

Before Jasbir Singh and G.S. Sandhwalia, J.J.

GURMUKH SINGH - *Appellant*

versus

STATE OF PUNJAB AND OTHERS *Respondents*

LPA No. 1155 of 2012

August 29, 2013

Letters Patent, 1919 - Clause X - Punjab Package Deal Properties (Disposal) Rules, 1976 - R. 6-A - Rule is mandatory in nature - Objections - Challenge to auction of property before its confirmation on the ground of irregularity or fraud - Necessary to

deposit the challenge money - Non deposit of challenge money even on demand being made - Objection not to be entertained as had not complied with the conditions of deposit - Therefore, objection could not continue further.

Held, that on the basis of the said Rule which is mandatory in nature on account of the fact that on demand being raised on non deposit of challenge money, the application is not to be entertained at all. The purpose is very apparent that there is no unnecessary challenge to any auction without the person depositing the requisite money. Sub Clause (b) and (c) further provide that in case objections are accepted, challenge money shall be refunded and the property shall be re-auctioned with the bid starting from the previous highest bid and where it is not accepted the challenge money is to be forfeited. The appellant had not complied with these conditions, therefore, the proceedings could not continue further. He was even granted an opportunity by the Sales Commissioner and a demand was raised as provided under the Rules but he chose not to deposit the amount. In such circumstances the objection could not be entertained and the Financial Commissioner was justified in allowing the petition of respondent no.7 which has been duly upheld by the learned Single Judge.

(Para 9)

A.K.Chopra, Senior Advocate with Harminder Singh and Mr. Rohit Ahuja, Advocates for the appellant.

K.K.Gupta, Addl. Advocate General, Punjab

Malkeet Singh, Advocate for respondent no.7.

G.S. SANDHAWALIA, J.

Prayer made in the application is for placing on record Annexures P/3, P/4 and P/5 with correct title and also exempt the appellant from filing certified copies of the same.

In view of the averments made in the application, which are supported by affidavit, the Civil Misc. Application is allowed. Annexures P/3, P/4 and P/5 with correct title are taken on record.

(1) Challenge in the present appeal is to the judgment dated 25.7.2012 passed by the learned Single Judge in Civil Writ Petition No.13850 of 2012

Gurmukh Singh Vs. State of Punjab and others whereby the writ petition was dismissed and the order dated 29.5.2012 passed by the Financial Commissioner rejecting the objections filed by the petitioner against the sale conducted on 20.7.1984 were rejected.

(2) A perusal of the judgment under appeal would go on to show that the learned Single Judge recorded a finding that firstly the land was never retrieved under the Directory Organization, therefore, contention of the appellant that it could not have been put to sale by way of restricted auction was without any basis and there was no material placed on record to show that the land was retrieved by the said organization. The second reasoning which prevailed with the learned Single Judge was that as per the rule application raising objections was to be filed within ten days from the auction along with challenge money and the appellant has failed to comply with the requirement of the rules and, therefore, could not challenge the said auction due to non compliance of the statutory provisions.

(3) A perusal of the writ petition would go on to show that one Dhanno Devi had been allotted 17 standard acres 11 unit in lieu of the land left in Pakistan under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as "the D.P. Act"). The said allotment was cancelled on 23.10.1970 and was put to auction on 20.7.1984 and the successful bidder was Joginder Singh-respondent no.7 for a sum of ` 1,20,000/- against the reserved price of ` 42,000/-. The case was put up for confirmation by the Tehsildar but the appellant filed objections against the confirmation which were rejected on 11.7.1985 by the Sale Commissioner on the ground that challenge money had to be deposited and the opportunity had been granted to the appellant to deposit challenge money on 11.6.1985 and extension had been sought on 3.7.1985 but the needful had not been done. Accordingly, vide order dated 11.7.1985 finding was recorded that the application stood automatically lapsed and was ordered to be filed. The appellant filed a revision petition before the Chief Sales Commissioner which was dismissed on 8.5.1986 on the ground that the challenge money had not been deposited inspite of several opportunities. However, in revision, the Commissioner, Jalandhar division, Jalandhar vide order dated 6.6.1990 remanded the case to the Sales Commissioner for fresh decision and to record a finding as to whether the allotment of land was cancelled or not from the Directory Organization. Respondent no.7-Joginder Singh approached the Financial Commissioner against the remand order which was allowed

