IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

213

CIVIL WRIT PETITION NO.21286 OF 2015
DATE OF DECISION: APRIL 03, 2019

Bhim Sain

.....Petitioner

VERSUS

State of Punjab and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Saurabh Arora, Advocate,
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab,
for the State-respondent Nos.1 to 5.

Mr. Ashwani Prashar, Advocate,
for respondent No.6.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this petition is to the auction proceedings carried out on 12.12.2012 (Annexure P-7) by the Sale Officer, Assistant Registrar Cooperative Societies, Samana, in pursuance of the auction notice dated 05.11.2012 (Annexure P-6), order dated 29.07.2013 (Annexure P-8) vide which the revision petition preferred by the petitioner before the Joint Registrar, Patiala, stands dismissed, followed by the challenge before the Special Secretary, Cooperation, Punjab, by filing revision petition, which was dismissed vide order dated 28.04.2015 (Annexure P-11).

2. It is the contention of learned counsel for the petitioner that the awards, which have been passed against the petitioner are all exparte where,

without any evidence, the said awards have come into existence on the arbitration proceedings, which have been initiated by respondent No.6-The Kakrala Cooperative Agricultural Service Society Ltd., Kakrala, District Patiala. His further contention is that the auction notice indicated that the recoverable amount was ₹32,00,325-45P, which included ₹27,47,427-45P as principal amount and ₹4,06,822/- as interest and ₹40075/- as miscellaneous expenses whereas the auction had been carried out for an amount of ₹1,55,76,659/-, resulting in recovery of an amount, which is much beyond the amount specified in the auction notice and no explanation whatsoever has been given in this regard by the respondents. That apart, he contends that the procedure as prescribed under Section 72 (11) of the Punjab Cooperative Societies Rules, 1963 (hereinafter referred to as "the 1963 Rules" for holding the auction has not been followed, especially with regard to non-compliance of the provisions of Rule 72(11)(g) of the 1963 Rules, which mandates deposit of 15% of the price of immovable property at the time of purchase of the property. His submission is that the Society has itself purchased the land of the petitioner, which measured 47 kanals 4 marlas, which could not have been done by the Society and in any case since it was a purchaser, it was required to deposit 15% of the price of immovable property, which has not been deposited with Sales Officer and, therefore, the sale is not valid. Contention has also been raised that the execution proceedings, in pursuance whereof the sale of the property of the petitioner has been carried out, are beyond the period of limitation as the awards, which have been passed, were of the year 1999 or prior thereto and period of more than 12 years had expired, it would be hit by the provisions of Article 136 of the Limitation Act. Counsel submits that the value of the land of the petitioner was approximately ₹50 lacs per acre and the total value of the land of the petitioner measuring 47 kanals 4 marlas would come to ₹3 crores and, thus, the amount for which the land has been auctioned is much less than its value and, therefore, the same cannot sustain. Prayer has, thus, been made for allowing the writ petition by setting-aside the impugned auction proceedings as well as the subsequent proceedings/orders.

3. On the other hand, learned counsel for respondent No.6 has asserted that there are 567 awards, which have been passed against the petitioner. Irrespective of the fact that the said awards have been passed exparte but the petitioner having not challenged any of these awards, the same have attained finality and are beyond challenge now.

4. As regards the contention of learned counsel for the petitioner that the value of the land, which has been auctioned, is ₹3 crores, he submits that as per the Collector rate prevalent at the time of auction, it was valued at ₹12,50,000/- per acre and, therefore, the amount for which it has been auctioned is fully justified and as per the prevalent rates. With regard to the plea of limitation as raised by the petitioner, he contends that the awards, which were passed from the year 1999, demand was issued on 01.04.2004 and the execution proceedings for recovery of the amount initiated, when the petitioner failed to deposit the awarded amount in the year 2005. Notices for sale were issued in the year 2006 onwards, which process of sale has been stalled by the petitioner on one pretext or the other. He, thus, contends that the period of limitation would not apply as the proceedings were initiated well within time. As regards the contention that the proceedings of sale are not in consonance with Section 72(11)(g) of the 1963 Rules, his submission is that the proviso to this rule would govern the case of

respondent No.6, according to which the decree holder, if is the purchaser, is entitled to set off the purchase money under Rule 72(11)(k) and the Sale Officer shall dispense with the requirement of this rule. He, thus, contends that the said ground also cannot sustain. As regards the plea of counsel for the petitioner that the amount which has been recovered from the petitioner is in excess than what was mentioned in the auction notice, he states that the total awarded amount alongwith interest in various auction notices came to ₹1,87,76,984/-, which has been set off by the Sales Officer in satisfaction of various awards passed against the petitioner. He, therefore, prays for dismissal of the writ petition.

