



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

101

CWP-14136-1994

Date of Decision: 07.03.2026

MUDA AND ORS.

...Petitioners

Vs.

STATE OF HARYANA AND ORS.

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Amit Jain, Sr. Advocate with
Ms. Nikita Sharma, Advocate
for the petitioners

Mr. Akshit Pathania, Assistant Advocate General, Haryana

Mr. Som Nath Saini, Advocate with
Mr. Amit Saini, Advocate
for respondents No.5 to 8

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioners through instant petition under Article 226/227 of the Constitution of India are seeking setting aside of orders passed by Revenue Authorities whereby sale of surplus land in favour of Swarna s/o Bakhtawar Ram has been cancelled.

2. On 29.06.1977, the respondent put on restricted auction 70 kanal 6 marla land comprised in khasra No.10//1,2,3,8,9,10,12,13 & 18 situated in Village Sunder Bahadurpur, Tehsil Jagadhri, District Ambala (now Yamunanagar). As it was a restricted auction only, members of Scheduled Caste could participate. In the auction Swarna who offered bid of Rs.25,100/- was declared highest bidder. The auction was confirmed in his favour. He deposited earnest money to the tune of Rs.3,140/-. He was supposed to deposit balance amount in installments. He failed to deposit

balance amount. He was handed over possession on 11.06.1979 though had not deposited full auction money. On account of non-deposit of auction money/sale consideration, the respondent vide order dated 21.02.1980 cancelled auction which was confirmed on 08.02.1978. It is apt to mention here that Gopi and few other persons were claiming that they are in possession of auctioned land. The authorities partially accepted their claim. They unsuccessfully approached higher authorities. Gopi preferred *CWP-40-1981* before this Court assailing order dated 05.10.1981 passed by Revisionary Authority. It is apposite to mention that by order dated 05.10.1981, the Revisionary Authority has held that land measuring 3 kanal 4 marla shall not be put to auction. This Court vide order dated 25.11.1992 allowed aforesaid writ petition and set aside order passed by Deputy Secretary (Rehabilitation)-cum-Settlement Commissioner to the extent that case of Gopi would be examined in the light of Government Instructions dated 17.05.1962.

3. Swarna did not deposit auction money and respondent vide order dated 21.02.1980 cancelled sale in his favour. He remained silent from 1980 to 1987 and on 03.11.1987 filed an application seeking permission to deposit overdue installments. Tehsildar (Sales) made a reference to Settlement Officer to accord permission to deposit overdue installments. The reference was made on 13.11.1987 and it was accepted on 16.11.1987. Swarna deposited overdue installments on 13.11.1987 i.e. date on which reference was made to Settlement Officer. The respondent issued sale certificate in favour of Swarna on 23.11.1987. The petitioner herein purchased land in question from Swarna on 04.12.1987. Tehsildar (Sales) vide communication dated 26.04.1988 made a reference to Joint

Secretary (Rehabilitation)-cum-Settlement Commissioner praying cancellation of sale certificate issued in favour of Swarna. The reference was primarily made on account of claim of Gopi that Civil Court has stayed the proceedings, thus, land in question could not be transferred to Swarna. The Joint Secretary (Rehabilitation)-cum-Settlement Commissioner by impugned order dated 11.08.1994 cancelled sale certificate issued in favour of Swarna. As sale certificate stood cancelled in favour of Swarna, the rights of petitioner adversely effected because he had purchased land in question from Swarna.

