

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

891

**CWP-3140-2015
Date of decision: 05.05.2023**

KHUSHPAL SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Kanwaljeet Singh Derabassi, Advocate
for the petitioner.

Ms. Niharika Sharma, AAG. Punjab.

VINOD S. BHARDWAJ, J. (Oral)

The instant petition has been filed under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of Certiorari and setting aside of the order dated 15.10.2014 (Annexure P-11) whereby the auction of land in favour of the petitioner had been cancelled after a period of nearly 16 years.

2. Learned Counsel appearing on behalf of the petitioner contends that the respondent No. 3 i.e. the Department of U.B.D.C. Amritsar Circle, Amritsar had issued public notice in the leading newspapers for inviting bidders for the excess lands with the Irrigation Department. The reserved prices as well as other terms & conditions of the land were duly mentioned in the auction notice. The auction was to be held on 25.06.1998 and as per

CWP-3140-2015

-2-

the said notice, land measuring 1.02 acre at village Gaggarbhana, Tehsil Baba Bakala, District Amritsar was also put up for auction. The petitioner participated in the aforesaid auction proceedings held on 25.06.1998 and was the highest bidder for the above parcel of land at a price of Rs. 2.56,000/- per acre. As per terms & conditions of auction, 10% of the bid amount was required to be deposited at the spot while the remaining amount could be opted to be deposited by the auction bidder in four installments. The payment module of the bid amount was as under:

24.7.1998	<i>the auction amount with 10%</i>
24.7.1999	<i>15% of auction amount with interest.</i>
24.7.2000	<i>15% of auction amount with interest.</i>
24.7.2001	<i>Same as above</i>
24.7.2002	<i>Same as above.</i>

3. He contends that instead of the aforesaid module, the petitioner paid the amount as under:

24.07.1998	15% of the auction amount with interest.
18.09.1998	15% with interest were deposited.
22.06.2000	Same as above.
14.07.2001	Same as above.

4. It is submitted that the last installment was deposited by the petitioner albeit after some delay. It is averred that the petitioner had thus deposited an amount of Rs.2,76,421/- which such facts stand verified by the respondents in their own inter-departmental communication as well. It is averred that the petitioner has been diligently pursuing the respondent-authorities for registration of the sale deed in his favour, however, notwithstanding that the respondents acknowledged the receipt of the

CWP-3140-2015

-3-

aforesaid amount, however, the auction in favour of the petitioner was cancelled vide letter bearing Memo No. 7256/79-R/1 dated 15.10.2014 whereby it was communicated to the petitioner that the bid in question which was in favour of the petitioner has been cancelled on account of the petitioner not depositing the installments on time. Aggrieved thereof, the present petition has been filed.

5. Pursuant to the notice being issued, the respondents filed their reply wherein they acknowledged that the auction proceedings were undertaken by the respondent and that in the bidding process, the petitioner was the highest bidder for the aforesaid land measuring 1.02 acres. They further acknowledged that a sum of Rs. 2,76,420/- had already been deposited by the petitioner. However, since the petitioner was in default, the same has been forfeited by the department in accordance with the Rules and that such action of the Government is fully justified. The respondents in their reply has given the details of the following amount that had been deposited:

1.	<i>Total amount due</i>	<i>= 261120.00</i>
2.	<i>10% amount deposited at the End of auction vide receipt No. 75/37266 dated 24.07.1998</i>	<i>= 26112.00</i>
3.	<i>25% amount deposited vide Receipt No. 03/40344 dated 18.09.1998 Within 60 days.</i>	<i>= 65308.00</i>
	<i>Total amount deposited</i>	<i>= 91420.00</i>
	<i>Balance amount was to be deposited</i>	<i>= 169700.00</i>

6. The respondents have further averred as under:

“As per terms and conditions of auction notice balance amount was to be deposited in one lot or along with 15% interest annually within four annual installment. 1st Installment was due on 24.09.1999, 2nd was due on 24.09.2000, 3rd installment was due on 24.09.2001 and Fourth Installment was due on 24.09.2002. Petitioner submitted affidavit (Agreement) on 21.09.1998 (Photo copy attached as Annexure R-1) in which he committed that if I will not deposit the balance amount then amount already deposited may be forfeited.

