IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

EFA-3166-1993 and
XOBJC-181-CI-2010
Date of Decision: March 28, 2019

Balbir Singh

..........APPELLANT

VERSUS

Union of India and others

........RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. M.L. Sarin, Senior Advocate with
Mr. Amaninder Preet, Advocate
for the appellant.

Mr. Arun Bansal, Advocate
for the cross-objectors.

Ms. Balwinder Kaur, Senior Panel Counsel
for respondent No. 1-Union of India.

Mr. Jagdish Manchanda, Advocate
for respondent No.3.

****

SURINDER GUPTA, J.(Oral)

Heard.

This is appeal against the order dated 25.08.1993, whereby the objections filed by respondent No.3 were accepted and auction of the property of the land bearing *Khasra* No. 2172/1 measuring 42 bighas 11 biswas in favour of the appellant was set aside by the Executing Court with the observations that this land is not owned by Union of India but by National Airport Authority, which is an autonomous body.

Before proceedings further, it is relevant to have a brief look on the facts of the case.

The land of Harbans Singh son of Thaman Singh, resident of Mehna Mohalla, Bathinda was acquired and award was passed by the Land Acquisition Collector. A reference was made under Section 18 of the Land Acquisition Act, 1949 (hereinafter referred as 'the Act') in which the compensation was enhanced. The land owner filed first appeal before this Court, bearing FAO No. 64 of 1984 which was decided on 16.10.1984 and compensation for the acquired land was awarded as follows:

i. For the land situated on either side of the National Highway leading from Bathinda to Barnala upto a depth of 500 meters.	@ *Rs.16-80p per sq.yd.*
ii. For the land upto a depth of 500 meters from the Municipal Limits fencing of the Cantonment or from the boundary of 3rd phase of Urban Estate of Bathinda town.	@ *Rs.16/- per sq.yd.*
iii. For the rest of the acquired land.	@ *Rs.8-50p per sq.yd.*

The order dated 16.10.1984 was further amended to allow decree holder 30% solatium instead of 15% on the amount of enhanced compensation and interest thereon was also allowed as per provisions of the Act.

Harbans Singh filed execution seeking payment of compensation in which notice was issued to Union of India. The objections were filed therein, which were ultimately decided and thereafter warrant of attachment of property of judgment debtor were ordered to be issued. The decree holder supplied a list of properties of judgment debtor, which included land bearing *Khasra* No.2172/1, measuring 42 Bighas 11 Biswas and *Khasra* No.1963 measuring 14 Bighas 19 Biswas.

In the auction proceedings held on 24.01.1990, attached land was sold for ₹11 lakhs. On the next date fixed before the Executing Court, the objections were filed by Joginder Singh and thereafter, on 09.03.1990 objections against the auction were also filed on behalf of National Airport Authority.

Before proceedings further, it will be relevant to have note of the fact that before any order confirming the auction could be passed, the Defence Estate Officer deposited the amount of compensation amounting to ₹7,76,627.77 paise for payment to decree holder.

In the objections, filed on behalf of National Airport Authority, it was alleged that the attached land situated within the revenue limit of Patti Jhutti, Bathinda was earlier owned by Nand Singh and others and was acquired for very-high Omni Range (VOR) for Director General of Civil Aviation vide notification under Section 4 dated 30.04.1968. Notification under Section 6 was also issued on 16.05.1967. As per provisions of Section 13 of National Airport Authority Act (Act No. 64 of 1985), the land acquired for Civil Aviation vests in National Airport Authority, which is an independent and autonomous body. The objectors alleged that the land was attached without any notice. List of properties owned by objector was given with the averment that this property was owned by Union of India. Thereafter, the auction of the land was got effected. On coming to know of this fact, the objections were filed.

In reply, filed by the auction purchaser, preliminary objections were taken that the objections filed by National Airport Authority are barred under Order 21 Rule 90 of Code of Civil Procedure. It was alleged that objector being functionary of Union of India is not an autonomous body. As per the revenue record, the land is owned by Union of India and not by the objectors.

Another set of objections was also filed by Joginder Singh and others to the effect that auction in the execution proceedings is illegal, null and void. The objectors whose ancestral land was acquired were ready to purchase, this land as their sentiments are attached with this land. On the objections filed by National Airport Authority and Joginder Singh and others, the following issues were framed by the Executing Court:-

> *"1. Whether the property belongs to Union of India, if so its effect? Objector.*
>
> *2. Whether the property belongs to National Airport Authority an autonomous body if so its effect? OPO.*
>
> *3. Whether Mukhtiar Singh etc. objectors have got any claim or interest in the property? If so to what effect?OPO.*
>
> *4. Relief."*

While recording findings on issues No.1 and 2, the Executing Court observed that the land put to auction belongs to National Airport Authority as per the provisions of Section 13 of the Act No.64 of 1985. The relevant observations of the Executing Court as contained in Para No. 9 to this effect are reproduced as follows:

