

I.L.R. Punjab and Haryana

(1967)1

CIVIL MISCELLANEOUS

*Before Shamsher Bahadur, J.*GURBACHAN KAUR AND ANOTHER,—*Petitioners.**versus*THE STATE OF PUNJAB AND ANOTHERS,—*Respondents.*

Civil Writ No. 949 of 1964.

May 13, 1966.

*East Punjab Refugees Rehabilitation Buildings and Building Sites Act (XLII of 1948)—Ss. 6 and 11—Highest bidding at an auction sale—Whether subject to confirmation by Deputy Commissioner.*

*Held*, that an auction-sale held under section 6 of the East Punjab Refugees Rehabilitation Buildings and Building Sites) Act, 1948, does not require the confirmation of the Deputy Commissioner. The sale becomes complete when the purchaser deposits the initial instalment of 20 per cent and thereafter the sale can be cancelled and the site resumed only if any breach is made in the mode of payment or a breach is committed of any terms on which the site or building was sold in exercise or powers under section 11 of the Act.

*Petition under Article 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus, or any other writ, order or direction be issued quashing impugned order of the Deputy Commissioner-respondent.*

H. R. SODHI, ADVOCATE, for the Petitioner.

S. S. DEWAN, ADVOCATE, FOR ADVOCATE-GENERAL, for the Respondents.

## ORDER

Shamsher Bahadur, J.—The question which arises for determination in this petition is whether the highest bidding in an auction sale under the provisions of the East Punjab Refugee Rehabilitation (Buildings and Building Sites) Act, 1948, is subject to confirmation by the Deputy Commissioner ?

Gurbachan Kaur and Rajinder Singh Sodhi, who are the petitioners, are displaced persons from West Punjab and have settled down in Yamunanagar, House No. 161-A in Model Town, Yamunanagar, was constructed by the Government under the provisions

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of the East Punjab Refugees Rehabilitation (Buildings and Building Sites) Act, 1948 (hereafter referred to as the Act), enacted with the object of rehabilitating displaced persons. This house along with other such houses, constructed by the State Government, was put up for public auction on 25th of April, 1964. There was no condition of sale that the person, gave the highest bid, would be entitled to become a purchaser only after confirmation of the sale by the Deputy Commissioner. The reserve price fixed for the house was Rs. 14,033. The bidding closed in favour of the petitioners for Rs. 14,560. It was on 12th May, 1964, that the petitioners were informed that their bid had not been accepted and that the property would be put to auction again on 29th of May, 1964. Feeling aggrieved by the Government's refusal to close the sale in their favour, the petitioners have moved this court in the exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution.

In order to appreciate the contentions, which have been raised by Mr. H. R. Sodhi, the learned counsel for the petitioners, it is necessary to set out the salient provisions of the Act. Under section 5 "the State Government may erect such buildings or other structure ..... and may sell, lease or otherwise dispose of such buildings to refugees or other persons on such terms and conditions as it may be fit .....". Under sub-section (1) of section 6: "Where the State Government sells any building site or sells a building under this Act, the said sale may be effected either by auction or by private treaty at a fixed valuation, as may be determined by it." Sub-section (2) requires that the purchase price may be lump sum at the time of sale or in instalments as hereinafter provided. Sub-section (3) relates to the method by which instalments may be paid. Section 7 provides: "The building or the site sold under section 6 shall be subject to the first and paramount charges in favour of the State Government in the sum of the unpaid portion of the purchase money....." Section 11 enables the Deputy Commissioner "to resume the site or building sold or leased under this Act in case of non-payment of any instalment or breach or any of the terms on which the same was sold or leased or of any rule made from time to time under this Act, and may in addition forfeit part or whole of the money already paid." A right of appeal is granted to an aggrieved party against whom an order is passed under section 11. Under sub-section (1) of section 12: "A party aggrieved by an order under section 11 may, within thirty days, appeal to the Commissioner of the Division, who may restore the property or a part or whole

of the money forfeited on such terms or conditions as he may deem fit, or pass such other orders as he may deem just and equitable." Under section 13 such a sale-deed is exempt from stamp duty and registration. This provision is obviously designed for the benefit of the refugees, who are purchasers of buildings under this Act.

There is also the rule making power and under rule 1 of Schedule B "only a refugee who does not own a site or a house in East Punjab and has not purchased a site from the Provincial Government and whose wife or dependent children have also no such house or site, can purchase a building." Under rule 4 there is a restriction on transfer to this effect: "The transfer of any right, title or interest will be permitted freely after the whole of the purchase price has been paid. Prior to that transfer of any interest in the building shall be allowed only with the permission of the Financial Commissioner, Rehabilitation, which will not ordinarily be given except in cases in which—

- (i) the purchaser has been allotted agricultural land in a district other than the one in which the building is situate; or
- (ii) the purchaser has set up his permanent business and shifted his residence to a place other than the one where he had purchased the building.

In all such cases the offer of transfer of the building, must in the first instance, be made to a refugee at a price not exceeding the cost at which the building was purchased, plus the additional expense, if any, incurred by the transferer."

It only remains to be mentioned that under the conditions of sale all the rights for the houses and plots situate at Model Town/ Model Colony/Rampura Colony are reserved with the Deputy Commissioner, Ambala. The reservation of the rights "with the Deputy Commissioner" does not contemplate the action which is sought to be impugned in these proceedings. The Deputy Commissioner may forfeit only under section 11 in consequence of the paramount charge of State under section 7 for the unpaid amount of purchase money. It is to be observed that soon after the auction sale, the person, in whose favour the bidding is closed, is recorded as a purchaser. The petitioners have paid 20 per cent of the purchase

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money as first instalment and it is not the case of the respondent State that any breach of the provisions of the Act or of the statutory rules has occurred. It is sought to justify the action contemplated in the communication of 12th of May, 1964, that the Deputy Commissioner under the conditions of sale had the general power to reject the offer contained in the highest bid. It is only a court's sale which is normally subject to confirmation of the highest bid. The sale in question took place under the provisions of a statute, which is designed to help the refugees in purchasing buildings and building sites. These sales are even exempt from stamp duty and registration. No case has been brought against the petitioners for any breach or failure to pay the purchase price when called upon to do so.

In my opinion, the sale was completed when the petitioners deposited the initial instalment of 20 per cent and thereafter the cancellation could only have been made if any breach had been made in the mode of payment, and it is only an order made under section 11 of the Act, which could have been made a subject-matter of appeal. It cannot be argued, as has been done by Mr. Dewan, that the petitioners should have appealed to the Commissioner under section 12 from the order communicated to them that there would be a re-auction. To repeat, under section 11 the Deputy Commissioner has the power only to resume the site or building if there is any breach in payment of instalments or of any terms on which the site or building was sold or leased. Admittedly, no such breach has taken place. The power of forfeiture under section 11 could not, therefore, be exercised, and, consequently, there was no occasion of filing any appeal which lay only from an order of forfeiture under this section. When the sale was made in pursuance of the provisions of the Act, it could be cancelled only if in this statute itself it is so provided. The only ground of cancellation involving a forfeiture of the site or building is the one laid down in section 11 and that condition is clearly inapplicable to the facts of the present case. In the circumstances, I am of the opinion that the contemplated cancellation of the sale is void and illegal, and has to be quashed.

This petition will, therefore, be allowed with costs, and the parties are directed to complete the sale transaction which closed in favour of the petitioners as the highest bidders.

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R.S.