

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11065-1993 (O/M)

Date of decision : 03.07.2025

Shamsher Singh through LRs

..... Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. G.S. Nagra, Mr. K.S. Rawat,
Mr. P.S. Chahal, Advocates
for the petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

Mr. Dinesh Ghai, Mrs. Amita Arora, Advocates
for respondent No. 5.

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HARSH BUNGER, J.

1. Prayer in the instant civil writ petition filed under Articles 226/227 of Constitution of India, inter alia, is issuance of a writ in the nature of certiorari for setting aside the order dated 15.07.1992 (Annexure P-5), passed by learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner').

2. Briefly, petitioner is stated to have purchased 10 Kanal – 4 Marla area, comprised in Khasra No. 25//11/3, 20 and 21, in an open auction on 25.01.1983. The sale is stated to have been conducted under the provisions of Punjab Package Deal Properties (Disposal) Act, 1976 (in short '1976 Act'). The petitioner is stated to have paid the balance amount of Rs. 13,360/- on 27.05.1986.

2.1 It is stated that one Hazara Singh son of Shri Partap Singh claimed himself to be in possession of the aforesaid land in question and applied for its transfer to Tehsildar (Sales). It appears that the aforesaid prayer of Hazara Singh was rejected on 03.01.1975 holding that the said area could not be transferred to him as the same was sub-urban property. According to the petitioner, the said order dated 03.01.1975 has attained finality.

2.2 It is further stated that since aforesaid land in question was sub urban property, the same was put to an open auction on 25.01.1983, wherein petitioner was the highest bidder.

2.3 It is still further submitted that above referred Hazara Singh and other persons, namely, Piara Singh, Parkash Singh, Jagir Singh, Kulwant Singh, Mohan Singh etc. submitted their objections to aforesaid open auction held in favour of petitioner, however, the same were rejected by Settlement Commissioner, Punjab, Rehabilitation Department, Mohali, (in short 'Settlement Commissioner'), vide order dated 26.04.1984 (Annexure P-1).

2.4 It is required to be noticed here that in the said order dated 26.04.1984 (Annexure P-1), it has been duly recorded that the application of the objectors for transfer of land on the basis of possession had already been rejected by Tehsildar (Sales) on 03.01.1975 on the ground that the land being sub urban, could not be transferred under the then prevalent policy. It is still further observed that the land had become urban upon extension of municipal limits and accordingly, the same was auctioned.

2.5 Feeling aggrieved against order dated 26.04.1984 (Annexure P-1), above referred Piara Singh preferred an appeal before learned Deputy Commissioner-cum-Chief Settlement Commissioner, Rupnagar (in short 'Chief Settlement Commissioner'), however, the same was dismissed, vide order dated 30.08.1985 (Annexure P-2) by observing as under :-

“ I have carefully considered the arguments advanced on behalf of both the sides and have also gone through the record of the lower courts. It is not disputed that the land in question is the package deal property. As such the disposal of package deal land/property has to be governed by the provisions of the Punjab Package Deal Properties (Disposal) Act, 1976 and rules framed thereunder. It is contended that the land in question was rural agricultural land and its nature could not be changed but the nature and status of the land depends upon its location i.e. if it falls within the limit of rural estate it become rural land and if it comes within the municipal limits it becomes sub-urban/urban. The land in question was located in village Kharar but if falls within the extended municipal limits of Kharar town Committee. As such the land in question was to be deemed as urban. The disposal of urban/sub-urban land/property is to be made in accordance with the provisions contained in para IV of Chapter II of the Punjab Package Deal Properties (Disposal) Rules 1976 which inter-alia provide that the disposal of lands which are sub-urban or are potential residential or commercial sites shall be made by public auction open to all. In view of these provisions the disposal of land in question by auction was legal and regular. The stay order issued by the then Rehabilitation Minister has also no legal validity because the same was not

passed under any provisions of land and in the circumstances it was not obligatory to implement it.

In view of the above discussion, I am of the opinion that the Settlement Commissioner, Rehabilitation, Punjab, Mohali had rightly rejected the objections of the appellant on 26.4.1984. I, therefore, find no reasons to interfere with the said order. Accordingly, I dismiss the appeal and uphold the order passed by the learned Settlement Commissioner, Punjab, Rehabilitation Department, Mohali, in all these town cases.”

2.6 It transpires that the aforesaid order dated 30.08.1985 (Annexure P-2) was never challenged and same attained finality between the parties.

2.7 It appears that upon dismissal of appeal preferred by above referred Piara Singh, vide order dated 30.08.1985 (Annexure P-2), the then Sales Commissioner, Kharar, vide order dated 15.05.1986, confirmed the sale made in favour of petitioner.

2.8 It transpires that Parkash Singh son of Shri Shadi Ram (respondent No. 5 herein) alongwith Piara Singh and Jagir Singh etc., who had initially filed objections to open auction, held in favour of petitioner; preferred an appeal before Chief Settlement Commissioner against order dated 15.05.1986, passed by Sales Commissioner, Kharar, whereby the open auction in favour of petitioner was confirmed.

2.9 The above referred appeals came to be decided by Deputy Commissioner-cum-Chief Sales Commissioner, Rupnagar (in short 'Chief Sales Commissioner'), vide order dated 04.03.1987 (Annexure P-3), whereby the matter was remanded to Sub Divisional Officer (Civil), Kharar-cum-Sales Commissioner [in short 'SDO (Civil)'] for deciding the

case afresh. While passing the order dated 04.03.1987 (Annexure P-3), the Chief Sales Commissioner placed reliance upon a judgment passed by this Court in the case of '*Mohinder Kaur and others Versus Financial Commissioner (Taxation), Punjab*', (CWP No. 3533 of 1971, decided on 07.05.1980) to hold that the character of area was frozen by the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (in short '1955 Rules') for the purposes of allotment to the allottees and accordingly, the issue as to whether a particular land was rural or urban/semi urban was to be considered as on 15.08.1947.

