

(2013) 05 P&H CK 0110

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 7448 of 2011

Lt. Col. Adesh Pal Singh
Randhawa

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: May 10, 2013

Acts Referred:

- Constitution of India, 1950 - Article 300A

Citation: (2013) 171 PLR 300 : (2013) 4 RCR(Civil) 35

Hon'ble Judges: Rajiv Narain Raina, J

Bench: Single Bench

Advocate: J.S. Gill, for the Appellant; T.N. Sarup, Additional Advocate General, Punjab, for the Respondent

Final Decision: Allowed

Judgement

Rajiv Narain Raina, J.

The claim in this petition is for a direction to the Sub-Divisional Magistrate-cum-Sales Commissioner, Rupnagar, to issue a sale certificate to the petitioner after calling upon him to pay the balance auction price of plot No. B-142/52, 53 situated in Mohalla Sekhan, District Rupnagar, Punjab. This plot measuring 666 sq. ft. was purchased by the paternal grandmother of the petitioner late Smt. Iqbal Kaur wife of Dr, Jhilmil Singh in an open auction held at Rupnagar on 11.05.1984 conducted by the Tehsildar (Sales), Hoshiarpur, comprising evacuee property. Smt. Iqbal Kaur was the successful bidder and had deposited earnest money of Rs. 28,000/- vide receipt No. 52, Book No. A190, Lot No 52-53 (P-2) at the time of sale by auction.

2. It is the case of the petitioner that after the auction was conducted the earnest money of Rs. 28,000/- was paid but the receipt of the said amount did not find its way into official record for confirming the bid. Smt. Iqbal Kaur had retained proof of

payment (P-2). It is averred that since the challan form was not attached due to oversight, the auction could not be confirmed by the Sales Commissioner. This led to passing of an adverse order dated 19.03.1985 by the Sales Commissioner, refusing to confirm sale by auction. When Smt. Iqbal Kaur came to know of this, she approached the Tehsildar (Sales), Hoshiarpur, who had conducted the auction to rectify the mistake. When the true facts were brought to the notice of the Tehsildar (Sales), Hoshiarpur, he passed an order dated 16.08.1985 confirming the auction sale in favour of late Smt. Iqbal Kaur. After passing of the order confirming auction one Gopi Chand s/o Arjan Pass claiming to be in possession of the property filed an appeal before the Deputy Commissioner-cum-Chief Sales Commissioner, Rupnagar, on 25.10.1985 arraying Iqbal Kaur wife of Lachman Singh (not Dr. Jhilmil Singh) as respondent No. 3 giving her address as his own, that is House No. 1540 Mohalla Sheikhan, Rupnagar. The appeal was allowed and the case was remanded to the Sub-Divisional Magistrate-cum-Sales Commissioner, Rupnagar, to decide the same afresh after affording an opportunity of hearing to the appellant-Gopi Chand who alleged being in possession of the land. In response to the proceedings in remand, the State Government filed a reply stating that the auction had been confirmed being legal and valid. Gopi Chand withdrew his appeal. The litigation came to an end in 1986. After 9 years, Gopi Chand approached this Court by filing CWP No. 8525 of 1995 seeking directions to the Sales authorities for deciding his representation for allotment of the plot on the basis of possession. The State filed reply before the Division Bench of this Court apprising it of the fact that the matter had already been decided in favour of late Smt. Iqbal Kaur vide order dated 27.04.1995 even before the filing of the writ petition on 31.05.1995. In these circumstances, the writ petition was disposed of as infructuous. However, liberty was granted to Gopi Chand to challenge the order dated 27.04.1995 before the appropriate authority. Thereafter, Gopi Chand filed a spate of appeals before the authorities of the State Government, which were dismissed time and again. The last of the appeal was consigned to the office record by the Tehsildar-cum-Sales Commissioner vide his order dated 26.03.2003. The matter was laid to rest. Smt. Iqbal Kaur expired in 1992. Thereafter, the case was pursued, as per the petitioner, by his father after the death of Smt. Iqbal Kaur and he too passed away in 2005 after having fallen terminally ill in 2003. The petitioner served in the Indian Army and was posted to serve in different stations and was unable to pursue this matter vigorously. Be that as it may, the authorities never informed the petitioner, the grand-mother or his father of the status of the case and were told that the matter is sub judice. In July 2007, the petitioner sent a letter to the Sub-Divisional Magistrate, Rupnagar, asking him of the present status of the case and also to intimate him the balance amount of the auction money left to be paid so that the sale certificate could be issued. This led to a spate of correspondence exchanged between the petitioner and the authorities and between one authority and another. The first of this correspondence started with the letter from the Tehsildar dated 15.02.2008 to the Sub-Divisional Magistrate, Rupnagar informing the latter that the appeal filed by Gopi Chand had been

