

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.18890 of 2020(O&M)
Date of Order:18.11.2020

Deepinder Pal Singh and others

..Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jagmohan Singh Bhatti, Advocate,
for the petitioners.

Mr. Suveer Sheokan, Addl.A.G.,Punjab

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conference on account of restricted functioning of the Courts.

Through this petition, filed under Article 226/227 of the Constitution of India, the petitioners have prayed for the following substantive reliefs:-

- “b. *For the issuance of the writ in the nature fo certiorari of the auction (copy of Government order never supplied except the communication dated 22.10.2003 Annexure P-14 being illegal in the light of the Punjab Government order dated 02.07.2001 Annexure P-12) and to quash the execution proceedings pending before the court of SDM Sunam (Annexure P-26) being illegal, arbitrary and colourable exercise of the powers with further the subsequent proceedings of the property in question sicne has been demarcated in favour of the auction purchaser on 09.01.2005 as such the order of cancellation shall automatically be deemed to have been taken back without any communication to the auction purchaser;*
- c. *A writ in the nature of Mandamus be issued directing the*

respondent to accept the third and fourth installment which since has not been accepted in spite of the offer of the third and fourth installment by way of issue of cheque in favour of the respondent with a further direction not to proceed with any proceedings and any subsequent proceedings arising and coming out of the proceedings by way of consequential relief of questioning the same may kindly be issued in favour of the petitioner's being the legal heirs of the auction purchaser (Late Sucha Singh, father of the petitioners);

- d. To issue a writ in the nature of Mandamus directing the respondents to calculate the amount of compensation and defamation in favour of the auction purchaser for his miseries suffered during his lifetime spread over a period of 12 years and one month with interest;*
- e. A writ in the nature of prohibition may kindly be issued in favour of the petitioners not to disturb their peaceful possession and to quiet the proceedings pending in the court of SDM Sunam arising out of the proceedings are in the court of law anywhere for the property in question enjoyed by the petitioners peacefully which is in that possession;*
- f. To issue a writ in the nature of mandamus directing the respondents to award the compensation to the petitioners as prayed in their representation attached to the writ petition with a further direction to accept the remaining amount of installments/third and fourth installment as prayed in letters/communications dated on various dates i.e. 20.08.2001, 20.11.2001, 26.03.2002, 08.05.2002, 06.11.2020, 03.02.2003, 07.02.2003, 24.03.2003, 25.04.2003, 04.08.2003, 17.11.2003, 10.03.2005, 11.03.2005, 18.01.2006, 15.12.2008 are the few references sent to the respondents which remained unheeded and ended in fiasco even as on date.”*

It shall be necessary to notice certain facts:-

The Department of Irrigation, Punjab decided to sell a piece of land which was surplus with it. An advertisement in this regard was issued which was followed by a corrigendum, Annexure P-1. It was notified that the land measuring 29 kanals 18 marlas shall be sold through public auction on free hold basis. It was also notified that the auction shall be held on 26.06.1998 at Sangatpura. In the auction held, late Sh. Sucha Singh (the

predecessor in interest of the writ petitioners) turned out to be successful bidder (highest bidder) at Rs.13,58,000/-.

At this stage, it would be appropriate to notice relevant terms of the auction advertised in the auction notice, Annexure P-1, which are extracted as under:-

- “3. On the finalization of auction the successful bidder shall deposit 10% of the auction amount.
4. Within 60 days from the date of auction, 25% amount of the total amount of auction shall be deposited.
5. The remaining amount of the highest bid either deposited within 60 days in lump sum or shall deposit in four yearly installments along with 15 percent interest.
6. The transfer of ownership rights shall only be given after full and final payment.”

On 27.07.1998, Late Sh. Sucha Singh Giani deposited Rs.2,00,000/- and thereafter another amount of Rs.1,40,000/-was deposited on 30.06.1998. On 18.10.1998, the auction sale was approved by the competent authority. The successful bidder further deposited an amount of Rs.3,40,000/- on 28.12.1998. Thus, the total amount deposited comes to Rs.6,80,000/-. As per Clause-5, the successful bidder was required to deposit the balance amount of the 75% of the auction amount in four yearly installments along with interest @ 15% per annum. The successful bidder was called upon to deposit the remaining amount vide communications dated 09.12.2001 and 22.10.2003, however, he did not choose to deposit the amount. He, however, took possession of the land and caused damage to the Canal Rest House which had been constructed. Certain articles were also stolen. Since, he never came forward to deposit the remaining amount, therefore, on 06.11.2003 and 07.11.2003, the bid offered by the petitioners was cancelled vide communications, Annexure P-15 and P-16. He still did not come forward to deposit the amount. He wrote a letter dated 07.03.2005

offering to deposit 3rd installment with interest after demarcation of the land took place on 09.01.2005 in which certain portion of the land was found in unauthorized possession of someone. He stated that he is open to necessary adjustments in the 4th installment with reference to the deficiency found in the land on measurement and certain items. However, he did not deposit the amount.

The State of Punjab filed a petition on 23.03.2006 under Section 4, 5 and 7 of the Punjab Public Premises Land (Eviction and Rent Recovery) Act, 1973, seeking his eviction from the land measuring 29 kanals 18 marlas.. He contested the petition resulting in its dismissal on 19.08.2008. An appeal filed by the State was also dismissed by the Deputy Commissioner only on the ground of delay vide order dated 01.10.2009. Civil Writ Petition No.4507 of 2010 assailing the order passed by the Deputy Commissioner, Sangrur, exercising the powers of Commissioner, came to be allowed on 20.01.2011. The case was remanded to the Deputy Commissioner to decide the appeal on merits.