4. Learned Senior Counsel for the petitioners submits that petitioner purchased land from Swarna on 04.12.1987 and at that point of time there was valid sale certificate in favour of Swarna. Sale certificate of Swarna was cancelled by impugned order dated 11.08.1994. As cancellation order was passed much later than date of purchase by petitioner, his purchase for all intents and purposes was valid. The respondent has wrongly considered that Swarna could not transfer auctioned land within 10 years. The respondent is relying upon Policy dated 15.09.1981. Said policy is inapplicable to petitioner because land in question was auctioned on 29.06.1977. The Policy could not be applied retrospectively. As per sale certificate, period of 10 years was applicable from the date of purchase and as per Policy dated 15.09.1981, 10 year period is applicable from the date of issuance of sale certificate. The petitioner was supposed to rely upon condition mentioned in the sale certificate instead of Policy. The authorities regularized sale in favour of Swarna by subsequent orders and regularization related back to date of auction and handing over possession. The petitioner is in possession, thus,

at this belated stage his possession should not be disturbed. The petitioner purchased 70 kanal and 6 marla land from Swarna whereas Gopi is concerned with 17 kanal 10 marla and out of said 17 kanal 10 marla land there is only one khasra comprising 3 kanal 4 marla which is overlapping.

5. *Per contra*, learned State counsel as well as counsel of the private respondent submit that auction in favour of Swarna was cancelled on 21.02.1980. There was no challenge to cancellation order. Swarna at the behest of petitioner deposited installments in one go on 13.11.1987 i.e. after the expiry of seven years from the date of cancellation of sale in his favour. Swarna had remedy to file revision before higher authorities against order of cancellation of auction/sale, however, in a stealth manner deposited installments and got recalled cancellation order which was unknown to law. The petitioner contrary to Policy of 1981 purchased land from Swarna. As per Policy of 1981, Swarna could not sell land within 10 years from the date of issuance of sale certificate.

6. Heard the arguments and perused the record.

7. From the perusal of record and arguments of both sides, following question arise for consideration of this Court:-

- (i) Whether sale of land in question by Swarna in favour of petitioner was contrary to Policy dated 15.09.1981?
- (ii) Whether purchase of land by petitioner from Swarna was valid?
- (iii) Whether cancellation of sales certificate by impugned order is justified?

8. **Question No.(i) :-** Whether sale of land in question by Swarna in favour of petitioner was contrary to Policy dated 15.09.1981?

8.1 The respondent conducted auction on 29.06.1977. Auction in favour of Swarna was confirmed on 08.02.1978. He was handed over possession on 11.06.1979. His earnest money was forfeited and land resumed vide order dated 21.02.1980. Said order was never challenged. The respondent vide memo dated 15.09.1987 imposed restriction on alienation of land allotted to members of Scheduled Caste Category. As per said memo, members of Scheduled Caste Category cannot transfer land allotted to them for a period of 10 years from the date of confirmation of the sale. Relevant extracts of the memo dated 15.09.1987 read as :-

“3. In order to curb this exploitation of the members of the Scheduled Castes by the affluent section, it has been decided by the Govt. that the restriction not to alienate the land for 10 Years purchased in restricted auction may be imposed. This period of 10 years will be counted from the date of confirmation of the sale and this condition will be applicable in all these cases in which the sale deeds are yet to be issued. Accordingly necessary entry to this effect, be made in all the sale certificates in respect of restricted auction.”

From the perusal of above-quoted memo, it is evident that members of Scheduled Caste cannot alienate land allotted to them for a period of 10 years from the date of confirmation of sale. It has been further provided that prohibition of alienation would be applicable to sale deeds which are yet to be issued. In the case in hand, the sale certificate was issued on 23.11.1987. As sale certificate was issued after issuance of aforesaid memo and in the memo it was categorically incorporated that restriction would be applicable even to sale deeds which are yet to be issued, the restriction on alienation was applicable to land sold to Swarna.

