procedure as prescribed in the Rules of 1962 would be applicable. Attention of the Court has been drawn to the Rule 18 of the Rules of 1962 which empowers the Secretary Rehabilitation Department to call for record of any case at any time pending or decided and pass such order as he may deem fit in accordance with well settled law. Rule 18 of the Rules of 1962 is extracted as under:-

“18. Notwithstanding anything contained in these rule the Secretary, Rehabilitation Department, Haryana may call for at any time record of any case pending or decided by lower authorities and pass such order as may be deemed fit in accordance with law.

Provided that party affected by the proposed order shall be given opportunity of being heard.”

It may be noticed that the petitioners have failed to prove that the auction was conducted under the 1955 Rules and not under the Punjab Package Deal Properties (Disposal) Rules, 1962. Still further, as per Section 24 of the Act of 1954, Chief Settlement Commissioner also has a similar powers.

In the present case, a situation has been created due to error of the concerned officials and two persons who have purchased the same property are being made to run for their rights in the property by litigating in Courts. However, in the present case, the Court is called upon to decide who has the better right (superior right). Hence, lengthy arguments addressed by the learned counsel for the petitioners on technicalities of law does not

impress this Court. As per the Rules of 1962, the procedure for sale of the property by public auction has been prescribed. Rule 5 of the Rules of 1962 elaborately deals with the procedure for sale of the property, confirmation thereof acceptance of the highest bid and thereafter issuance of the sale certificate. However, the issuance of the sale certificate is an executive act of the authority and in absence of the sale certificate, it would not be correct to conclude that no title has passed. The title, in the considered opinion of the Court passed to the auction purchaser on the approval of sale by public auction and deposit of the sale consideration. Once, title had passed to Inder Singh, any subsequent auction unless the sale in favour of Inder Singh had been cancelled, would not adversely effect the rights of Inder Singh. The rights of Hatti Singh etc. would be subservient to the rights of Inder Singh. The procedure as prescribed in Rules 5 and 8 of the Rules of 1962 are extracted as under:-

“5. Procedure for sale of property by public auction:-

Where any property is to be sold by public auction:-

- (a) The property shall be sold through the officers appointed by the State Government in this behalf.*
- (b) The Settlement Commissioner or any other officers empowered to sell any such property shall cause proclamation of the intended sale to be made in the language of the principal Civil Court of the Original jurisdiction within whose jurisdiction the property is situated.*
- (c) Notice of the intended sale shall be given at least 15 days before the proposed sale and every such notice should state the date, time and place of the proposed sale, the description of the property sold, the location and*

boundaries, where possible, the terms and condition of the sale and any other particulars which the Settlement Commissioner or other officer considers material. One copy of the notice shall be affixed in a conspicuous place in the village(s) where the property is situated e.g. the Panchayat Ghar, Gurdawara, Mandir, School, etc. It shall within the discretion of the settlement commissioner or other officer to advertise the sale in news paper and in such other manner as he may deem fit.

(d) No sale shall take place until after the expiry of the period of fifteen days from the date of publication of the notice.

(e) Every auction of a property shall be subject to a reserve price fixed in respect of the property, but such a reserve price shall not be disclosed.

(f) The Officer conducting the auction may in his discretion with hold sale of any property without assigning any reasons therefore.

(g) The Officer conducting the sale may, at his discretion for reasons to be recorded in writing, adjourn the sale to a specified date and hour and an announcement to that effect shall be made at the time of the adjournment of the sale. Provided that where sale is adjourned for a period exceeding fifteen days a fresh notice shall be published.

(h) The person declared to be the highest bidder at the public auction shall pay in cash immediately at the fall of hammer the whole amount of the highest bid if it does not exceed Rs.500/- and if it exceeds this figures, an amount equal to 25 per cent of the highest bid, as earnest money.

If this amount is not paid, the bid shall be cancelled and the property put to re-auction. The loss, if any, resulting from the re-auction shall be recoverable from the previous bidder.

The highest bid in respect of which an initial deposit has been made shall be subject to the approval of the Settlement Commissioner or an officer appointed by him for the purpose. Provided that no bid shall be accepted until after the expiry of fifteen days from the date of the auction.

(i) Procedure for acceptance of the highest bid – (1) *The Settlement Commissioner or other Officer shall not be bound to accept the highest or any other tender and shall not be bound to disclose his reasons therefore. Every bidder shall be bound by his bid and shall if he resiles from such bid, be liable to forfeit his deposit of earnest money. The decision of the Settlement Commissioner with regard to the forfeiture of the deposit shall be final.*

If a bid has been accepted by the Settlement Commissioner or other officer, the bidder shall produce before the Tehsildar (Sales) or any other officer appointed by the Settlement Commissioner for the purpose within thirty days of the receipts of such intimation to him of the acceptance of the bid, a Challan showing a deposit into the treasury of the balance of the purchase money.

3. *The Settlement Officer (Sales) may in deserving cases extend the aforesaid period of 15 days by such period not exceeding one month, as he may think fit.*

The Settlement Commissioner may in exceptional and really hard cases grant such further extension for the payment of balance price as he may consider reasonable.