The Deputy Commissioner further remanded the petition to the court of Sub Divisional Magistrate exercising the powers of Collector vide order dated 14.09.2012. The Collector after grant of opportunities to the parties to lead evidence, ordered eviction of legal heirs of late Sh. Sucha Singh Giani (the writ petitioners herein) vide order dated 20.09.2013 against which an appeal filed by the writ petitioners was dismissed on 27.10.2014 only on the ground that the appeal is barred by time. Once again extraordinary jurisdiction of this court was invoked by filing Civil Writ Petition No.680 of 2015, at this time by the writ petitioners, which was allowed on 16.11.2016 and the case was remitted back to the Deputy Commissioner to

decide the appeal on merits.

At this stage, it would be significant to note that after the order passed by the High Court on 16.11.2016, the petitioners made all efforts to delay the disposal of the appeal. Learned Deputy Commissioner noticed at page 335 of the paper book that the counsel representing the petitioner failed to put to appearance on 04.10.2018 as well as on 09.10.2018, forcing the court to read the grounds of appeal and decide. The appeal was ordered to be dismissed by a detailed order on 09.10.2018. The petitioners filed Civil Writ Petition No.11997 of 2019, challenging the orders passed by the Collector and the Commissioner, which was also dismissed with the following order, on 02.03.2020:-

“The predecessor-in-interest of the petitioners purchased certain land in an auction. However, he failed to pay the consideration and, thus, his allotment was cancelled. Subsequently, he has been ordered to be evicted in proceedings initiated under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as '1973 Act'), vide order dated 20.09.2013. Appeal has also been dismissed.

Learned counsel for the petitioner submits that the High Court had remanded the case to the Appellate Authority vide order dated 16.11.2016 for a decision of the appeal on merits. However, the Appellate Authority did not give adequate opportunity to the petitioners. The counsel engaged by them expired and the petitioners were not given notice to enable them to replace the counsel.

From the record, it is apparent that the order of cancellation of allotment was never challenged. Thus, the petitioners and their predecessor became unauthorized occupants of public land and they were bound to be evicted in proceedings initiated under the 1973 Act. Under the circumstances, no useful purpose would be served by remanding the case to the appellate authority once again.

Thus, the writ petition has no merit and the same is accordingly dismissed.”

The petitioners rather than filing the Letters Patent Appeal have chosen to file a fresh writ petition.

Learned counsel for the petitioners has submitted that the court while dismissing the petition on 02.03.2020 had granted liberty to the petitioners to challenge the order of cancellation of the bid and, therefore, the writ is maintainable. The copy of the order cancelling the bid was never supplied to the petitioners and therefore, the petitioners are entitled to maintain the writ petition.

This court has analyzed the arguments of learned counsel for the petitioners and perused the paper book.

In the considered view of this court, the present writ petition is wholly misconceived and is liable to be dismissed with costs for the following reasons:-

- (1) It is not in dispute that the petitioners filed Civil Writ Petition No.11997 of 2019 which was dismissed by the Court on 02.03.2020. A reading of the lengthy writ petition, it is apparent that the pleadings in para after para are to the effect that the court while passing order on 02.03.2020 has not considered various aspects. In the considered view of this Court, the judgment/order passed in a writ petition cannot be challenged by filing a second/subsequent writ petition by the parties to the previous writ petition.
- (2) Still further, the writ petition suffers from an unexplained delay and latches. The petitioners after the delay of 17 years have chosen to assail the orders passed in the year 2003. It is not the pleaded case of the petitioners that they were not in the knowledge of orders

dated 06.11.2003 and 07.11.2003, Annexure P-15 and P-16, respectively.

- (3) The petitioners are in unauthorised possession of the public land since 2003. The petitioners or their predecessors neither deposited the amount within the prescribed time nor paid any amount to the government for use and occupation of the land.
- (4) Further the present petition is abuse of the process of Court. The petitioners have allowed the order of eviction passed under the provisions of Punjab Public Premises Land (Eviction and Rent Recovery) Act, 1973 to become final and have filed the present writ petition without disclosing the reason why the petitioners did not assail the orders passed in the year 2003 cancelling the bid of the petitioners within reasonable period of time. Reasons for not including the relief sought in the present petition in the previously filed writ petition have also not been explained. Limitation for filing a civil suit assailing the order of cancellation of the bid has also elapsed long back..
- (5) Still further the petitioners were never granted liberty as is being sought to be projected by the learned counsel for the petitioners. The court only noticed that the order of cancellation of allotment was never challenged. That does not itself mean that the petitioners have been granted liberty.

- (6) Still further, the petitioners have been defending the proceedings under the Punjab Public Premises Land (Eviction and Rent Recovery) Act, 1973 continuously since 2006 onwards. They were represented by various counsels. Therefore, the petitioners cannot claim that they did no know of the procedure.
- (7) Further, in fact, it is not a case of cancellation of allotment. In the present case, the predecessors of the petitioners had purchased the property in a public auction subject to certain terms as notified in the corrigendum Annexure P-1. Clause-6 thereof clearly provides that the transfer of title would take place only after the entire auction amount is deposited. In the present case, admittedly, the entire auction amount has not been deposited. Thus, no right in the property came to be created in favour of the petitioners or their predecessors. The respondents have only acted in terms of the terms of public auction.

Keeping in view the aforesaid facts, this court is of the considered view that the petitioners are guilty of abusing the process of Court and, therefore, they are liable to be saddled with exemplary cost of Rs.1,00,000/- which shall be deposited within a period of 2 months with the 'Poor Patients Welfare Fund' of the Post-graduate Institute of Medical Education and Research (PGIMER), Chandigarh, personally or through its website "www.pgimer.edu.in" and produce the receipt duly verified by his counsel before the Registrar General of this Court.

Consequentially, the writ petition is dismissed in limine.

18th November, 2020

(ANIL KSHETARPAL)

nt

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No