



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

201

CWP-18534-1996

Date of Decision : 11.11.2024

PISHAURA SINGH AND ANOTHER

.... PETITIONERS

V/S

FINANCIAL COMMISSIONER APPEALS (II), PUNJAB AND ORS

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.S.K.Arora, Advocate
for the petitioners.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of orders dated 10.04.1989 (Annexure P-1), 22.12.1989 (Annexure P-2), 02.06.1993 (Annexure P-4) and 15.07.1996 (Annexure P-6) passed by revenue authorities whereby auction of land in favour of respondent No.3 has been cancelled.

2. The revenue authorities on 12.08.1975 in public auction sold 20 kanals 16 marlas land situated in Fattuwalla, Tehsil and District Ferozepur to respondent No.3 being the highest bidder. The auction was confirmed on 03.01.1976. The sale certificate dated 04.01.1985 was

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issued in favour of respondent No.3 and mutation was also sanctioned in his favour. As the respondent No.3 received possession as well as mutation came to be sanctioned in his favour, became absolute owner of the land.

3. The petitioners vide sale deed dated 04.02.1985 purchased aforesaid land from respondent No.3. The said sale deed was duly registered and mutation was sanctioned in their favour. They received physical possession of the land from respondent No.3. The revenue authorities received a complaint from respondents No.4 and 5 alleging that respondent No.3 in violation of terms and conditions of auction and sale certificate has sold land to the petitioners. The jurisdictional Tehsildar (Sales) made a suo moto reference vide order dated 10.04.1989 to the Chief Sales Commissioner for cancellation of auction in favour of respondent No.3 entailing cancellation of sale by respondent No.3 in favour of petitioners.

4. The Chief Sales Commissioner without affording opportunity of hearing to petitioners vide order dated 22.12.1989 accepted suo moto reference of Sales Commissioner, Ferozepur and set aside auction of land in question. The petitioners preferred revision before Commissioner, Ferozepur Division, Ferozepur assailing order dated 22.12.1989 passed by Chief Sales Commissioner. The said revision came to be dismissed vide order dated 02.06.1993. The petitioners further preferred petition before Financial Commissioner (Appeals) Punjab who vide order dated 15.07.1996 rejected the same.

The relevant extracts of order passed by Financial Commissioner



(Appeals) read as :

“4. The learned counsel for the petitioners has, in his arguments, reiterated the grounds of petition and has asserted that as the petitioners have purchased the said land against consideration from respondent no. 2, who has become owner of the land, the impugned order has wrongly been passed and prayed that the same be set aside by accepting the present revision petition.

5. The learned State Counsel, on the other hand, argued that as per terms & conditions announced at the time of auction, at Sl.no.6, there was clear-cut stipulation that the auction-purchaser would not alienate the land, purchased in 'restricted auction' before the expiry of 20 years to a 'non-Harijan/Scheduled Caste. At the time of auction, Shri Jag Singh, respondent no.2, gave the highest bid and as a token of acceptance of these terms & conditions, he thumb-marked the memo containing the said terms on 12.6.1975, the date on which the land was put to auction, which was duly attested by Tehsildar (Sales).

6. After careful consideration of the arguments advanced by both the parties and after thorough perusal of the record, I am of the view that the present revision petition has no merit and the same deserves to be dismissed. In this case, the conditions of sale have been violated by Jag Singh by selling the said land to the present petitioners, who are non-harijans, before the expiry of the stipulated period of 20 years, from the date of auction-sale. In view of this, the present revision petition is dismissed.”

5. Mr. S.K.Arora, Advocate submits that auction of the land in question took place on 12.08.1975 and it was confirmed on 03.01.1976.



There was no statutory provision at that point of time which prohibited auction purchaser to further sell auctioned land. In the absence of statutory provision, any condition of auction or sale certificate prohibiting further transfer was in violation of Section 10 of Transfer of Property Act, 1882 (for short '1882 Act'). Condition prohibiting further transfer came into force by way of The Punjab Package Deal Properties (Disposal) Rules, 1976 (for short '1976 Rules). The said Rules came into force w.e.f. 24.09.1976.

In support of his contention, he relied upon judgment in *Mohinder Singh and others vs. Financial Commissioner (appeals), Punjab and others, 2015(11) RCR (Civil) 561* wherein this Court in similar circumstances has held that sale in favour of auction purchaser cannot be cancelled on the ground of further sale.

6. Mr. Aman Dhir submits that auction in question was a restricted auction. The land was sold to a member of Scheduled Caste Category. He could sell land to members of same category whereas the petitioners belong to General category. They had purchased land in violation of 1976 Rules. The restrictions in 1976 Rules imposed vide notification dated 22.06.1988 was applicable to all the transactions either took place prior to 1976 Act or thereafter.