consigned to the record room for want of prosecution in the year 1995 but yet no order has been passed confirming sale. The case of the petitioner was recommended for issuance of sale certificate. The process remained in correspondence between different functionaries of Government. The next important letter is the one written by the Tehsildar (Sales), Rupnagar dated 04.06.2010 to the Sub-Divisional Magistrate, Rupnagar, for issuance of appropriate orders in favour of the petitioner. In the midst of this correspondence, the entire matter was sought to be turned around on the basis of a decision rendered by this Court on 19.02.2004 in CWP No. 4886 of 2003 by which the Division Bench of this Court issued a general direction to the State commanding it to scrap all policies of the Punjab Government relating to un-authorized occupation of Government property. This started another chapter in the long history of this case. In this way, the State began objecting to issuing sale certificate on the ground of directives of this Court. The authorities seem to have lost sight of the fact that the petitioner had rights crystallized under the public auction in 1984 held in accordance with law then in force but that right had been brought under litigation by Gopi Chand, who wasted everyone's time in a barrage of applications, appeals, writ petitions etc.

3. The Deputy Commissioner, Rupnagar, took stock of situation and wrote letter dated 10.06.2010 (P-10). He found that the executive instructions sought to be cited against the petitioner relate to unauthorized possession/construction on urban Government land and directions issued by this Court in CWP No. 4886 of 2013 (Court on its Own Motion v. State of Punjab) not to regularize unauthorized possession/construction on public Government lands. To the contrary, the case of late Smt. Iqbal Kaur relates to property sold to her in a public auction in the year 1984 and 20% of the bid amount/sale price stands deposited in treasury office by the auction purchaser and the land auctioned was evacuee property for which approval by Sales Commissioner was required as per Rule 6, sub-rule XI of the Punjab Package Deal Properties (Disposal) Rules, 1976, framed under the Punjab Package Deal Properties (Disposal) Act, 1976. Consequently, the matter was remanded to the Sales Commissioner being the designated authority.

4. The Sales Commissioner, Rupnagar, found that the auction was conducted as per policy dated 04.09.1984 of the Government of Punjab, which was in force at that time. The policy related directly to rural evacuee land. As per para 3(1)(x)(iv) of that policy, it was laid down that in case any bidder fails to deposit the balance amount of the bid within 15 days of the confirmation of the bid, the said bid can be cancelled by the Deputy Commissioner. It was said that the auction in this case was confirmed on 19.03.1985 but Gopi Chand sparked the long drawn out litigation carried on till 26.03.2003. It was found that during this period neither late Smt. Iqbal Kaur nor her nominee deposited the balance amount of the bid nor submitted any application with intention to deposit the money. But it was admitted in the letter dated 03.08.2010 issued by the Deputy Commissioner, Rupnagar, and addressed to the Commissioner, Patiala Division, Patiala, that there is no record available in the office

with regard to informing the applicant for deposit of balance amount. This period of 15 days is found in Chapter 3 of the Rules 1976, which relates to urban property. The property auctioned in 1984 was not classified as an urban property. However, the Deputy Commissioner, Rupnagar, sought advice of the Commissioner, Patiala Division, Patiala, vide letter dated 16.07.2010 on the subject that since there is no scheme in operation at present and the value of the property is now in crores of rupees the orders passed by this Court were not capable of implementation in this case for regularization of illegal possession. It was also stated that in the litigation that followed it was not the stand of the State throughout before the Courts that the said property was urban properly. It transpires that the land which was rural evacuee property in 1984 has become urban with passage of time and falls within the Rupnagar city and this fact clouded the matter. The question raised at the end of the letter seeking advice by the Deputy Commissioner, Rupnagar, from the Commissioner, Patiala Division, Patiala, was that after the death of late Smt. Iqbal Kaur, whether the property can be sold to her legal representatives or not. In response to the advice sought, the Commissioner, Patiala Division, Patiala, addressed a letter to the Deputy Commissioner, Rupnagar (P-12). The advice given by the Commissioner, Patiala Division, Patiala, was this:-

