

111

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

**Civil Revision No.2724 of 2019
Date of Decision: 29.04.2019**

**Managing Committee, DAV Senior Secondary School
.....Petitioner**

Vs

**Secretary to Government of Haryana and others
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Vikas Chatrath, Advocate
for the petitioner.

Mr. Ravinder Malik, Advocate
for respondents No.4 and 7.

RAJ MOHAN SINGH, J.

[1]. The present revision petition is fifth in number preferred by the petitioner. Petitioner has challenged the orders dated 24.07.2018 and 19.03.2019 passed by the District Judge, Kurukshetra.

[2]. Earlier CR No.5880 of 2017, CR No.8727 of 2018 and CR No.9074 of 2017 all titled '*Managing Committee, DAV Senior Secondary School, Shahbad through its Manager vs. Mukesh Kumar and others*', were decided by the High Court vide common order dated 07.03.2018 after noticing

incriminating facts on record.

[3]. It was noticed that the District Judge, Kurukshetra while exercising the power of Education Tribunal, accepted the claim of the respondents and passed the order dated 04.12.2015.

Para 31 of the said order reads as under:-

“31. In view of my findings on issues No. 1 to 6, the appeal succeeds and is hereby allowed with costs and appellants No. 1 to 6 are held to be entitled to the same pay as admissible to their counter parts in privately managed government aided schools in the State of Haryana and the respondents No. 1 to 3 and the respondent No. 4 are liable to share the burden in accordance with the grant in aid scheme applicable to the respondent No. 4 school from time to time and termination orders dated 10.8.2009 of appellants No. 1 to 4 and termination orders dated 20.2.1999 of appellants No. 5 and 6 are declared to be illegal, null and void and the appellants No. 1 to 6 are held to be entitled to reinstatement with 50% of the back wages payable by the respondent No. 4 with continuity of service and consequential benefits. Memo of costs be prepared accordingly. Present appeal file be consigned to the record room after due compliance.”

[4]. It was further noticed that in the execution list of the properties of judgment-debtor No.4 was ordered to be filed and warrants of attachment were also ordered to be issued after quantification of the amount payable to the decree-holders. Warrants of attachment of the properties of the judgment-debtors were issued vide order dated 03.07.2017 and sale of the properties of the judgment-debtor No.4 was also ordered to be conducted after dismissing the objections filed under Order

21 Rule 66 CPC vide order dated 16.11.2017.

[5]. In the aforesaid revision petitions, the grievance of the petitioner was that the petitioner was not heard in respect of calculations. It was contended that re-employment of the decree holders was stayed by the Division Bench of the High Court, however it was not disputed that 50% of the back wages were to be paid by defendant No.4 on the same pay scale which were admissible to the Government employees and regarding which grant-in-aid was given by the Government. The grant-in-aid was claimed to be claimed by the petitioner from the Government. While disposing of the aforesaid revision petitions, it was ordered that District Education Officer, Kurukshetra shall make calculations regarding the amount payable to the decree holders in terms of decree passed by the District Judge, Kurukshetra and submit the same to the executing Court within 15 days and thereafter judgment-debtors will be given time of four weeks to pay the said amount to the decree holders. If the said amount was not paid, no extension of time would be granted and the properties attached was to put on sale. In the meanwhile, sale of the properties was stayed.

[6]. Thereafter CR No.3691 of 2018 titled '*Managing Committee, DAV Senior Secondary School, Shahbad vs. Mukesh Kumar and others*' was also decided by the High Court

and it was noticed that the District Education Officer, Kurukshetra had filed the calculations within time and the said calculations were taken on record by the District Judge, Kurukshetra, however the decree holders claimed the amount to be deficient. They were given liberty to file their own calculations. It was found that the judgment-debtor did not make the payment within four weeks as earlier ordered by the Court, therefore, District Judge vide order dated 08.05.2018 ordered the sale of the attached property and fixed the schedule for proclamation and auction. The judgment debtor filed an application for recalling of order dated 08.05.2018 and the said application was dismissed on 14.05.2018. In view of earlier order dated 07.03.2018 passed by the High Court, it was found that District Education Officer, Kurukshetra had already made the calculations and the amount in terms of the said calculations is required to be paid. Petitioner-Institution was held liable to pay the amount of Rs.1,94,00,000/- to the decree holders. The judgment debtors were given sufficient time to make the payment. Owing to the conduct of the petitioner, it was found that the petitioner cannot blame others for their own default. Finding no merit in the impugned orders, the aforesaid revision petition was dismissed vide order dated 30.05.2018.