> "*As stated earlier property attached and sold bears khasra No.2172/1 (42 Bighas 11 Biswas) and khasra No.1963 (14 Bighas 19 Biswas). According to the objector-National Airport Authority, the property stood*

transferred to the Airport Authority which is an autonomous body whereas according to the auction purchaser the property continues vesting in Union of India as National Airport Authority is not an autonomous body. As per latest jamabandi for the year 1987-88 Ex. DH/4, khasra No.2171/1 has been shown to be ownership of the department VOR and in possession of VOR. VOR stands for very-high Omni Range. Khasra No.1963 as per jamabandi for the year 1987-88 is recorded in the name of Government of India but in possession of PWD Department. It, however, not disputed that previously this property belonged to Civil Aviation Department under the Government of India and as such earlier the Government of India was owner. But this position continued prior to National Airports Act, 1985. Under Section 3 of this Act, the Authority is body corporate having perpetual succession and common seal, with power, subject to the provisions of the Act, to acquire, hold and dispose of property both immovable and moveable, and to contract and shall by the said name sue and be sued. Section 3 also carries manner of constituting the Authority. Section 4 relates to disqualification for office member and section 5 terms of office and conditions of serving members. Section 13 relates to transfer of assets and liabilities of the Central Government to the Authority. For our purpose clauses (a) to (d) of sub-section (1) of Section 13 are reproduced as follows:

1. As from such date as the Central Government may appoint by notification in the official Gazette-

(a) all properties and other assets including equipment and navigational and ground aids relating

to air traffic services and vested in the Central Government for the purposes of any aerodrome, civil enclave and aeronautical communication station and administered by the Director General of Civil Aviation immediately before such date shall vest in the Authority.

(b) all properties and other assets vested in the central Government for the purposes of Civil Aviation Training Centre, Allahabad and the Fire Services Training Schools, Calcutta and administered by the Director General of Civil Aviation immediately before such date shall vest in the Authority.

(c) all residential buildings owned by the Director General of Civil Aviation immediately before such date shall vest in the Authority.

(d) all debts, obligations and liabilities incurred, all contracts entered into, and all Training Centres and the Fire Services Training School shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Authority.

By Gazette Notification dated 27.05.1986 published in Gazette of India (extra) Part 2(ii) No.216 dated May 21, 1986 in exercise of powers conferred by Sub Section (1) of Section 13 of the National Airport Authority Act, 1985, the Central Government has appointed the first date of June, 1986, the date for the purposes of that sub section. As such the reading of Section 13 of the Act with notification of 27th May 1986, property which was earlier owned by Civil Aviation Department of Engineering, stood transferred to National Airport Authority an autonomous and corporate body. The attachment was effected after Act of 1985 and Notification of 1986 referred to above and as such Union of India cannot be said to have interest *in the property which was attached and put to sale. Under Order 21 Rule 90 CPC any person whose interests are effected by sale can apply for setting aside the sale on the ground of irregularity or fraud in publishing or conducting it. As such when any person, who is owner of the property but his property has been put to sale without his knowledge, it would, to my mind, amount to an irregularity. Even otherwise, despite the fact that in the revenue papers name of National Airport Authority does not figure, it can still file objections as it claims title through the Department of Civil Aviation under Union of India. As per the decree-holder's own statement, he did not know who is the owner of the land in question. Thus, it cannot be strictly excluded from the purview of Order 21 Rule 90 CPC. To support this contention reference can conveniently be made to 1991(1) SLJ. 344 Punjab National Bank Vs. Rajesh Kumar Jain and another."*

Learned counsel for the appellant submits that before putting the property to auction, notice was issued to Union of India but no objection was raised that this property vests in Civil Aviation Department, as such, no objections after the auction could be raised. He has referred to provision of Order 21 Rule 90, Sub Clause (3) CPC, which reads as follows:

> "No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up."

The above provisions of Order 21 Rule 90 CPC are not applicable in this case, as no notice of the sale was given to objector before attachment or auction and it is not even the judgment debtor. This fact is not disputed that the land was acquired for the Director General Civil Aviation and as per provisions of Section 13 of the Act No.64 of 1985 it vests in National Airport Authority w.e.f. Ist date of June, 1986. The auction in this case was held on 24.01.1990, on which date, the land vested in objector, who was not bound to make any payment. Even otherwise payment of execution amount was deposited by the Defence Officer and even if the payment is in full or part, this fact is to be decided by the Executing Court on the application of Harbans Singh, who is not before this Court. Learned Executing Court has dealt with the matter in detail. Once the payment of execution amount has been deposited before the auction is confirmed, the auction purchaser is left with no right to seek confirmation of auction. The remedy available to him is to seek refund of auction amount deposited by him as per law. In this case decree holder after receiving compensation amount from judgment debtor appears to be satisfied and auction purchaser is seeking conformation of sale of land in auction, which was conducted to recover amount due to decree holder. When decree holder is left with no claim qua judgment debtor and executing Court has allowed deposit of decretal amount after auction but before confirmation of sale, auction purchaser is left with no right to claim confirmation of sale.

The Executing Court has dealt with the aspect of title of the suit property in detail, which calls for no interference in this appeal. As such, I find no merits in appeal filed by Balbir Singh (EFA No. 3166 of 1993) and the same is dismissed.

Cross-objections (181-CI-2010) have been filed by Hakam Singh and Lachhman Singh, who are legal heirs of Mukhtiar Singh and another objector before the Executing Court claiming right to purchase this property.

As the objections filed by National Airport Authority have been accepted and the appeal filed by auction purchaser Balbir Singh has been dismissed, as such, Hakam Singh and Lachhman Singh are left with no right to file cross-objections in this appeal. Even otherwise, no right of these cross-objectors call for any determination in this appeal on dismissal of appeal filed by Balbir Singh, as such, the same are also dismissed.

Learned counsel for the cross-objectors has confined his submission only for grant of liberty to the objectors to avail other legal remedies available to them within the parameters as prescribed under law. No separate order allowing such liberty is required, as liberty to avail legal remedy is always with either party.

(SURINDER GUPTA)
March 28, 2019 **JUDGE**
Jyoti-II.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No