5. I have considered the submissions made by counsel for the parties and with their assistance have gone through the pleadings, impugned orders and records of the case.

6. The facts, which are not in dispute, are that the petitioner was appointed as Salesman in respondent No.6-Society on 01.10.1978. He worked as such till 19.06.1981 whereafter he was promoted to the post of Secretary of the said Society, on which he worked from 1981 till 1998. While working as a Secretary of the Society, amount is alleged to have been embezzled by him by adopting a novel method that the interest, which was charged from the members by the Society was received from them but the amount of interest was deposited less with the Society. On account of this, 354 arbitration references were initiated against the petitioner, which were decided against him on this ground. Apart from these, 201 arbitration references were decided against the petitioner on account of committing embezzlement in the funds of the society and 12 arbitration references went against him on account of audit objection, according to which cash in hand

was embezzled by the petitioner. A total of 567 awards were passed against the petitioner, which have attained finality as no appeal has been preferred by the petitioner against the said awards. It is also admitted that all these awards, which have been passed, were between 1998 and 2000. It is also not disputed that the proceedings for recovery of the said amount by filing execution were initiated, starting from the year 2004. The process of auction of the property of the petitioner by sale was initiated in the year 2006, which could not conclude on one pretext or the other and, therefore, it cannot be said that the proceedings, which have been initiated against the petitioner were barred by limitation, would be hit by the provisions of Article 136 of the Limitation Act.

7. As regards the contention of learned counsel for the petitioner that the value of the land was much more than for which it was auctioned as an acre of land, according to the petitioner, was valued at Rs.50 lacs and, therefore, should have fetched ₹3 crores, suffice it to say that the report of the Tehsildar, Samana, dated 10.09.2012 indicates the collector rates to be ₹12,50,000/- per acre, then according to which the value of the land would be the same for which the said land has been auctioned vide sale dated 12.12.2012 (Annexure P-7) and, therefore, it cannot be faulted with.

8. As regards the contention of learned counsel for the petitioner that the auction proceedings are not in consonance with Rule 72(11)g of the 1963 Rules, the said plea also cannot be accepted in the light of the proviso to Rule 72(11)(g). Rules 72(11)(g) and (k) read as follows:-

> "***72. Procedure in execution of award etc.***
>
> *(1) to (11)(f) xx xx xx xx xx xx*
>
> *Xx xx xx xx*

(g) A sum of money equal to 15 per cent of the price of immovable property shall be deposited by the purchaser in the hands of the Sale Officer at the time of the purchase, and in default of such deposit, the property shall forthwith be resold: Provided that where the decree-holder is the purchaser and is entitled to set-off the purchase money under clause (k), the Sale Officer shall dispense with the requirements of this rule.

(h) to (j) xx xx xx xx xx xx xx

Xx xx xx xx xx xx xx

(k) Where a decree-holder purchases the property, the purchase money and the amount due on the decree shall be set off against one another and the Sale Officer shall enter satisfaction, of the decree in whole or in part accordingly."

A perusal of the above sub rules would show that the requirement of deposit of 15% of the price of the immovable property by the purchaser with the sales Officer at the time of purchase would come into force not in the case of a decree holder who purchases the said immovable property, as is apparent from the proviso to sub rule (g). This is with reference to sub Rule (k), which provides that a decree holder when purchases a property, would be entitled to setting off the purchase amount with the decretal amount for satisfaction of the decree.

9. As regards the contention of learned counsel for the petitioner that the amount which was mentioned in the auction notice was ₹32,00,325-45P whereas the amount which has been recovered was ₹1,87,76,984/-, which is far in excess of the amount due towards the petitioner. The said plea cannot be accepted in the light of the details with regard to the amount

due towards the petitioner as placed on record by respondent No.6 in pursuance to the order dated 22.07.2016 wherein this Court had directed the President of the Society-respondent No.6 to file an affidavit giving the relevant details as to how and on what basis the respondent Society had arrived at a figure of ₹1,87,76,984/-, which was the amount for which the auction had been carried out, which was purchased by the Society. The calculations and the details of various awards, which have been passed, have been given in Annexure R6/1 alongwith affidavit of the President of the Society, which details have not been disputed by the petitioner by filing any response thereto. The said plea of counsel for the petitioner, therefore, cannot be accepted as it is apparent that the liability of the said amount of the Society-respondent No.6 was against the petitioner.

10. As regards the contention of counsel for the petitioner that the interest which has been charged against the petitioner is excessive, suffice it to say that the award which has been passed by the arbitrator having attained finality in the light of the fact that the same has not been challenged ever by the petitioner, the said plea cannot be accepted and no relaxation in the interest amount can be granted.

11. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

April 03, 2019 **(AUGUSTINE GEORGE MASIH)**
khurmi **JUDGE**

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