7. I have heard the arguments of counsel for the parties and perused the record.

8. From the perusal of record, it is evident that respondent No.3 purchased land in question in public auction which was held on 12.08.1975. Sale in favour of respondent No.3 was confirmed on



03.01.1976. At that point of time, there was no statutory provision prohibiting further sale of land which was purchased in restricted auction. 1976 Act came into force w.e.f. 19.04.1976 and 1976 Rules came into force w.e.f. 24.09.1976. The State Government by notification dated 22.06.1988 inserted sub-rule (8) in Rule 6 of 1976 Rules whereby restriction was imposed. The relevant extracts of Rule 6 of 1976 Rules are reproduced as below :

“6. Sale of land or property by auction.

(1) Where any land or property is not transferred under Part I, Part II and Part III of this Chapter, and it is not required for, sale by negotiation, to any Government Department, Semi-Government Department, Co-operative society, Corporate Body, Public Institution or any local authority for a public purpose, it shall be disposed of by public auction or restricted auction by the Tehsildar (Sales) or Naib-Tehsildar (Sales).

x x x x

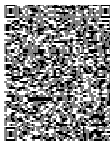
(3) The surplus rural agricultural land which does not fall in the categories specified in the preceding sub-rule shall be disposed of by restricted auction to the following classes of persons and in the following ratio, namely :-

(i) persons belonging to the Scheduled Castes not exceeding forty per cent of the Banjar and Ghair Mumkin land;

(ii) persons belonging to the Backward Classes not exceeding ten per cent of the Banjar and Ghair Mumkin land; and

(iii) persons belonging to the Scheduled Castes and Backward Classes the whole of the available

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cultivable land.

(4) Persons who can participate in restricted auction. Where any land is to be sold by restricted auction only a landless agriculturist who is a member of the Scheduled Castes or Backward Classes and resides in the village in which the land offered for sale is situate shall be permitted to participate in the auction: provided that if after the proceedings of the restricted sale as above, more land is available for sale in the village, a landless agriculturist who is a member of the Scheduled Castes or Backward Classes and resides in other villages of the same Patwar Circle shall be permitted to participate in the auction; provided further that if after the auction of land, as hereinbefore laid down, still more land is available for sale, landless agriculturist who is member of the Scheduled Castes or Backward Classes and resides in other villages of the same Kanungo Circle shall be permitted to participate in the auction.

x x x x

(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 twenty 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.

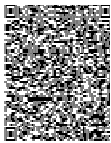


(ii) An auction purchaser in restricted auction shall cultivate the land so purchased himself or through any member of the Scheduled Castes or Backward Classes only.

(iii) If an auction purchaser in restricted auction violates any of the conditions, mentioned in clauses (i) and (ii) above, the 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.”

9. From the perusal of sub-rule (8) inserted w.e.f. 22.06.1988, it is evident that alienation of land purchased in restricted auction is prohibited. In case, land purchased in restricted auction is alienated, the competent authority may cancel the sale and forfeit the amount already paid. The said Rule came into force w.e.f. 22.06.1988 and in the case in hand, land was auctioned on 03.01.1976 and petitioners purchased said land on 04.02.1985, meaning thereby, transaction between respondent No.3 and State Government as well as transaction between petitioner and respondent No.3 took place prior to insertion of sub-rule (8) in Rule 6 of 1976 Rules. There is nothing in 1976 Rules indicating that said sub-rule was having retrospective effect. In the absence of specific provision empowering amendment in Rules retrospective, it is a settled proposition of law that amendment is prospective in nature. In any case, rules in the absence of specific power cannot be retrospectively amended.

10. This Court in **Mohinder Singh's case (supra)** has already held that sale of land purchased in public auction is not bad unless and until there is a statutory provision. In the absence of statutory provision, restriction on the further sale of land which was purchased in public



auction is contrary to Section 10 of 1882 Act.

In the case in hand, the restriction on further sale was imposed without statutory provision. The restriction was part of sale certificate, however, there was no such entry in the revenue record, resultantly further sale in favour of petitioners was registered and revenue record was amended. Thus, case of petitioners is covered by judgment of this Court in Mohinder Singh’s case (supra). It is apt to notice here that the petitioners till date are in possession of the disputed land. Any order setting aside sale in favour of petitioners, at this stage, would not be just and fair.

11. In the wake of above discussion and findings, this Court is of the considered opinion that the instant petition deserves to be allowed and accordingly allowed. The impugned orders dated 10.04.1989, 22.12.1989, 02.06.1993 and 15.07.1996 are hereby set aside.

(JAGMOHAN BANSAL)
JUDGE

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