

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

**CWP-11655-1997**

**Date of decision : 13.03.2024**

**Avtar Singh and others**

**.....Petitioners**

**versus**

**State of Punjab**

**..... Respondent**

**CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

**\*\*\***

Present :- Mr. Balbir Singh, Advocate  
for the petitioners.

Mr. Tribhawan Singla, Senior DAG, Punjab.

**\*\*\***

**RAJESH BHARDWAJ, J.**

Prayer in the present petition is for setting aside the impugned orders of respondents No.2 and 3 (Annexures P-5 and P-6) respectively, cancelling the original auction sale of 80 kanals of land in Village Milkwal for Rs.8,000/- made in favour of respondent No.4 on 31.12.1975 and ordering fresh sale of said land already sold on 27.05.1982 by respondent No.4 for consideration of Rs.67,500/- to the petitioners and also restraining respondents No.1 to 3 from fresh sale of the said land and also for staying the dispossession of the petitioners from the said land.

Petitioners have challenged the order dated 26.07.1996 passed by the Chief Sales Commissioner, Ludhiana whereby the sale dated 31.12.1975 executed in favour of respondent No.4 was cancelled and the order dated 11.12.1996 passed by the Commissioner, Patiala Division whereby the revision filed against the order dated 26.07.1996 was dismissed.

Learned counsel for the petitioners has submitted that respondent No.4-Sarwan Singh (through his father as his attorney) had purchased 80 kanals of inferior evacuee *banjar qadim* land on 31.12.1975 from the Punjab Government as package deal property in an open auction on the basis of his highest bid of Rs.8,000/- against the reserved price of Rs.4,500/-. It is submitted that on the basis of highest bid of auction purchaser, respondent No.4, sale of the said land to him was confirmed by the competent authority. He has submitted that normally such inferior lands were sold by auction and the price was to be paid by installments of 15/20 years. Respondent No.4 had deposited the entire amount of sale price in the Treasury and the sale certificate dated 21.12.1981 was issued in his favour. Thus, respondent No.4 became the full owner of the said land vested in him. Thereafter, the sale certificate, one printed form containing a condition therein that the land was not to be sold before 20 years to any non-Scheduled Caste persons was issued. He has submitted that the Mutation No.1018 was sanctioned in respect of the said land in favour of respondent No.4. However, when the said mutation in favour of respondent No.4 was reflected in the *Jamabandi* for the year 1981-1982, he was entered as owner of the said land on basis thereof without any such condition/restriction mentioned in the revenue entries. Thereafter, respondent No.4 sold his land on 27.05.1982 through registered sale deed at the prevalent market price of Rs.67,500/- to the petitioners and thus, the petitioners purchased this land as a *bona fide* purchaser by paying the due consideration to respondent No.4. Registered sale deed was executed in favour of the petitioners on 27.05.1982. Thereafter, Mutation No.1046 dated 27.05.1982 was sanctioned without any qualification or condition in favour of the petitioners by the Assistant Collector 2<sup>nd</sup> Grade, Samrala. It

is submitted that the mutation entered in favour of respondent No.4 and sale of the said land to the petitioners is without any condition as reflected in the revenue record. He submits that the petitioners are 'Saini' by Caste which is included among the Scheduled Castes and Backward Castes in Punjab. He has submitted that after purchase of the said land from respondent No.4, the petitioners have spent Rs.50,000/- for making various agricultural improvements i.e. for construction of the kothas, installation of the tubewells etc. He submits that the petitioners are in continuous, open and peaceful cultivating possession of the said land since 1982. He has submitted that after about 20 years, the District Agricultural Officer without any jurisdiction recommended the cancellation of the auction sale and consequent mutation made in favour of respondent No.4 in 1975 by sending *ex parte* reference to respondent No.3. He has submitted that respondent No.3 acting *suo motu* and without any jurisdiction, cancelled the original auction sale and consequent mutation made in favour of respondent No.4 in 1975 and ordered fresh disposal after a lapse of about 20 years. It is submitted that the petitioners and respondent No.4 were provided no opportunity before passing the impugned order dated 26.07.1996. He has submitted that the only ground taken for the cancellation of the sale deed and mutation was that the land was sold to the petitioners in 1982 in violation of Condition No.6 in the sale certificate restricting sale of land by auction purchaser before 20 years to any Non-Scheduled Caste person. He has submitted that the registered sale deed for consideration of Rs.67,500/- did not contain any restriction therein, on the basis of which, the registered sale deed was cancelled. He has submitted that aggrieved by the same, petitioners filed the revision petition before the Commissioner, Patiala i.e. respondent No.2