on 31.1.1991 (Annexure P-6) with the direction that the Commissioner will pass the final order on merits after obtaining necessary clarification. The appellant approached this Court in Civil Writ Petition No. 12496 of 1991- Gurmukh Singh Vs. The State of Punjab and others challenging the order of the Financial Commissioner which was disposed of on 18.3.2011 and direction was issued that the Financial Commissioner would decide the issue afresh after hearing both the parties. In pursuance of the direction of this Court, the Financial Commissioner allowed the revision petition on 29.5.2012 filed by respondent no. 7-Joginder Singh and held as under:-

“I have carefully considered the rival contentions and have perused the record of the case, it is seen that the present proceedings were initiated on an application filed under section 6-A by the present respondent, contending that the auction conducted in favour of the petitioner may not be confirmed. The only provision under which such an application/petition can be considered is rule 6-A of the Punjab Package Deal Properties (Disposal) Rules, 1976. This rule lays down on two absolute stipulations: firstly that the application be filed within 10 days of the auction; and secondly that challenge money equivalent to 20% of the highest bid (5% if the objector is a member of Scheduled Caste) should be deposited on demand. The present respondent failed to deposit the challenge money on demand by the Sales Commissioner and hence his objection was rejected. The subsequent revision before the Chief Sales Commissioner was also rejected on this ground. To my mind, since the challenge money had not been deposited, the Commissioner was in error in going into the merits of the case and deciding that the matter should be considered afresh. Rule 6-A is clear that even if the objection to the auction is on ground of material irregularity or fraud, the challenge money has still to be paid. Hence even if the contention that the auction was a procured and fraudulent transaction is taken at face value even then it could not have been set aside without deposit of the challenge money. The Commissioner's order therefore cannot be sustained.

5. The result of above discussion is that this petition is accepted, the impugned order dated 6.6.1990 of the Commissioner is set aside, and the orders of the Sales Commissioner and Chief Sales Commissioner rejecting the objections are maintained.”

(4) Resultantly the appellant filed the writ petition which was dismissed on the grounds noticed above.

(5) Counsel for the appellant has vehemently submitted firstly that the auction was a fraud and farce since only two persons had participated in the said proceedings and secondly submitted that since the land had been retrieved by the Directory Organization, therefore, it had to be sold by public auction and the sale could not be restricted to the members of the Scheduled Caste/Backward Class. Accordingly, it was contended that the learned Single Judge was in error in dismissing the writ petition.

(6) Counsel for the respondents on the other hand submitted that as per Rule 6-A of the Punjab Package Deal Properties (Disposal) Rules, 1976 (hereinafter referred to as "the Rules"), it was necessary for any person who lays challenge to the auction on the ground of irregularity or fraud to deposit the challenge money and in case of non deposit of the challenge money, the said application was to lapse. It was accordingly submitted that since the appellant had not deposited the money inspite of an opportunity being granted, the order passed by the Financial Commissioner was justified.

(7) The submission made by the respondents carries much weight. A perusal of the Rule 6-A of the Rules would show that any person who lays challenge to any auction of property before its confirmation on the ground of any material irregularity or fraud was required to make an application to that effect to the Sales Commissioner and deposit 20% of the highest bid as challenge money. In case where the objection was filed by the member of Scheduled Caste/Backward Class in respect of sale made in restricted auction, the challenge money was to be to the tune of 5% of the highest bid. Further, it was provided in case of non deposit of challenge money in ten days the application was to automatically lapse. A perusal of the order of the Sales Commissioner would show that on 11.6.1985, the appellant was given an opportunity to deposit the challenge money on the next date of hearing. On the said date i.e. 3.7.1985, an application was filed for extension of time which was granted till 10.7.2013 but the needful was not done and accordingly, the objection was rejected on 11.7.1985 having lapsed. The relevant portion of the order reads as under:-

"It was ordered by me on 11.6.85 that the petitioner should deposit the challenge money before the next date of hearing. However, on the next date of hearing i.e. 3.7.85 the petitioner submitted an

application for the extension of the period for the deposit of the challenge money. Accordingly, the petitioner was ordered to deposit the challenge money by 10.7.1985. But on 10.7.1985 the petitioner has again submitted an application that he could not deposit the challenge money and has requested for more time. Accordingly, the case was fixed for today for consideration.