Petitioner did not deposit the 1st installment on due date so the petitioner was defaulter. Due to non compliance of terms and conditions of bid the Amount deposit by bidder with the Executive Engineer Jandiala Division UBDC Amritsar No. 1177/79-R/ 1 Dated 17-04-2000 was forfeited (photo copy Attached/R-2 Petitioner gave his application on 08.05.2000 along with affidavit that due to some bad circumstances he could not deposit the amount and but department already relax or given chance to the petitioner/bidder he may be allowed to deposit the amount by Superintending Engineer, Upper Bari Doab Canal Circle, Amritsar vide his letter No. 3988/4-M Dated 12.06.2000 (Copy attached as Annexure-R-3) allowed that balance amount along with interest may be deposited in one lot but the petitioner again failed to deposit the amount.”

Petitioner deposit the amount as per details given below:

<i>Sr. No.</i>	<i>Due Date of Installment</i>	<i>Date on which the amount deposit by the bidder.</i>	<i>Amount deposited</i>	<i>Receipt No. & Date.</i>
<i>1</i>	<i>24.09.1999</i>	<i>Not deposited</i>		
<i>2</i>	<i>24.09.2000</i>	<i>28.06.2000</i>	<i>145000</i>	<i>Receipt</i>

				No. 97/39268 Dated 28.06.2000
3	24.09.2000	14.07.2000	4000	Receipt No. 01 Dated 14.07.2000

Rs.39428/- was balance amount to be deposited but the bidder did not deposit the said amount. So the bidder was againd defaulter. Shri Khuspal Singh gave an application on 17.02.2003 (Photo copy attached as Annexure-R-4) in which he requested that he could not deposit the amount as he was Involved in Criminal Case and he may be allowed to deposit the amount. After that he never approached concerned Executive Engineer.”

7. It is thus averred in the response that the petitioner himself acknowledged non-payment of the amount on account of personal exigencies and unavoidable circumstances. Hence, there was no lapse on the part of the respondent-department and that the case of the petitioner was also forwarded to Superintending Engineer for according sanction to execute the sale deed in favour of the petitioner. However, the Superintending Engineer not being the competent authority to accord sanction, forwarded the case to the competent authority i.e. the Secretary to Punjab Government, Department of Irrigation, Chandigarh. The said authority had not approved of execution of the sale deed. Accordingly, the order of cancellation of the bid and forfeiture of the amount already deposited had been rightly passed.

8. Learned Counsel appearing on behalf of the petitioner contends that the stand of the respondents is dishonest and that the respondents want

CWP-3140-2015

-6-

to cause prejudice to the petitioner by not displaying the correct picture. He refers to the document Annexure P-8 to contend that the communication of the respondent-authorities itself shows that the petitioner had earlier deposited a sum of Rs.2,76,420/-. He was conveyed by the Department to deposit an amount of Rs.39,428/- on 14.07.2000. However, a sum of Rs. 86,700/- was thereafter deposited by the petitioner on 09.02.2011. After receipt of the aforesaid amount, the Executive Engineer had recommended that the entire amount has already been deposited and the sale deed is required to be registered in his favour. The relevant extract of the said communication reads thus:

“As per the terms and conditions of the auction, the successful bidder was required to deposit 10% at the time of auction out of the total bid amount and 25/% amount of total bid amount within a period of 60 days and the remaining amount either in one go or in 4 equal installments along with 15% interest. The total land concerning this case is 1.02 acre and the highest bidder of this auctioned land was Khushpal Singh son of Shri Harminder Singh, resident of Kothi No. 51, Mall Mandi, back side dental college, near Ajit Public School, Amritsar and he had offered the highest bid of Rs. 256000/-per acre and thus total amount of this bid comes to Rs. 261120. So as per the terms and conditions of the auction, this bidder had deposited 10% out of the total bid amount i.e. Rs. 26112/- after the bid was finalized and 25% amount of the bid i.e. Rs. 65308.00 was deposited by him within a period of 60 days. This bidder was required to deposit his first installment on 22.9.1999 but he did not deposit this first installment. Thereafter this bidder deposited Rs. 145000/- vide receipt Number 97/39268 dated 28.6.2000, and vide receipt No. 01/39268 dated 14.7.2000 deposited an amount of Rs. 40000/- Thus, he

CWP-3140-2015

-7-

deposited total amount of Rs. 276420/- which was more than the principal amount of the bid i.e. 261120/- Now this bidder was required to deposit an amount of Rs. 39428/- by 14.7.2000 but on dated 9.2.2011 he submitted an application to the effect that his household circumstances are not favourable so he could not deposit the amount and now the same may be deposited. So keeping in view the application of this bidder, the then Executive Engineer had got deposited from him an amount of 86700/-. Now as per the opinion of this office the sale deed is required to be registered. Thus the description of the amount deposited by this bidder and the receipt thereof copy of auction notice, Jamabandi, Site plan and copy of the cutting of the news paper are being forwarded with a request that approval be given for getting the sale deed registered in favour of the bidder. The approval in respect of the bid offered by the bidder was given by your office vide letter No. 6596/4-L dated 25.08.1998.”