He has not challenged aforesaid policy/memo. The petitioner has also not challenged aforesaid memo. The petitioner is claiming that memo is inapplicable to him because auction was conducted in 1977 whereas memo was issued on 15.09.1981. The contention of petitioner is misconceived because aforesaid memo lucidly mandates that restriction on alienation would be applicable even to sale deeds which are yet to be issued. In the case in hand, sale deed was issued on 23.11.1987 and in the sale deed condition of restriction on sale was duly incorporated, thus, restriction on sale was manifestly applicable to Swarna. He could not sell land for 10 years from the date of sale deed. It is apt to mention here that auction was confirmed in his favour on 08.02.1978 and subsequently cancelled on 21.02.1980. During 21.02.1980 to 22.11.1987, there was no transfer/sale document in his favour. He rightly or wrongly got land in November' 1987. Memo dated 15.09.1981 was applicable to Swarna, thus, he wrongly and beyond the mandate of memo dated 15.09.1981 transferred land in favour of the petitioner. The petitioner during the course of hearing conceded that memo dated 15.09.1981 is disputed only on the ground that it was inapplicable to Swarna because auction was held in June' 1977. As aforesaid memo was applicable even to sale deeds which were yet to be issued, Swarna was bound to comply with said condition. It is apposite to mention here that petitioner has not challenged validity of aforesaid memo to the extent it is applicable to sale deeds which were yet to be issued on the date of issuance of said memo. Sale in favour of Swarna was cancelled on 21.02.1980 and aforesaid memo was issued on 15.09.1981, thus, this Court even otherwise is of the opinion that memo dated 15.09.1981 was applicable to Swarna because he regained right, if any, on the land in question in 1987.

9. **Question No.(ii) :-** Whether purchase of land by petitioner from Swarna was valid?

9.1 As held hereinabove, Swarna could not transfer land within 10 years from the date of issuance of sale certificate whereas he sold land in question within 10 years from the date of issuance of sale certificate. Purchase of land by petitioner from Swarna was invalid. It was contrary to terms and conditions of the sale deed as well as memo dated 15.09.1981. The petitioner is claiming that as per sale certificate Swarna could not resale, transfer or mortgage the land till the expiry of 10 years from the date of purchase. The date of purchase was 29.06.1977 i.e. date of auction or 08.02.1978 i.e. date of confirmation of auction. He purchased land from Swarna on 04.12.1987, thus, purchase was valid. He purchased land after 10 years from the date of auction and after the expiry of almost 10 years from the date of confirmation of auction.

9.2 The date of auction was 29.06.1977, however, date of confirmation was 08.02.1978 and petitioner purchased land from Swarna on 04.12.1987. No doubt, acceptance of highest bid created right in favour of Swarna, however, auction was confirmed on 08.02.1978 and he was handed over possession on 18.06.1979. He was not issued sale certificate. Transaction completes on the date of issuance of registration of sale deed or issuance of sale certificate. The petitioner purchased land from Swarna on 04.12.1987. The date of auction was irrelevant even if contention of petitioner, for the sake of adjudication is accepted that 10 years should be counted from the date of purchase instead of date of issuance of sale certificate. The petitioner purchased land within 10 years from the date of confirmation of auction, thus, he purchased land even in

violation of condition mentioned in sale certificate dated 23.11.1987. There was no provision of condonation of said condition. The auction in favour of Swarna was cancelled on 21.02.1980 and it was restored on 16.11.1987. Period from 21.02.1980 to 16.11.1987 needs to be excluded if contention of petitioner is accepted that recalling of cancellation order relates back to date of confirmation of auction. The petitioner or Swarna could not take benefit of their lapse. No right existed in favour of Swarna from 21.02.1980 to 16.11.1987, thus, said period needs to be excluded for all intents and purposes. If said period is excluded, the petitioner purchased land within 10 years even from the date of auction leaving aside date of confirmation of auction or date of issuance of sale certificate. Therefore, examination of the matter from each angle leads to one conclusion i.e. Swarna sold land within prohibited period.

9.3 The petitioner is claiming that condition incorporated in sale certificate should be considered instead of memo dated 15.09.1981. It was memo dated 15.09.1981 which prohibited alienation of property within 10 years. The restriction enshrined in the memo was incorporated in sale certificate dated 23.11.1987. In the memo, it was clearly mentioned that 10 years' period would be counted from the date of confirmation of sale. It was further provided that restriction would be applicable even to sale deeds which are yet to be issued.

In aforesaid circumstances inescapable conclusion is that purchase of land by petitioner from Swarna was invalid. It was in gross violation of conditions of memo dated 15.09.1981 and sale certificate dated 23.11.1987.

