

203.

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

CWP-15941-2018

Date of Decision: 10.01.2023

BHUPINDER NAGPAL

.... Petitioner

Versus

STATE OF PUNJAB AND ORS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Dr. Deepak Jindal, Advocate, for the petitioner.

Mr. Deepanjay Sharma, DAG, Punjab.

Mr. Arvind Rajotia, Advocate,
for respondent No.5.

Mr. B.R. Rana, Advocate, for Mr. J.S. Toor, Advocate,
for respondents No.6 and 7.

JAISHREE THAKUR.J (Oral)

1. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to register the sale deed/sale certificate in favour of the petitioner regarding agricultural land measuring 40 kanals, 20 kanals, 400/1959 share of 97 kanals-19 marlas etc. situated at Village Kattan, Hadbast No.495, Tehsil Nurpur Bedi, District Ropar, which land was purchased by the petitioner in a public auction held on 12.01.2012.

2. In brief, the facts as culled out are that the agricultural land with construction raised on 40 kanals was put to public auction by the Debt Recovery Tribunal, Chandigarh, in execution proceedings and a recovery

certificate issued by the Presiding Officer, DRT, Chandigarh in a case titled *Canara Bank Versus M/s Ashok Traders and others*. The petitioner was a successful bidder in the auction purchase and a sale certificate was duly issued by the Recovery Officer. The petitioner paid a total consideration of Rs.25,25,000/- apart from a poundage fee @ 2% of Rs.1,000/- and 1% on sale proceeds. Being successful in the auction purchase and armed with a sale certificate, the petitioner approached respondent No.4, the Sub Registrar, Ropar for registration of the sale certificate and for possession of the land after due demarcation. However, his prayer in this regard was declined on the ground that there was a prohibition on sale of this land under the orders of High Court passed in CWP No.9885 of 2002 and CWP No.794 of 1999. The petitioner was also made available a copy of jamabandi for the year 2011-12 relating to the said property wherein it was mentioned that as per orders of Punjab and Haryana High Court in CWP No.9885 of 2002 and CWP No.794 of 1999, owners have been prohibited to sell or mortgage the land. Respondent No.5 Bank when contacted refuted the aforesaid facts. Petitioner filed a complaint with local police regarding cheating having been committed upon him, but no action was taken thereon by either of the respondents. Hence, this writ petition.

3. Notice of motion was issued and replies have been filed by the respondents.

4. I have heard learned for the parties and with their assistance, have gone through the pleadings of the case.

5. A perusal of the status report filed by way of affidavit of Ritu Kapoor, Naib Tehsildar, Nurpur Bedi, District Rupnagar, District Ropar, would reflect that as per the revenue record, the land is Gair Mumkin Forest and no building is constructed over khasra Nos.29 and 30 which was sold to the petitioner herein. Further, the report submits that the demarcation of the said joint land cannot take place without partition.

6. The public auction as conducted by the officers of the DRT could not be made effective by putting the petitioner in possession of the land, since the revenue record reflected the purchased land to be Gair Mumkin Forest which cannot be partitioned. Considering the fact that the petitioner herein has purchased land which was reflected in the public notice to be agricultural land with construction thereon whereas in fact the land in question is Gair Mumkin Forest as per revenue record. It appears that the petitioner herein has been duped of his hard earned money. This Court fails to understand as to how the Bank officials took such land as mortgage as security while advancing the loan, which in fact was never agricultural land and was in fact Gair Mumkin Forest land. The role of the bank officers is questionable and definitely needs to be looked into. Whether or not the land was of the same measurement as portrayed, is another question that needs to be looked into.

7. However, the question still arises as to whether the petitioner, who is a bona fide purchaser of the land in a public auction conducted by the officers of the DRT, can be made to suffer for no fault of his? Admittedly, the petitioner is a bonafide purchaser, believing that a public auction

conducted by official of the Debt Recovery Tribunal and the bank officials would be a genuine sale. He has been wronged by authorities who are none other than official of the bank since he has not been able to put the land to use. The value of the rupee has depreciated over the last period of 11 years and with the same amount he would be unable to purchase a similar piece of land. He has been deprived of the use of land as well as not refunded the amount which has been illegally retained by the bank. At the very outset when the bank officials were made aware that the land put to auction is not agricultural land, the bank should have, on its own accord, refunded the amount and got the sale certificate cancelled. That would have been in the fitness of things and just, instead of driving the petitioner from pillar to post. He is to be recompensed for the wrong committed upon him by the Bank. Apart from the refund of the entire amount deposited by him i.e Rs.25,25,000/- along with all other incidental charges and expenses that have been incurred by the petitioner with interest @ 15% per annum (which is being disputed by the counsel for the respondent Bank) he is also required to be compensated for the mental agony and anguish apart from the botheration of approaching various officers and courts for getting the sale deed registered and to be put into possession of land, for which he was entitled to.

8. Consequently, the compensation payable by the Bank for the sheer harassment of a citizen, who has been duped on account of negligence of the Bank officers themselves, is assessed at Rs.5 lakhs. This amount of compensation will be released to the petitioner within a period of one month from the date of receipt of certified copy of this order.

9. While disposing of the writ petition with the aforesaid direction, it would be expected of the Bank to ensure that its officials are careful in accepting the property papers as mortgage, since there is always public money which is involved in such matters.

10. Present petition is disposed of accordingly.

(JAISHREE THAKUR)
JUDGE

10.01.2023

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No