9. Counsel for the petitioner further contends that as a matter of fact the delay in deposit of the aforesaid amount occurred since the respondent authorities did not communicate the interest to the petitioner. He continued to visit the office of the respondents for being informed about the interest and that as and when they communicated the amount overdue, he deposited the same without any further delay. He contends that the said fact was duly enquired into by the authorities and a chargesheet was issued to the then Executive Engineer vide letter dated 15.05.2013 under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. The charge against him was to the effect that the deposit of the amount in question was accepted by the said Executive Engineer without any government approval. He contends that during the departmental enquiry against the then Executive Engineer, the charge against the officer was dropped and not established.

CWP-3140-2015

-8-

The Enquiry Officer rather recorded a finding that the amount was got deposited by the Executive Engineer to safeguard the interest of the State Government and to avoid any financial loss. The relevant extract of the order passed by the competent authority i.e. the Additional Chief Secretary to the Government of Punjab, Department of Irrigation, reads thus:

That, Sh. Ashwani Kumar Sharma, Executive Engineer (now retired) against whom charge sheet had been submitted as per Govt. Letter no. 19/26/2015-1 Sipro (1)/486620/1-3, dated 15.05.2013 according to the Rule 8 Punjab Civil Services (Punishment and appeal). Rules 1970. The allegation in the charge sheet were placed as follows:

- 1. "On 24/05/2011, the bidder for 1.02 acres of additional land of village Gagarbharha, which was sold through open auction on 24.07.1998 conducted by you, against the conditions of the bid, amount of Rs.86700/- Deposited without Govt. approval.*
- 2. Negligent on the part of duty."*
- 2. As per Mr. Ashwani Kumar Sharma, Executive Engineer (Now retired). Answering the allegations levelled against him in this charge sheet vide his letter No. 3985/UO dated 28.08.2015, both these are denied. And a comment/report was sought from the Chief Engineer, Canals, Irrigation Department, Punjab, Chandigarh.*
- 3. That Chief Engineer Canals, Irrigation Department, Punjab, Chandigarh vide his letter No. 5293/6 EE, comment report regarding this case was sent on 27.11.2015. After considering the comment report sent by the Chief Engineer Canals, mark to Mr. MS Rattu, Additional District and Sessions Judge (Retd.) appointed as investigating officer vide Government's*

CWP-3140-2015

-9-

letter No: 787489/1, dated 01.07.2016 for conducting regular investigation of this case.

4. That the inquiry officer vide his letter dated 03.02.2017 submitting his detailed inquiry report, the allegations levelled against Mr. Ashwani Kumar Sharma, Executive Engineer (now retd.) were not substantiated. The operative part of the inquiry report submitted by the Inquiry Officer is as follows:-

"The allegations leveled against the C.O. are that he allowed to deposit Rs. 86,700/- In fact the history of the case is that bidder ask again and again to Inform him about the interest. It is revealed that Government department failed to calculate the interest for 9 years. This amount was got deposited by the C.O./ as a interest shows that he acted in good faith to help the Department to avoid financial loss. He has not extended any time to the bidder or violated any of the condition laid down at the time of auction.

In view of the facts stated above couple with the evidence and document placed on record by the P.O. and CO. The charges leveled against C.O. are not proved.

That the said position, after carefully considering the records available in the case and the records presented by the investigating officer, Mr. Ashwani Kumar Sharma, Executive Engineer (now Writs to Punjab Civil Services (Sentence and Appeal), the charge, sheet issued under the Rules, 1976 is entered in the office.

This Letter is issued after the approval of competent authority.

