

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

RSA-2517-1988 (O&M)
Reserved on : 02.04.2024
Pronounced on: 04.04.2024
2024:PHHC: 045831

JASBIR SINGH AND OTHERS

. . . . APPELLANTS

Vs.

STATE OF PUNJAB AND ANOTHER

. . . . RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued By:- Ms. Raina S. Thakur, Advocate,
for the appellants.

Mr. Sahil R. Bakshi, AAG, Punjab.

DEEPAK GUPTA, J.

This Regular Second Appeal is filed by unsuccessful plaintiffs, whose suit for declaration and permanent injunction, regarding land in dispute, was dismissed by the trial Court on 18.07.1986 and then, the appeal filed by them was dismissed by the Appellate Court on 18.08.1988. Thus, the present appeal is against the concurrent judgments of the Courts below.

2.1 The facts, which merge on perusal of the record, are that one Waryam Dass, a member of the Scheduled Caste, purchased 79 Kanals 9 marla of land [*hereinafter referred to as 'the suit land'*] situated within the revenue estate of village Bachhuan, Tehsil Balachaur, District Hoshiarpur in a 'restricted auction' for an amount of ₹32,500/-. It was a package deal property. On receipt of the entire sale consideration, sale certificate dated 10.09.1981 was issued in his favour. However, said Waryam Dass sold the suit land to the plaintiffs (*appellants herein*) for consideration of ₹45,000/- vide sale deed dated 26.04.1983. Defendant No.2-Tehsildar-cum-Managing Officer (Sales), vide impugned order dated 27.01.1984, cancelled the transfer

of the suit land earlier made in favour of Waryam Dass and also forfeited the sale consideration to the State Government, on account of breach of the conditions of the sale, as the suit land earlier sold to Waryam Dass, could not be sold further by him to a non-scheduled caste person for a period of 20 years.

2.2 Plaintiffs challenged the validity of the order dated 27.01.1984 by pleading that once Waryam Dass was issued a sale certificate, he had become absolute owner of the suit land and so, the condition imposed on the auction purchaser i.e. Waryam Dass restricting him from selling the land to any person other than Scheduled Caste, was against the public policy. Plaintiffs also pleaded to be *bona fide* purchasers for value.

2.3 Suit was contested by the defendants (*respondents herein*) by submitting that sale of the land in auction to Waryam Dass was subject to the provisions of Punjab Package Deal Properties (Disposal) Act, 1976 [for short 'the 1976 Act'] and rules, 1976 made thereunder, prohibiting the transfer of the said land to a non-scheduled caste person for the period of 20 years; and that said condition was duly incorporated in the sale certificate and therefore, the sale of the suit land made by the Waryam Dass, in favour of the plaintiffs, was in violation of the statutory bar.

2.4 Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court found the impugned order dated 27.01.1984 to be valid and legal. Plaintiffs were found to be not the *bona fide* purchasers. As such, the suit was dismissed on 18.07.1986.

2.5 Plaintiffs filed appeal. The Appellate Court referred to Rule 2J of the Punjab Package Deal Properties (Disposal) Rules, 1976 [for short 'the 1976 Rules'] defining 'restricted auction' to mean as an auction confined to

the members of the Scheduled Castes or to the socially and educationally backward classes of citizens notified by the State Government from time to time. Ld. Appellate Court further referred to Rule 6 (8), which created bar on the alienation of the land purchased in the restricted auction to any person, not a member of the Schedule Castes for a period of 20 years. The said Rule further provided that in case an auction purchaser in restricted auction violates any of the conditions, Tehsildar (Sales) or Naib Tehsildar (Sales) was competent to cancel the sale, forfeit the amount already paid and resume the land after serving necessary notice. Ld. Appellate Court further found that before passing the order dated 27.01.1984, whereby the sale in favour of Waryam Dass was canceled and amount forfeited, necessary notices were sent to Waryam Dass, but he refused to receive the same and as such, he was proceeded *ex parte*.

2.6 Ld. Appellate Court further referred to ***Joga Singh Vs. The Deputy Secretary (Rehabilitation-cm-settlement Commissioner), Jalandhar, 1980 PLJ 404***, in which a member of the Scheduled Castes had purchased some land in restricted auction under Rule 5 of 1976 Rules. It was a Package Deal Property and Condition No.7 incorporated in the conveyance deed, prohibited the sale thereof to a Non-Harijan for a period of 10 years. Validity of the condition was assailed before this Court. It was held by this Court that it was a valid and enforceable condition.

2.7 Ld. Appellate Court further found that in the sale certificate dated 10.09.1981, issued in favour of Waryam Dass, it was clearly stipulated that he i.e. auction purchaser (Waryam Dass) will not be entitled to sell, mortgage or alienate the land in question in favour of any Non-Harijan for a period of 20 years. After referring to these stipulations in the conveyance deed

and by relying upon *Joga Singh's case (supra)*, ld. Appellate Court upheld the order of the trial Court, whereby the impugned order dated 27.01.1984 of the Tehsildar (Sales) was found to be legal and valid.

2.8 Adverting to the plea of the appellants-plaintiffs to the effect that they were *bona fide* purchasers, ld. Appellate Court referred to the entries in the jamabandi Ex.D2, wherein there was a specific remark with a red ink, reciting that auction purchaser Waryam Dass was not entitled to sell the land for a period of 20 years i.e. from 20.08.1975 to 20.08.1995 in favour of a Non-Harijan. The identical remark in red ink also appeared in the mutation No.370 (Ex.D1), vide which ownership of the suit land was mutated from Central Government to Waryam Dass. Based on these entries, it was found that appellants-plaintiffs could not plead themselves to be *bona fide* purchasers and so, issue was held to be rightly decided against them by the trial Court. Appeal was accordingly dismissed.

3. Ld. counsel for the appellants, before this Court, was at loss of words to assail any of the aforesaid concurrent findings of the Courts below on any ground whatsoever. By referring to the relevant provisions of law and rules and by referring to the evidence produced on record, it has been rightly held that sale made by auction purchaser-Waryam Dass in favour of plaintiffs was illegal and void being in violation of the specific terms and conditions of the auction made in his favour. The said sale was found to be in violation of the 1976 Act and the rules made thereunder and as such, the impugned order dated 27.01.1984 passed by Tehsildar (sales) was found to be legal and valid. On the basis of evidence on record, in view of entries made in the revenue record, it has been rightly held that plaintiffs-appellants are not the *bona fide* purchasers.

4. After going through the impugned judgments passed by the Courts below, this Court does not find any merit whatsoever, in the present appeal, so as to warrant any interference in the well reasoned judgments passed by the Courts below.

Dismissed.

Pending application(s), if any, also stand disposed of.

04.04.2024

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

No