

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

**RSA No.1213 of 2018 (O&M)
Date of Decision: May 01, 2018**

The Municipal Committee, Barwala

...Appellant

Versus

Jai Narayan and Company and another

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Deepak Manchanda, Advocate
for the appellant.

Mr. A.K. Chopra, Senior Advocate
with Ms. Palak Dev, Advocate
for respondent No.1

Mr. P.K. Jangra, Addl. A.G. Haryana
for respondent No.2.

FATEH DEEP SINGH, J.

Plaintiff-Jai Narayan and Company, now respondent No.1 filed against Municipal Committee, Barwala-appellant the then defendant, a suit for mandatory injunction directing the defendant Municipal Committee (in short, 'the Committee') to get the sale deed registered in respect of land measuring 55 kanals and 5 marlas detailed in the suit. The suit is based on the claim that on 23.3.1999 a public auction was conducted by SDO (Civil), Hisar and the plaintiffs were the successful bidders, whose bid was @ Rs.2,32,000/- per acre and the entire sale consideration of Rs.15,76,150/- was deposited with the defendant and has sought along with the same relief restraining the defendant from alienating the property to anyone else, claiming that Deputy Commissioner-cum-

Collector, Hisar vide letter No.7776/LF dated 25.10.1995 had given permission to the Committee for auction of this land.

The stand of the defendant was of non-maintainability of the suit being bad for non-joinder of necessary parties. On merits, though admitted the averments of the plaint but denied that the plaintiff is the owner in possession of the property in question holding that no proper sanction from competent authority was ever made and claiming that plaintiff was in illegal possession of this land. On the basis of pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to a decree for mandatory injunction as prayed for? OPP
2. Whether the suit is not maintainable due to non-joinder of necessary parties? OPD
3. Whether the plaintiff has not come to the Court with clean hands and suppressed the material facts? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Relief

The plaintiff examined himself as PW1 and proved documents Ex.P1 to Ex.P34 and Ex.PX/1, Ex.PX/2, Ex.PX and closed the evidence. On the other hand, defendant examined Mahabir Singh, Secretary M.C. Barwala as DW1, Sandeep Kumar, Building Inspector as DW2 and closed evidence. It was through judgment decree dated 9.3.2016, the Court of learned Civil Judge, Junior Division, Hisar decreed with cost suit of the plaintiff directing the plaintiff to affix *ad-valorem* Court fee within three months from the date of this judgment. Upon appeal, the Court of learned Additional District Judge, Hisar through impugned judgment dated 5.9.2016 upheld the findings of the trial Court, thereby, dismissed the appeal of the

appellant-Committee. That is how, the present regular second appeal has come about.

Heard learned counsel for the parties and perused the records of the case. Since pleadings are the very foundation of a case of a party, the written statement moved by the appellant-defendant invariably admits and accepts the fact that it was on the letter of Deputy Commissioner dated 25.10.1995 according due sanction to the appellant-committee for auction of the land in question, an open auction was held by the SDO (Civil) on 23.3.1999 @ Rs.2,32,000/- per acre and total sale consideration of Rs.15,76,150/- was duly deposited by the plaintiff-respondent. During the course of arguments, learned counsel for the appellant could not convince nor could answer the query of the Court as to their claim that the auction was wrongly made or what action has been taken by them for nullifying it. When as is there on the records, it is the appellant-Committee which has directed the plaintiff vide letter No.541 dated 19.4.1999 to deposit the total consideration amount after deducting Rs.4,10,000/- which was earlier deposited as initial amount and further that it was vide resolution No.6 dated 01.5.2002 the appellant-Committee had appointed one of its official to execute the sale deed and letter No.769 dated 25.6.2002 was written for registering the sale deed followed by another letter bearing No.503 dated 30.08.2005. Learned counsel for the appellant could not bring to the notice of the Court any such administrative action of Government initiated for setting aside this auction and sale in the exercise of its power. Rather studied silence on the part of the appellant-Committee does not auger well for it. Section 5 of Haryana Municipal Common Land (Regulation) Act,

1974 empowers that all lands vested in Municipal Committee by virtue of the provisions of this Act shall be utilised or disposed off by the municipal committee for the benefit of the inhabitants of the Municipality in the manner prescribed and further under the Haryana Municipalities Management of Municipal Properties and State Properties Rules, 1976 the Deputy Commissioner has been empowered on an application sanctioning or refusing to sanction a sale by auction and there is nothing to show that there has been violation of Rule 3 of these Rules, whereby, Deputy Commissioner concerned refused to accord sanction to this public auction by the appellant. Though, as a faint argument, learned counsel for the appellant has sought to claim that an FIR is sought to be registered by the State Government, however, learned counsel for the respondent has placed on record letter bearing No.4/47/2015-2 dated 16.12.2016 to show that complaint bearing No.274 of 2012 has been filed by order of the State Government dated 16/19.12.2016 and that even State Government by its local Government authority on the basis of the report of the Lokayukata had dropped the complaint so initiated in this matter. Learned trial Court had rightly concluded that there was ex-post facto sanction in favour of the plaintiff. However, the State Government could have overruled such an auction but as is admitted stand of the appellant's counsel till date no such action has been initiated to nullify such an auction and, therefore, till date the same holds good by all means. Since the own stand of the appellant taken in the pleadings and in their arguments readily accepting the auction, handing over the possession to the plaintiff and the fact that the same still holds good. Learned counsel for the appellant could not convince by any

means, how there has been violation of any statutory rules governing the properties of such nature owned by State of Haryana. The Courts below have rightly drawn the conclusion on the issues by correctly appreciating the evidence and the law and have come to a justifiable conclusion. Thus, the appeal being hopelessly without any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

May 01, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No