Dated, Chandigarh 06 March 2017

K. B. S. Sidhu, IAS

CWP-3140-2015

-10-

10. It is thus argued by the counsel for the petitioner that the respondent-authorities have taken a stand that the acceptance of the amount in question by the Executive Engineer was without any authority whereas the charge against the said officer already stands dropped. He thus contends that the petitioner had deposited the entire overdue amount alongwith the interest as informed to him by the respondent-department way back in the year 2011 and that the order of cancellation of the bid was in the year 2014 when there was no outstanding/overdue amount qua the said land.

11. Learned counsel appearing on behalf of the respondent-State, however, contends that the amount having not been deposited well in time and their being a delay in the payment of the installments, the petitioner himself was in breach of terms and conditions of the auction. He thus is not entitled to claim execution of any sale deed. The respondent-Department has thus rightly taken an action as per the terms and conditions and has directed forfeiture of the money already deposited by him in accordance with law.

12. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition.

13. Two crucial documents that are not disputed by the respondents are Annexure P-8 i.e. the Communication bearing Memo No. 282 dated 22.03.2012 which was sent by the Executive Engineer, Jandiala, Division UBDN, Amritsar as well as the order Annexure P-12 dated 06.03.2017 passed by the Additional Chief Secretary, Government of Punjab, Department of Irrigation. A reading of the aforesaid documents clearly shows that notwithstanding a delay by the petitioner in depositing the

CWP-3140-2015

-11-

amount of the bid money, he had deposited the amount as intimated to him by the department alongwith interest. The communication of the interest was delayed by the respondent themselves, such fact is duly reflected from the communication Annexure P-12. The defence taken by the Executive Engineer for accepting the amount of Rs. 86,700/- as against the communication of Rs.39,000/- in the year 2000 alongwith interest for delayed payment was accepted by the Department. The officer himself communicating that the department did not communicate the interest payable by the petitioner for a period of nearly 09 years and that he had accepted the amount in the year 2011 to mitigate the losses of the Government and to overcome the delay/lapse of the respondent-department itself having been accepted to be a valid defense, liability for a delayed deposit of the said amount cannot thereafter be fastened on the petitioner-the land owner. It would be travesty of justice in case the respondent authorities are permitted to contend that even though they may be at lapse in communicating the outstanding amount to the petitioner, however, the responsibility for delayed deposit the said amount must still be borne by the bidder himself. The contemporaneous internal department documents reflect that the respondents had accepted the delay in deposit to be attributable against the department. The acceptance of the balance sale consideration with interest in the year 2011 gave rise to an expectation for the petitioner and creation of a right to seek registration of the sale deed.

14. It is also noticed that the above said amount had been deposited way back in February, 2011, however, the order of repudiation/forfeiture was passed by the respondent-authorities in 2014 when the entire amount in

CWP-3140-2015

-12-

question had already been deposited by the petitioner as per the communication sent by the respondent-authorities could not have thereafter unilaterally withdrawn and taken a decision to the contrary and to defeat the right that stood accrued in favour of the petitioner. The action of the respondent-authorities thus suffers from lack of transparency, reasoning and merit. The authorities having accepted the explanation put forth by the Executive Engineer and dropped the disciplinary proceeding against him and wanting to fasten the responsibility & liability for a delayed deposit on the petitioner, such an act of the respondent-authorities cannot be upheld.

15. The petitioner being a farmer cannot be presumed to be vested with the same bargaining power or aware of the functioning hierarchy of the department. The department had already delivered possession of the land to the petitioner and he has been in continuous and in exclusive enjoyment of the same. The department cannot claim that it has suffered a prejudice by a delayed deposit of the amount especially when the entire amount alongwith interest was demanded & deposited. The landowner too can be presumed to have exercised an option in purchasing some other land but for the assurance of the department. It cannot be said to be a case of concessional allotment & is rather a bid price & highest price on the said date. A mere delay in deposit of the entire sale consideration may not thus be sufficient to repudiate the agreement amongst the parties. The underlying intent of the parties being to alienate the land in favour of the petitioner, the same needs to be given due weightage. The respondents thus acknowledged the right of the petitioner to the land in accepting the money and never seeking any enforcement of any breach. The impugned order directing cancellation of the bid in favour of

CWP-3140-2015

-13-

the petitioner (Annexure P-11) dated 15.10.2014 is accordingly set aside.

The respondents-authorities are directed to execute the sale deed in terms of the auction notice in favour of the petitioner within a period of 03 months from the date of receipt of certified copy of this order.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

MAY 05, 2023

Vishal Sharma

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