In connection with the above cited subject, the letter under reference has been perused carefully, from which it is clear that the auction with regard to this land was confirmed by Sales Commissioner, Rupnagar on 19.3.1985. As per sub rule (xi) of Rule 6 of the Punjab Package Deal Property (Disposal) Rules, 1976, the Sales Commissioner is to give approval regarding confirmation of the bid and under sub rule (xii)(a) of Rule 6 of the abovesaid Rules, firstly it was required to inform the successful bidder on the acceptance of the bid or cancellation in writing and in that event only, the concerned persons could be held responsible for depositing the balance amount within 15 days of the receipt of information under sub rule (xii)(b) of the above said Rules. But the Sub Divisional Magistrate, Rupnagar vide his letter No. 16.7.2010 has mentioned this fact that there is no such record available in his office, from which it could be found that the Sales Commissioner, Rupnagar or Tehsildar (Sales), Rupnagar had given any information to the successful bidder regarding the property purchased by her in the auction. From the above, it is clear that the staff of Sales Commissioner, Rupnagar and Tehsildar (Sales), Rupnagar has committed negligence in this case and there is no fault of the successful bidder in it. Therefore, the sale certificate is liable to be issued to the successful bidder in respect of the property purchased after depositing of the balance amount.

5. Since the order finds that there has been negligence on the part of the staff of Sales Commissioner, Rupnagar and Tehsildar (Sales), Rupnagar and that no fault could be attributed to the successful bidder, a recommendation was made to issue sale certificate after calling upon the auction bidder to deposit the balance amount. On clarification issued by the Commissioner, Patiala Division, Patiala, the Deputy Commissioner, Rupnagar; wrote a letter to the Sub-Divisional Magistrate-cum-Sales

Commissioner, Rupnagar, that the auction purchaser should have been intimated about the balance amount of the land purchased and after depositing the same, sale certificate should have been issued. The Deputy Commissioner Rupnagar, called upon the Sub-Divisional Magistrate-cum-Sales Commissioner, Rupnagar, to intimate the balance amount to the auction purchaser and on getting the same deposited, necessary action should be taken for issuance of the sale certificate and in future, there should be no irrelevant correspondence started. This direction is contained in the letter dated 12.08.2010 (P-13).

6. Thereafter, the Sub-Divisional Magistrate-cum-Sales Commissioner, Rupnagar, wrote a letter dated 02.02.2011 to the petitioner in response to his representation dated 19.11.2010 together with the copy of the order dated 02.11.2010 passed in CWP No. 19730 of 2010 filed by the petitioner, which was disposed of with a direction to the respondents to take appropriate decision strictly in accordance with law and rules and to communicate the same to the petitioner within a period of three months. In response to that order, the petitioner received a letter dated 02.02.2011 intimating that the petitioner's earlier representation dated 21.06.2007 for depositing the balance amount and for issuance of sale certificate stands consigned to the record room vide order dated 11.12.2008 and, therefore, the petitioner may file an appeal against the order dated 11.12.2008. A copy of the order dated 11.12.2008 was enclosed with the order (P-1).

7. It is the stand of the petitioner which remains un-rebutted in the written statement that the order dated 11.12.2008 was not communicated to him. In order to complete the narration and facts it would be necessary to reproduce that order found at page No. 29 of the paper book, which reads as follows:-

After going through the letter and reading the notings sent by the above said Tehsildar Rupnagar, the entire facts of the case are not coming forward. After going through the case carefully, it is clear that the order passed by D.C.-cum-Chief Sales Commissioner, Rupnagar dated 15.10.1986 has become final because no appeal was preferred against the same. Thereafter, the objections raised by Gopi Chand were not decided on merits but were proceeded ex parte due to his non-appearance. As such the order dated 15.10.1986 is presumed final. It is relevant to mention here that in the original case party Iqbal Kaur is Wd/o Lachhman Singh, which is also reflected in the D.C. Sahib's order and even in the record of the year 1979, 1980 and 1983 but now the applicant who is the LR of Iqbal Kaur is writing Iqbal Kaur as W/o of Jhilmil Singh. Therefore, the application of the applicant is consigned to the record room due to the above stated two reasons.

8. It appears that the simple case inter alia was sought to be confounded by introducing Lachman Singh as the husband of Smt Iqbal Kaur and not Dr. Jhilmil Singh to cloud the matter. The name Lachman Singh appears to be the handiwork of Gopi Chand in his litigation to gain undue advantage. The position has been set at rest by the petitioner in the writ petition in Grounds at paragraph 14 sub paragraph

D swom on knowledge in the verification clause stating that it was done intentionally giving wrong address of Smt Iqbal Kaur to secure undue benefit of which there is an admission in the written statement of the State in reply to its corresponding sub paragraph. When it is said in the quoted portion of the order reproduced above that the order passed by D.C.-cum-Chief Sales Commissioner, Rupnagar dated 15.10.1986 (P-4) has become final because no appeal was preferred against the same it has been apparently misused to confuse the case vis-à-vis the name of the husband of Smt. Iqbal Kaur as arrayed by Gopi Chand in the appeal case No. 7/C.S.C. filed on 25.10.1985 filed by him. This to my mind is a dirty trick played by Gopi Chand in his litigation and therefore abused by the department which cannot be used against the petitioner. Faced with the above piquant situation and not having received any response to reserve his legal and valid claim, the petitioner was compelled to approach this Court by filing the present writ petition on 25.04.2011.

9. Notice of motion was issued on 28.04.2011. In response to the notice the State has contested the case by filing a reply. In defence of the action, it is stated in the preliminary submission that the representation dated 21.06.2007 has been consigned to the record room vide order dated 11.12.2008. That order is appealable. The main defence in pith and substance is that due to change in Government policy viz-a-viz the disposal of Government urban land, a clarification was sought by the answering respondent No. 4 from the State Government through the Deputy Commissioner-cum-Chief Sales Commissioner, Rupnagar, but the Deputy Commissioner, instead of seeking clarification from the State Government, sent the case to the Commissioner, Patiala Division, Patiala. The Commissioner, Patiala Division, Patiala, vide order dated 11.08.2010 directed the Sub-Divisional Magistrate-cum-Sales Commissioner, Rupnagar, to issue sale-certificate. It is then stated by the 4th respondent, who has filed reply on behalf of respondent No. 1, 2 and 4 but not the Divisional Commissioner, Patiala Division, Patiala that in the absence of necessary clarification from the State Government the case was decided on the basis of available official record.

10. I have heard Mr. J.S. Gill, the learned counsel for the petitioner and Mr. T.N. Sarup, learned Additional Advocate General, Punjab, for the State and have carefully perused the record placed before this Court.

11. Mr. Gill submits that his client cannot be made to pay the price of parting with right to land sold at a public auction in accordance with law in 1984 inherited through his grandmother late Smt. Iqbal Kaur in such an offhand manner. His client cannot also be made to pay the price of frivolous and vexatious litigation spawned by Gopi Chand claiming right to land on the basis of possession of evacuee property, which was brought to an end long ago. If he did not get his case decided on merits by abandoning the case he cannot be taken to have succeeded in his claim.

12. Counsel submits that there is a finding of fact recorded in the correspondence exchanged between the Tehsildar (Sales), the Deputy Commissioner, Rupnagar and the Commissioner, Patiala Division, Patiala, that neither the late grandmother nor her nominees or legal representatives were ever informed or intimated of the balance payment to be made beyond the deposit of 20% of the total auction price of Rs. 1,40,000/- in 1984. He further submits that the order dated 11.12.2008 produced for the first time in response to this writ petition and part of the impugned order (P-1) was never communicated to his client, or to his predecessor-in-interest, the late Smt. Iqbal Kaur. Still further, Mr. Gill submits that the order (P-1) has been passed in contempt of the order passed by the learned Single Judge of this Court while disposing of CWP No. 19730 of 2010 calling upon the 4th respondent to take appropriate decision strictly in accordance with law and rules. There is neither consideration of law or rules and the order has been passed at the back of the petitioner without affording an opportunity of hearing and, therefore, the order is in breach of principles of natural justice for which reason alone it deserves to be set aside. Mr. Gill further submits that merely because the land has come within the city of Rupnagar after 29 years would not be ground to re-classify rural evacuee property as urban property by passage of time which he had no control over due to litigation only to deprive him of his right to inheriting property protected as a constitutional right under Article 300-A and that this Court should not be swayed in this case by price rise since the right to property inured in late Smt. Iqbal Kaur in 1984 only to be mired in meaningless litigation launched by Gopi Chand claiming ownership by long possession of evacuee property over which he had no demonstrable right, title or interest. Besides, if prices of property have risen manifold meanwhile so has the cost of construction escalated manifold which his client would have to bear the brunt in case this petition succeeds without recompense. Mr. Gill has taken this Court through the extraordinary lengths that Gopi Chand went on a litigation spree enjoying the luxury of litigation at the cost of the petitioner and his family and ancestor-right holder. The petitioner's family are displaced persons from Rawalpindi who migrated to India during partition. Mr. Gill further submits that the order dated 11.12.2008 is liable to be ignored or to be declared non est in view of the conscious decision taken by the Commissioner, Patiala Division, Patiala, and the stand of the Sub-Divisional Magistrate-cum-Sales Commissioner, Rupnagar, in the written statement filed by him is wholly unfair. The State Government should not be permitted to wriggle out of the public auction and the order passed by the Commissioner, Patiala Division, Patiala in favour of late Smt. Iqbal Kaur.

13. There appears to be merit in the contentions of the learned counsel for the petitioner. The Tehsildar (Sales) as the auctioning authority can be blamed for dereliction of duty in not placing the receipt of payment of Rs. 28,000/- towards 20% of the auction price on the official record which initially led to non-confirmation of the sale. The damage caused by that action was taken advantage of by Gopi Chand

who slapped the first case and kept the petitioner's family engaged in long drawn out litigation which came mercifully to an end in 2003 after a good 19 years. Even assuming that the State Government had not taken a final decision on confirmation of sale, there is still no cogent reason given in the written statement or during the course of arguments by the learned State Counsel that there was any error of reasoning or error apparent on the face of record in the order dated 11.08.2010 (P-12) passed by the Commissioner, Patiala Division, Patiala. The State Government has not set aside the order or challenged it in Court. It is also not the case that the order was passed contrary to the Rules of Business of Punjab Govt. or without authority to decide. On the other hand it was the duty of the Tehsildar (Sales) and the Sales Commissioner, to have informed late Smt. Iqbal Kaur or her nominees after her death etc. calling upon them to deposit the balance amount but he failed to do so. There is a finding of fact recorded in the order while accepting the finding of the Sub-Divisional Magistrate, Rupnagar in his letter dated 16.07.2010 that there is no record available in the office from which it can be said that the successful bidder was informed after auction intimating the balance amount to be paid.

14. Mr. Sarup has not been able to point out from the record or from the written statement that the finding recorded by the Commissioner, Patiala Division, Patiala, is incorrect or he had no jurisdiction to pass the order or it was passed against the allocation of work laid down in the Rules of Business of Punjab Government or was a dishonest one. I have, therefore, no hesitation in quashing the impugned order dated 02.02.2011 (P-1) and the order accompanying it, i.e., 11.12.2008. Resultantly, the writ petition is allowed with costs of Rs. 25,000/- to be paid to the petitioner by the respondent State for needless harassment though he cannot be truly compensated. A direction is issued to the respondents to intimate the petitioner of the balance amount payable within 15 days from the date of receipt of certified copy of this order. On being informed accordingly, the balance amount of the auction price will be paid within 30 days of receipt of notice of payment of balance amount to be deposited in Government Treasury against receipt. On deposit of the same, respondents would issue sale certificate to the petitioner within 7 days from the date of deposit of balance price and the petitioner would be put in possession of the property with police help, if required.