who without applying his judicious mind dismissed the same *in limine* vide impugned order dated 11.12.1996. It is submitted by counsel for the petitioners that the mutation entry and *jamabandi* for the year 1981-82 did not mention any restriction and thus, there was no fraud whatsoever committed by the petitioners in purchasing the land from respondent No.4 which was purchased by them at the prevailing market price of Rs.67,500/-. It is submitted that in the facts and circumstances of the case, it is apparent that the petitioners are the *bona fide* purchasers and their rights are protected under the provisions of Section 41 of the Transfer of Property Act. He has submitted that in the facts and circumstances of the case and in view of the statutory provisions, it is apparent that the impugned orders passed are totally illegal, arbitrary and unsustainable in the eyes of law and thus, deserve to be *set aside*.

*Per contra*, learned counsel for the State has opposed the submissions made by counsel for the petitioners. He has drawn the attention of this Court to the reply filed. It is submitted that the petitioners have not approached this Court with clean hands and has concealed the material facts from this Court. It is submitted that the land in dispute was sold to respondent No.4 by restricted auction which was incorporated in the sale certificate issued to the auction purchaser i.e. respondent No.4 on 21.12.1981. He has submitted that this condition restricted respondent No.4 from alienating this land for a period of 20 years to any non-scheduled caste and was clearly incorporated in the Mutation No.1018. The copy of the Mutation is also annexed as Annexure R-3/1. Thus, the fact regarding the restriction of sale for 20 years was clearly reflected in the revenue record and thus, respondent No.4 could not alienate the land in violation of the condition incorporated in the sale certificate. He has

submitted that this condition restricting the sale for a period of 20 years is clearly provided in Rule 8(i) of Punjab Package Deal Properties (Disposal) Rules, 1976. This Rule 8 reads as follows:-

*“(8) Bar on the alienation of the land purchased in restricted auction:*

*(i) Where any land has been sold in restricted auction, the auction purchaser shall not be entitled to lease, transfer, sell, mortgage with possession or otherwise alienate or part with the land wholly or partly, so purchased, in any manner, in favour of a person, who is not a member of the Scheduled Castes or Backward Classes, for a period of 20 years, provided that the land may be pledged in favour of a Government or Semi-Government Corporation, or Co-operative Financing Institution, for securing loan for effecting improvements on the said land.”*

*(ii) An auction purchaser in restricted auction shall cultivate the land so purchased himself or through any member of the Scheduled Castes or Backward Classes only.*

*(iii) If an auction purchaser in restricted auction violates any of the conditions, Tehsildar (Sales) or Naib-Tehsildar (Sales) shall be competent to cancel the sale, forfeit the amount already paid, and resume the land, after giving due notice to him.*

Learned counsel has further submitted that the issue involved in the present petition has already been dealt in the Full Bench of this Court titled as Smt. Niranjana Kaur and others Vs. The Financial Commissioner, Revenue & Secretary to Government, Punjab and others passed in CWP-5662-1986 decided on 16.07.2010 which has been subsequently followed in the judgment titled as Bahal Singh and others Vs. Financial Commissioner (Appeals), Punjab and another passed in

CWP-2745-1994 decided on 19.12.2013 and thus, the issue involved in the present petition has already been settled by this Court in the above-mentioned judgments. He has submitted that there being no merit in the petition, the same deserves to be dismissed.

Heard. On hearing counsel for the parties and perusing the record, it is apparent that the land in dispute was purchased in an auction by respondent No.4 on 31.12.1975. This was restricted auction wherein there was a clear condition that the auction purchaser could not alienate the same before 20 years to a non-scheduled caste. The Rule 8 has already been reproduced above. This is an admitted fact that respondent No.4, the auction purchaser, has sold this land to the petitioners in violation of the condition as incorporated in the sale certificate issued to respondent No.4. Thus, by selling the land to the petitioners, respondent No.4 had violated the mandatory condition. Resultantly, this sale by respondent No.4 in favour of the petitioners was cancelled on 31.12.1975. The revision filed against the same was also dismissed by the Commissioner vide his order dated 11.12.1996. The controversy involved has been dealt with by this Court in Niranjan Kaur's case (supra) which has been further followed in Bahal Singh's case (supra). The law settled could not be denied by the counsel for the petitioners. Thus, from the facts and circumstances of the present case, it is apparent that the issue involved in the present case has already been settled. Hence, this Court does not find any infirmity in the impugned order passed and thus, the present petition is hereby dismissed.

13.03.2024  
m. sharma

( RAJESH BHARDWAJ )  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No