

# The Indian Law Reports

Before S. S. Sandhwalia, C.J. and G. C. Mittal, J.

MOHINDER SINGH,—Petitioner

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ No. 5063 of 1975

October 9, 1979.

*Punjab Package Deal Property Rules, 1962—Rule 11—Sale of land in a restricted auction—Auction purchaser debarred from further selling the land within a stipulated period—Land sold in violation of this condition of sale—Department cancelling the sale in favour of auction purchaser and resuming the land—Vendee from the auction purchaser—Whether entitled to be heard before resumption.*

*Held*, that in view of the wording of Rule 11 of the Punjab Package Deal Property Rules, 1962, the subsequent vendees are also entitled to be heard before any order of resumption is passed. The department is very well aware of the subsequent sale by the original transferee as the primary ground for cancellation of the original transfer is the subsequent sale made by the original transferee. Since the subsequent vendees step into the shoes of the original transferee and would swim or sink with him, therefore, they were also entitled to notice under rule 11 before they were to be dispossessed in pursuance of the order of resumption. The order of resumption would be binding only against the original transferee and the same would not bind the subsequent vendees unless they are heard by the department. (Para 7).

*Petition Under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court be pleased :—*

- (a) *to issue a writ in the nature of Certiorari, Mandamus or any other Writ, Order or direction quashing the impugned order dated 19th May, 1975 of respondent No. 1; Annexure P. 3.*
- (b) *in view of the peculiar circumstances of the case, the service of notices of motion be dispensed with;*

- (c) *in the circumstances of the case, production of certified copy of annexure 'P-2' be exempted ;*
- (d) *any other Writ, Order or Direction deemed appropriate in the circumstances of the case may be issued ;*
- (e) *and the costs of the petition be allowed in favour of the petitioner.*

*It is further prayed that during the pendency of the writ petition, execution of the impugned order and the auction scheduled for 28th August, 1975 may kindly be stayed.*

Sarwan Singh, Advocate, for the Petitioner.

N. S. Bhatia, Advocate, for the Respondents.

#### JUDGMENT

*Gokal Chand Mital, J.*

(1) This order will dispose of C.W.P. Nos. 4681, 4811, 4820, 5063, 5064, 5070, 5210, 5282, 5564, 5608, 5627, 5642, 6045, 6397 and 6913 of 1975 and 626 and 4531 of 1976, in which common question of law is involved. For facility of reference, the facts of C.W.P. No. 5063 of 1975 would be noticed in this judgment.

2. Rakha, respondent No. 3, had purchased the land in dispute in a restricted auction held by the Rehabilitation Department as a Harijan and in the sale certificate there was a clause debarring him from making sale within a period of ten years and in default of the same, the sale certificate in his favour was liable to be cancelled and the auction price to be forfeited. Admittedly, Rakha respondent effected sale in favour of the petitioner and others within the period of ten years as a result of which the transfer made in favour of Rakha by the Rehabilitation Department became liable to be cancelled.

3. When the sale by Rakha in favour of the petitioner and others came to the notice of the Rehabilitation Department, a reference was made under rule 11 of the Package Deal Rules to the Settlement Commissioner-cum-Deputy Secretary, Rehabilitation, Punjab, for taking action for cancellation of the transfer made in favour

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of Rakha respondent. The said officer heard Rakha respondent and,—*vide* order dated 19th of May, 1975, copy annexure P-3, cancelled the sale in his favour and forfeited the amount paid by him. Against order annexure P-3, Rakha did not take any action but one of his vendees has come to this Court to challenge the same on various grounds, including the one that the order annexure P-3 is liable to be struck down as the vendees from Rakha were entitled to be heard before passing the same and since they were not heard, the order was liable to be set aside.

4. All other points, barring the point of hearing the vendees, are covered against the petitioner by our judgment in *Joga Singh v. Deputy Secretary, Rehabilitation* (1).

5. As regards the hearing of the vendees from the original transferee, Mr Sarwan Singh, counsel for the petitioner, has invited our attention to the proviso to rule 11 of the Package Deal Rules. Rule 11 is as follows:—

“11. *Power of revision.*

The Settlement Commissioner may call for the record of any case pending before or decided by a subordinate officer and pass such order as may be deemed fit including the resumption of property, provided that the party affected by the proposed order shall be given an opportunity of being heard.”

He urges that the words ‘party affected by the proposed order’ would include the vendees from the original transferee as after the original transferee has further transferred his rights to the petitioner and others, they step into his shoes to defend the order of cancellation of the original transfer and for all practical purposes, the cancellation order would affect their rights. He further submits that according to the proviso, the subsequent vendees from the original transferee would stand or fall with the original transferee and as such should have been heard before any adverse order was passed affecting their rights in the property in dispute.

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(1) CW 2861/76 decided on 4th October, 1979.

6. On the other side, it is urged that the Rehabilitation Department only recognises the original transferee and not the subsequent vendees and, therefore, the subsequent vendees are not entitled to be heard.

7. After hearing the learned counsel for the parties and keeping in view the wording of rule 11 of the Package Deal Rules, we are of the opinion that the subsequent vendees are also entitled to be heard before any order of resumption is passed. The Department is very well aware of the subsequent sale by the original transferee as the primary ground for cancellation of the original transfer is the subsequent sale made by original transferee. Since the subsequent vendees step into the shoes of the original transferee and would swim or sink with him, therefore, they were also entitled to notice under rule 11 before they were to be dispossessed in pursuance of order annexure P-3. The order, annexure P-3, would be binding only against the original transferee, namely, Rakha and the same would not bind the subsequent vendees unless they are heard by the Rehabilitation Department.

8. It is not disputed that the petitioner and other vendees were not heard by the Rehabilitation Department and, therefore, the order, annexure P-3, passed against Rakha will not operate against them.

9. For the reasons recorded above, all the writ petitions are allowed only to the limited extent that order, annexure P-3, shall not operate against the petitioners and other vendees from the original transferees in all the cases till they are heard in accordance with the proviso to rule 11 of the Package Deal Rules. The petitioners are directed to appear before the Deputy Secretary, Rehabilitation-cum-Settlement Commissioner, Punjab, Jullundur, on 12th of November, 1979, who shall proceed to hear them and other vendees from the original transferees before taking any action against them in pursuance of the order, annexure P-3. No order as to costs.

S. S. Sandhawalia, C.J.—I agree.

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**N.K.S.**