10. **Question No.(iii):-** Whether cancellation of sale certificate by impugned order is justified?

10.1 The respondent conducted auction on 29.06.1977. Auction in favour of Swarna was confirmed on 08.02.1978. He was handed over possession on 11.06.1979. He was not issued sale certificate because partial consideration was outstanding. He failed to pay installments, thus, respondent vide order dated 21.02.1980 forfeited earnest money deposited by him and resumed the land. Swarna did not challenge order of forfeiture, thus, order of forfeiture attained finality. The respondents approached authorities seeking release of their land. The authorities partially released their land. They approached Civil Court which passed stay order in their favour. The Tehsildar (Sales) on 13.11.1987 accepted overdue installments of Swarna and made reference to Settlement Officers (Sales) on 16.11.1987. The Settlement Officers (Sales) accorded its consent and sale certificate came to be issued in favour of Swarna on 23.11.1987. Swarna sold aforesaid land to petitioners on 04.12.1987. The Joint Secretary (Rehabilitation)-cum-Settlement Commissioner accepted reference against sale certificate issued in favour of Swarna and vide order dated 11.08.1994 set aside order of revival of sale in favour of Swarna and issuance of sale certificate. The impugned order is justified on account of following reasons:-

- (i) Swarna failed to deposit installments and Tehsildar (Sales) vide order dated 21.02.1980 forfeited his earnest money and resumed the land. Order dated 21.02.1980, at any stage, neither was challenged nor set aside by any authority. Said order attained finality. In the absence of setting aside of said

order acceptance of installments from Swarna on 13.11.1987 and issuance of sale certificate in his favour on 23.11.1987 was not only beyond the jurisdiction of the authorities but also unknown to law, thus, higher authority was bound to set aside orders passed by authorities.

- (ii) As recorded hereinabove, Swarna could not alienate land in question within 10 years from the date of sale certificate, however, he transferred land before the prescribed period, thus, transfer was bad in the eye of law and sale certificate was liable to be set aside.
- (iii) Swarna deposited overdue installments in November' 1987 though forfeiture order was passed in 1980. There was no provision to accept installments after forfeiture of earnest money and resumption of land. The authorities could extend period of deposit prior to order of forfeiture. The moment order of forfeiture was passed, there was no occasion to accept overdue installments and issue sale certificate.
- (iv) The respondent by memo dated 15.09.1981 imposed restriction on transfer of land allotted to members of Scheduled Caste. In the said memo, it was noticed that affluent people make deposit for and on behalf of members of Scheduled Caste and get land transferred in their name. In the instant case, all the outstanding installments were deposited on 13.11.1987 and land was sold on 04.12.1987. It is shown that petitioners in connivance with Swarna and officials got regularized non-payment of installments and attempted to grab land which was meant for poor strata of the

society. Act of petitioners was contrary to scheme of the Act as well as Government Instructions. Role of Tehsildar and Settlement Officer was also doubtful, however, higher authorities despite setting aside their orders did not take action against them.

11. The petitioners are claiming that they are *bona fide* purchaser for consideration. At the time of purchase of land by them, there was valid sale deed in favour of Swarna. Validation order related back to order of forfeiture dated 21.02.1980. The petitioners have ignored the fact that if validation in 1987 related back to forfeiture dated 21.02.1980 then impugned order whereby sale certificate was cancelled, related back to date of sale certificate.

12. In the wake of above discussion and findings, the questions raised hereinabove are answered as below:-

- (i) Swarna in violation of Policy/memo dated 15.09.1981 sold land to the petitioners.
- (ii) Sale of land by Swarna to petitioners was invalid.
- (iii) The impugned order is justified and deserves to be upheld.

13. In the backdrop, this Court is of the considered opinion that the instant petition being bereft of merit deserves to be dismissed and accordingly dismissed.

14. Pending application(s), if any, stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

March 07, 2026
Deepak DPA

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No