4. *If the balance of the purchase money is not deposited within the period specified in sub-paras 2 and 3 above the initial deposit shall be liable to forfeiture and he shall not have any claim to the property. Further, if in reauction any loss is caused to Government, that loss may also be recovered from defaulting bidder.*

8. Delivery of possession and issue of sale deed, conveyance deed:- *When the purchase money has been realized in full from the purchaser, he shall be issued a sale certificate conveyance deed which shall entitle him to take possession of the property sold to him.*

A certified copy of the sale deed/conveyance deed shall be sent to the Registering Officer of the area where the whole or any part of the property is situated.”

This Court after consideration of the matter finds that merely because the sale certificate has not been issued in favour of Inder Singh cannot be taken as a ground to ignore the sale in favour of Inder Singh.

As regards limitation, Rule 18 of the Rules of 1962 clearly provides that competent authority has a power to call for the record of any case pending or adjudicated and decide the same in accordance with law.

As regards the argument of the learned counsel that no notice has been served to the petitioners, it may be noted that all the petitioners are sons of Jai Singh resident of Village Korwa Khurd, Tehsil Naraingarh, District Ambala and as per the report submitted by the official who visited the village in order to serve a notice on the petitioners, petitioner No.1 was found residing at the Village Korwa Kalan and not in Village Korwa Khurd and he wanted to serve notice on Hatti Singh who after reading the same refused to take the notice and, therefore he was compelled to paste the notice on the house of Hatti Singh. The report submitted by the official who visited the site is extracted as under:-

“Sir, to comply with your order, I visited in Village Korwa Khurd and enquired about Hatti Singh s/o Jai Singh and it was found that the said person is residing in village

Korwa Kalan. I went to Village Korwa Kalan and accompanied with Chowkidar Kishna Ram, visited the house of Hatti Singh s/o Jai Singh and he read out the notice and refused to take the notice in the presence of the Chowkidar then I pasted a copy of the notice on the house of Hatti Singh. Report is submitted.

*LTI Kishan Ram,
Chowkidar*

*Sd/- (Sunil Kumar) Peon
21.10.03*

O/o Tehsildar (Sales), Ambala”

Still further, as noticed above, learned Settlement Commissioner in the impugned order has specifically recorded that both the parties have been heard. This Court, in any case, has given opportunity to the petitioners to establish their superior rights as compared to that of Inder Singh which they have failed to establish. Hence, this Court does not find that the petitioners have superior rights as compared to Inder Singh.

Last argument of the learned counsel for the petitioners is with respect to the locus standi of the official respondents. It stands answered in view of the Rule 18 of the Rules of 1962.

This Court is conscious of the fact that the petitioners are not at fault. They have purchased the property in an open public auction. In such circumstances, a direction is issued to the competent authority to identify the surplus evacuee property, if available, almost of the equivalent value and allot the same to the petitioners. However, if equivalent land is not available, the official respondent shall be liable to refund the amount representing the price of the land, auction whereof has been cancelled i.e. land measuring 5 kanals 6 marlas to the petitioners alongwith interest at the rate of 10% p.a. from the date of payment till realization. This exercise be

completed within a period of three months from the date of receipt of certified copy of the order.

In view of what has been observed above, the present writ petition stands disposed of.

RSA No.191 of 2015 (O&M)

Inder Singh is in appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court on the ground that the writ petition challenging the order passed by the Settlement Commissioner-cum-Deputy Commissioner, Ambala dated 21.09.2005 is pending.

Once the aforesaid writ petition has been decided, only ground for reversal of the judgment passed by the First Appellate Court has cease to exist. Inder Singh has been held entitled to the land comprised in Rectangle No.62, Khasra No.7/3 (5 kanals 6 marlas).

The judgment of the First Appellate Court is set aside and that of the trial Court is restored. Hence, the aforesaid appeal is allowed accordingly .

RSA No.610 of 2015 (O&M)

This appeal has been preferred by plaintiff No.2-Ajit Singh.

Ajit Singh claims that he has superior rights because he and before him, his father was in possession of the property and, therefore, the sale of the property by way of public auction carried out by the public authorities in favour of defendant Nos.3 to 7 is illegal.

Learned trial Court after appreciating the evidence, dismissed

the suit qua declaration filed by plaintiff No.2 to claim the ownership and possession, however, learned trial Court granted a limited relief that the defendants will dispossessed plaintiff No.2 in due course of law being in possession.

Learned First Appellate Court has even reversed the partial relief granted to plaintiff No.2 as he is found to be having no right, title or interest in the property.

Learned counsel for the appellant-Ajit Singh had made sincere attempt to persuade this Court to protect the interest of plaintiff No.2-Ajit Singh-appellant herein in this appeal, however, learned counsel could not establish that a person who is in unauthorized possession of the public property has superior rights than the auction purchaser. A person who has entered into possession unauthorizedly in public property cannot claim superior rights than that of the auction purchaser.

Hence, this appeal is accordingly dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

10.12.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**