3. Today, I have heard the Id. Counsel for the petitioner on the one hand and the Id. Counsel for the auction purchaser and the Kanungo (Sales), Nakodar on the other hand. The Id. Counsel for the petitioner has submitted that objector is a poor man and therefore, he should be given more time in the interest of justice. On the other hand, the Id. counsel for auction purchaser and the Kanungo Sales have submitted that the petitioner was required to deposit the challenge money within ten days of the order. The Id. Counsel has submitted that the law on the point is very clear and it is set down that that in the case of non deposit of the challenge money within ten days of the order, the application shall automatically lapse. The Id. counsel has, therefore, submitted that the application has already lapsed and should therefore be filed.

4. I have carefully perused the file. It is provided in rule 6-A of the Pb. Package Deal Properties (Disposal) Rules, 1976 that if the objection is filed by the members of Scheduled Caste in respect of sale made by restricted auction the challenge money shall be equivalent to 5% of the highest bid. In case of non deposit of the challenge money within ten days of the order, the application shall automatically lapse.

5. Now in this case the challenge money has not been deposited by the petitioner within ten days of the order, therefore, this application has automatically lapsed and is therefore ordered to be filed. File be consigned to the record room after due compliance.”

(8) A perusal of Rule 6-A of the Rules would go on to show that there was a requirement under the said Rule and there was non compliance of statutory provisions. Rule 6-A of the Rules reads as under:-

“6-A Objections - (a) Where a person desires that the sale by auction of any rural property may not be confirmed under these rules

because of any material irregularity or fraud, in the manner and conduct of the sale, he may make an application to that effect to the Sales Commissioner;

Provided that every such application for setting said the sale shall be made within 10 days of the said auction and the person making the application shall on demand deposit a sum equivalent to twenty percent of highest bid as challenge money ;

Provided further that if an objection is filed by a member of the Scheduled Castes in respect of a sale made by restricted auction, the challenge money shall be equivalent to five per cent of the highest bid. In case of non deposit of the challenge money within 10 days of the order, the application shall automatically lapse.

(b) In case any application under clause (a) is accepted the challenge money shall be refunded and the rural property shall be re-auctioned with the bid starting from the previous highest bid.

(c) In case an application under clause (a) is not accepted, the challenge money shall stand forfeited.”

(9) On the basis of the said Rule which is mandatory in nature on account of the fact that on demand being raised on non deposit of challenge money, the application is not to be entertained at all. The purpose is very apparent that there is no unnecessary challenge to any auction without the person depositing the requisite money. Sub Clause (b) and (c) further provide that in case objections are accepted, challenge money shall be refunded and the property shall be re-auctioned with the bid starting from the previous highest bid and where it is not accepted the challenge money is to be forfeited. The appellant had not complied with these conditions, therefore, the proceedings could not continue further. He was even granted an opportunity by the Sales Commissioner and a demand was raised as provided under the Rules but he chose not to deposit the amount. In such circumstances the objection could not be entertained and the Financial Commissioner was justified in allowing the petition of respondent no. 7 which has been duly upheld by the learned Single Judge.

(10) The submission of the counsel that the land could not be put to restricted auction also is without any basis since it would also fall within

the ambit of material irregularity or fraud which would have to be looked into by the Sales Commissioner subject to deposit of challenge money which was admittedly not done. Even otherwise, nothing was placed on record as has been noticed by the learned Single Judge that land was retrieved by any Directory Organization of the Rehabilitation Department which would require that the land has to be put in open auction as contended. Accordingly, we do not find that there has been any infirmity or illegality in the order passed by the learned Single Judge, therefore, the same is upheld.

(11) Accordingly, the present appeal is dismissed.

V. Suri