[7]. Learned counsel for the petitioner by relying upon **Smt.**

Salma Aga and others vs. Sewak Sharan Gupta and others, 2001 AIHC 57; Sharma Rice Mills vs. Zimidara Friends Traders, 1992 CivCC 295; Aman Industries and ors. vs. Punjab Financial Corporation, 1991(2) PLR 615; Balakrishnan vs. Malaiyandi Konar, 2006(2) R.C.R. (Civil) 168; Aklui Mia Laskar vs. Branch Manager, SBI, 2004(2) CivilLJ 856 and M/s Shalimar Cinema vs. Bhasin Film Corporation, 1987 AIR (SC) 2081 submitted that the executing Court ought to have sold the proportionate land to meet out the entitlement of the decree holders after assessing the market value of such land. In view of non-compliance of the requirement under Order 21 Rule 66 CPC, the impugned order is illegal.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. The orders dated 07.03.2018 and 30.05.2018 passed by the High Court in the aforesaid four revision petitions preferred by the petitioner have already attained finality. Consequently, the property was put to auction and 3rd party interest has been created. The auction has already been confirmed vide order dated 28.03.2019 passed by the District Judge, Kurukshetra. The order reads as under:-

“Present: Shri M.S Malik, counsel for the decree-holders.

Shri Chander Mohan, Government Pleader for the respondents-J.Ds. No.1 to 3.

Shri B.R. Bajaj, counsel for the respondent-J.D. No.4.

Shri Jarnail Singh Sunarion, counsel for auction purchaser Sandeep Garg.”

The present execution petition is fixed for further proceedings. It is pertinent to mention here that on the last date of hearing, an application filed by judgment debtor No.4 for setting aside the sale on the ground of irregularity or fraud under order 21 rule 90 CPC was dismissed. Against that order, there is no stay till date.

Today, an application has been filed under order 21 rule 92 CPC for confirmation of sale. Since there is no stay and all the objections have already been dismissed, there is no hitch to confirm the sale conducted on 14.09.2018 and the same is hereby confirmed. Necessary certificate of sale of property be issued in favour of auctioner-purchaser.

Not to come up on 19.04.2019 for further proceedings.

*Sd/-
(Sant Parkash)
District Judge, Kurukshetra
(UID No.HR0019)”*

Date:28.03.2019

[10]. The aforesaid order has not been assailed in the present revision petition, nor the subsequent vendee has been impleaded as party respondent in the present revision petition. The order passed under Order 21 Rule 66 CPC was unsuccessfully assailed by the petitioner in earlier revision petitions. The orders passed in the said revision petitions have already attained finality. Thereafter, the execution has already reached the stage of Order 21 Rule 92 CPC after crossing intermediate stages of Order 21 Rules 89, 90 and 91 CPC. At no point of time, the petitioner filed any application

under Order 21 Rule 89 CPC for complying with the legal requirement.

[11]. The objections were filed under Order 21 Rule 90 CPC on 06.10.2018. The said objections were contested by the decree holders. The Court found that except the land measuring 5 Kanals 18 Marlas, the other properties of the petitioner-School were under mortgage. The objections were dismissed vide order dated 19.03.2019 passed by the District Judge, Kurukshetra.

[12]. Apparently, the objections under Order 21 Rule 66 CPC have already been dismissed against which the revision petitions have also been dismissed by the High Court and those orders have already attained finality. Thereafter, vide order dated 08.05.2018 sale of the attached property was ordered and schedule was fixed for proclamation and auction. Even the petitioner remained unsuccessful in application for recalling of order dated 08.05.2018 as the same was dismissed on 14.05.2018. The aforesaid order has also attained finality. Thereafter the land was subjected to auction. Higher bidder has already purchased the land and even sale has been confirmed vide order dated 28.03.2019 passed by the District Judge, Kuruskhetra. Even the said order has not been challenged, nor the auction purchaser has been impleaded in the present revision petition.

[13]. It appears from the record that the petitioner is in habit of challenging the proceedings by way of filing repeated revision petitions without honouring the entitlement of the decree holders. Out of total land measuring 60 Kanals 6 Marlas owned by the judgment-debtor/petitioner, only 5 Kanals 18 Marlas of the land has been sold to meet out the claim of the decree holders. In view of peculiar facts and circumstances of the case, if some amount is left surplus after satisfying the claim of the decree holders, the same can be paid to the judgment debtors in accordance with law.

[14]. There cannot be any dispute with the propositions as cited above, but the case laws as cited by learned counsel for the petitioner are not applicable to the peculiar facts and circumstances of the present case, wherein conduct of the petitioner is not only illegal, but is also found to be *mala fide*. The petitioner has concealed material facts and thus has not come to the Court with clean hands.

[15]. Owing to the conduct of the petitioner as discussed above, I do not find any error in the impugned orders passed by the District Judge, Kurukshetra. This revision petition is accordingly dismissed.

April 29, 2019

Atik

Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No