

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-15563-2018

Date of Decision: 27.3.2019

Gurdish Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. Anupam Bhardwaj, Advocate for the petitioners.

Mr. Pankaj Gupta, Additional Advocate General, Punjab.

Mr. Ashwani Prashar, Advocate for respondents No.2 and 4.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of certiorari for quashing the sale notice, Annexure P-2.

2. Briefly stated, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. In the year 1996, Shri Jagjit Singh took loan from respondent No.4-The Rama Primary Cooperative Agricultural Development Bank Ltd. (in short "the Bank") against mortgaged property. Petitioner No.1 got married to Smt. Jaswinder Kaur

27.12.2004 as is clear from the death certificate dated 12.6.2018 (Annexure P-1). Smt. Jaswinder Kaur wife of petitioner No.1 had expired on 6.7.2007. Petitioner No.1 being son-in-law whereas petitioner No.2 being wife are the legal heir of deceased Shri Jagjit Singh and are in possession of 2/3rd and 1/3rd share respectively of the property of the deceased. In the year 1997, Government of Punjab acquired the land measuring 1995.82 acres including the land of the deceased situated in village Phulo Khari, Kanakwal, Ramsara and Rama for setting up of Refinery and Liquid Fuel based Power Plant. The compensation was paid to Late Shri Jagjit Singh. The deceased fell ill in the year 1998 and had not disclosed to the petitioners regarding the acquisition of land or taking of loan. A sale notice, Annexure P-2, was pasted at the residence of petitioner No.2 by the Bank showing outstanding amount of ₹ 19,33,186/- (₹ 4,31,540/- as principal amount, ₹ 15,01,398/- as interest and ₹ 250/- as cost) as on 30.9.2017 against the deceased and put the property as mentioned in the notice to auction on 29.6.2018 at 11.00 AM. According to the petitioners, no notice under Rule 17(2) of the Punjab Cooperative Agricultural Development Bank Rules, 1959 (for brevity “the 1959 Rules”) in Form D had been served upon them. Hence, the present writ petition.

3. Upon notice, respondents No.2 and 4 filed written statement by pleading that Late Shri Jagjit Singh obtained a loan of ₹ 4.30 lakhs on 6.11.1996 for grapes by executing the documents and mortgaged property in favour of respondent No.4 and as on 31.3.2018, a total amount of ₹ 20,10,615/- was outstanding. The mortgaged property was acquired and compensation was received by the deceased. The petitioners never informed the Bank regarding the death of Shri Jagjit Singh and the recovery

notices dated 17.10.2011 and 11.4.2012 were issued in the name of the deceased. The sale of property could not be materialized due to influence of petitioner No.1. The Bank raised the dispute before the Arbitrator who passed the award dated 10.9.2013 (Annexure R-2/1) against petitioner No.2. The other averments made in the writ petition were denied and a prayer for dismissal of the same was made.

4. It was submitted by the learned counsel for the petitioners that in view of decision of this Court in **The Rajpura Janta Cooperative House Building Society Ltd. v. State of Punjab and others 2009(3) RCR (Civil) 278**, the recovery of the loan amount could be made from the estate of the deceased within a period of two years from the date of the death of the borrower.

5. On the other hand, learned counsel for respondents No.2 and 4 submitted that the sale notice, Annexure P-2, was rightly issued by the Bank as the petitioners had failed to repay the loan amount. Further, relying upon **Lalq Singh v. State of Punjab and others 1997(1) PLJ 1**, it was urged that award dated 10.9.2013 had been passed against the principal borrower which was executable.

6. We have heard learned counsel for the parties.

7. Similar issue had arisen before this Court in **The Rajpura Janta Cooperative House Building Society Ltd's case (supra)**, wherein keeping Section 22 of the Punjab Cooperative Societies Act, 1961 (in short “the Act”) in focus, it was held that where the death of the borrower had taken place on 17.6.1994, the reference to the Arbitrator sought in the year 1999 and the recovery in pursuance to the award passed thereto on 13.3.2000, was time barred.

8. Adverting to the judgment of the learned counsel for respondents No.2 to 4 in **Lalq Singh's case (supra)**, it may be noticed that the said case was not dealing with Section 22 of the Act and, thus, is distinguishable.

9. In view of the above, the debt which could not be enforced, therefore, even the arbitration award passed in respect of the same after nine years would be *non-est*. Accordingly, the present petition is allowed and the sale notice, Annexure P-2, is quashed.

(AJAY KUMAR MITTAL)
JUDGE

March 27, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes