

(2014) 07 P&H CK 0632

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 16597 of 1992

Jawahar Lal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: July 30, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 89

Citation: (2014) 176 PLR 775**Hon'ble Judges:** K. Kannan, J**Bench:** Single Bench**Advocate:** Som Nath Saini, Advocate for the Appellant; Ravi Dutt Sharma, D.A.G, Advocate for the Respondent

Judgement

K. Kannan, J.

The petitioner challenges the order cancelling the auction held in his favour in relation to the property of 31 kanals 19 marlas and conveyance effected in pursuance thereof. The auction was by a reserved bid amongst persons belonging to Scheduled Caste community and admittedly, the petitioner was declared the highest bidder for a price of Rs. 56,250/- at the auction held on 15.01.1985. He had paid the amount of Rs. 7035/- as earnest and the terms and conditions stipulated required payment of the balance in 15 installments on half yearly intervals. After the bid was accepted and he was declared as the highest bidder, conveyance deed was also executed in his favour under Annexure P-1 in a form that contained the conditions. Admittedly, he fell into arrears after the payment of 4 installments and for the nonpayment of installment as on December, 1988 the payment that was made was appropriated towards the earlier outstanding and two consecutive non-payments that fell due after December, 1988, notices had been sent directing him to make the installments due but the petitioner did not do so. The receipt of notice is admitted by the petitioner himself but he would state that he had gone away from the village at the relevant time and he would give an excuse for his

inability to make the payment. It is also an admitted fact that on 10.08.1989, he had been informed that the non payment had resulted in cancellation of the sale already made in his favour and that the re-auction would be held on 06.09.1989. In the re-auction held, the 4th respondent had been declared as the successful bidder at Rs. 90,000/- and as per the terms of the auction, he had paid 1/8th of the total paid amount. Before the sale was confirmed and resumed or delivered to the private respondent, the petitioner had approached the Court through this writ petition and this Court had passed an order on 17.12.1992 directing the dispossession to be stayed. At the time when the petition was filed and when the Division Bench was granting an interim order had bound itself about a Government instruction given on 18.08.1970 allowing for the person in default to make the balance of payment of the remaining installments, which he has complied with. Learned counsel appearing on behalf of the State would contend that the petitioner had been admittedly in breach of the conditions and notices of such breach were admittedly received by him. If the property was put to re-auction all that the Government memo dated 18.08.1970 provided was that the previous auction purchaser who was a defaulter could stave off any precipitated re-auction proceedings by making the payment of arrears at the re-auction. The contention is that the petitioner did not make such payment and therefore, he would not be entitled to any benefit.

2. While considering whether the re-auction held could be sustained or not, inevitably I have to take note of certain subsequent events which had taken place. An interim order that the Court passed is invariably provisional and it cannot under the normal circumstances dictate the final outcome as well. Exceptions however abound, such as when we are considering the interest of person who belongs to Scheduled Caste and who has been given the privilege of continuing in possession on a proof that the balance of amount was paid during the pendency of the petition. It is an admitted case that he has been allowed to continue in possession of the property and he also parted with the balance of consideration of Rs. 32,810/- on 08.12.1993. The Government has received the same and the petitioner himself has brought out through an affidavit the dates of payment which he has made that aggregated to the sum as determined at the time of auction. The counsel appearing on behalf of the subsequent purchaser would argue that he had parted with 1/8th amount of the bid amount of Rs. 90,000/- and his rights cannot be whittled by fortuitous directions given by the Court allowing him to make the deposits. He would plead for protection of rights under the re-auction

3. In this case, in my view, the scales of justice would best be upheld only by allowing for retention of the property in the hands of the petitioner who has parted with whole of the consideration in the year 1993 albeit with some delay and who has continued in possession of the property. The fact that the private respondent himself has not parted with whole of the consideration and he has but lost only 1/8th of the amount must be properly compensated. In a situation where I have brought out the circumstances justifying the retention of the property in the hands

of the petitioner who was 1st auction purchaser, I would apply the principles brought under Order 21 Rule 89 CPC in allowing for a property at an auction to be set aside on certain conditions such as payment of 5% as solatium to the subsequent purchaser and payment of advertisement cost and expenses to the government. The State which has received the sale consideration in full must have the benefit of interest from the time when the last installment fell due to the time when the amount was actually paid. Same way for the property bid at the re-auction which could not fructify on account of the interim directions given by the Court, the subsequent auction purchaser shall have the benefit of receiving 5% as solatium of sale consideration. I direct the same to be paid by the petitioner to the subsequent purchaser. The subsequent purchaser will also be entitled to be returned with the money from the State of what he has already paid with interest at 9% per annum. The payment of interest by the petitioner to the State for the delay in rendering the payment shall be at 12% from the date when the respective installments fell due and the dates when he has actually made the payment. The amount shall be calculated as under:

4. The amounts stipulated shall be paid within a period of 4 weeks from the date of receipt of copy of this order. The entitlement of the private respondent who was a purchaser shall be through demand draft. The State shall be liable to pay the amount delivered within a further period of 2 weeks from maximum period for compliance of the order by the petitioner. If there is any default at the instance of the petitioner in making the payment either to the Government as regards the interest for the balance of amount for the delayed payment of solatium, cost of republication and cost of auction which I have determined at Rs. 1000/- and in payment of solatium as I have now set forth to be payable to the private respondent, the auction already made in favour of the 4th respondent will stand revived and the petitioner will forfeit the right which is secured through this order. There shall be no extension of time under any circumstances for the time stipulations contained in this order. The counsel for the 4th respondent seeks for right to adopt any alternative remedy which I close as untenable. The writ petition is allowed on the above terms.