2.10 Feeling aggrieved against order dated 04.03.1987 (Annexure P-3), five separate petitions came to be filed before Commissioner, Patiala Division, Patiala (in short 'Divisional Commissioner') (including petition bearing RR No. 213 of 1987, preferred by petitioner-Shamsher Singh). All the aforesaid five appeals/petitions came to be accepted by learned Divisional Commissioner, vide order dated 15.06.1988 (Annexure P-4) whereby the order dated 04.03.1987 (Annexure P-3) was set aside by observing as under :-

“ This case hinges only on one point. Is this property rural or urban ? It is evacuee property and was covered under Displaced Persons (Compensation and Rehabilitation) Rules, 1955. These properties were dealt with by Government of India. Whatever properties had not been disposed of were transferred to State Government under the Punjab Package Deal Properties (Disposal) Act. All lands which were rural or urban under Displaced Persons (Compensation and Rehabilitation) Rules, 1955 later on covered under Package Deal Properties Act. For

disposal of Package Deal land a separate set of rules – 'Punjab Package Deal Properties (Disposal) Rules, 1976' has been framed. The definition of urban property in those rules is flexible. Though in the present case, even that is undisputable because municipal limit of Kharar Municipal Committee had been extended in 1975, so in these rules, this property ab-initio was urban property. Looking at it in this light, the action to alternate this property was void and its allotment was, therefore ab-initio void. The order of Chief Sales Commissioner dated 30.8.1985 is therefore, a valid order. The appeals are accepted and the impugned order dated 4.3.1987 is set aside.”

2.11 Being dis-satisfied against order dated 15.06.1988 (Annexure P-4), passed by learned Divisional Commissioner, respondent No. 5 (Parkash Singh) preferred a revision petition (ROR No. 156 of 1987-88) before learned Financial Commissioner. Apart from Parkash Singh, four other revision petitions came to be filed, namely, one revision petition by Piara Singh (ROR No. 157 of 1987-88) and three revision petitions by Hazara Singh (RORs No. 160, 161, 162 of 1987-88).

2.12 Learned Financial Commissioner (Appeals), Punjab, vide order dated 15.07.1992 (Annexure P-5), allowed the revision petitions and restored the order dated 04.03.1987 (Annexure P-3), passed by Chief Sales Commissioner.

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition seeking relief(s), as noticed hereinabove.

4. I have heard learned counsels for respective parties and perused the paperbook with their able assistance.

5. In the instant case, there is no dispute about the fact that the property in question was put to an open auction on 25.01.1983, wherein petitioner (Shamsher Singh) was the highest bidder. It is a matter of record that the objections filed by Parkash Singh (original respondent No. 5) to the open auction were dismissed by Settlement Commissioner, vide order dated 26.04.1984 (Annexure P-1).

5.1 It is also a matter of record that Parkash Singh did not challenge the order dated 26.04.1984 (Annexure P-1), whereby his objections to the open auction were rejected, however, as a matter of fact, the order dated 26.04.1984 (Annexure P-1) was challenged by other objectors (Piara Singh etc.) by filing an appeal before Chief Settlement Commissioner, which was also dismissed, vide order dated 30.08.1985 (Annexure P-2). Apparently, order dated 30.08.1985 (Annexure P-2) attained finality as no appeal was preferred against said order.

5.2 It has come on record that the open auction held in favour of petitioner was approved/confirmed by Sales Commissioner, Kharar, vide order dated 15.05.1986. Against the said order dated 15.05.1986, Parkash Singh (respondent No. 5) alongwith Piara Singh, Jagir Singh etc. filed appeal, which was allowed by Chief Sales Commissioner, vide order dated 04.03.1987 (Annexure P-3) primarily on the ground that the nature of land has to be seen as on 15.08.1947 by further placing reliance upon Rule 2(h) of 1955 Rules. Although, the order dated 04.03.1987 (Annexure P-3), was set aside by learned Divisional Commissioner by clearly observing that the property in question was urban property; however, learned Financial Commissioner has set aside learned

Divisional Commissioner's order dated 15.06.1988 (Annexure P-4) and restored the order dated 04.03.1987 (Annexure P-3), passed by Chief Sales Officer.

6. Having considered the matter in its totality, I am of considered view that once the land has been put to open auction under the provisions of 1976 Act by considering the property as sub urban as the municipal limits of Kharar stood extended in the year 1975 and objections filed by Parkash Singh (respondent No. 5) and others to the aforesaid open auction stood rejected by Settlement Commissioner, vide order dated 26.04.1984 (Annexure P-1) and even further an appeal against order dated 26.04.1984 (Annexure P-1), preferred by other objectors (Piara Singh etc.) apart from Parkash Singh (respondent No. 5), having dismissed by Chief Settlement Commissioner, vide order dated 30.08.1985 (Annexure P-2) and the said order having attained finality, therefore, there was no occasion for Parkash Singh to have again initiated fresh litigation against order dated 15.05.1986, passed by Sales Commissioner, Kharar, whereby sale in favour of petitioner (Shamsher Singh) was confirmed.

6.1 That apart, I am also of the view that the reliance placed by Chief Sales Commissioner upon Rule 2(h) of 1955 Rules and also upon a judgment of this Court in the case of '*Mohinder Kaur (supra)*', was totally misplaced as the said judgment as well as provisions of Rule 2(h) of 1955 Rules would not be attracted to the facts of present case for the simple reason that the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (in short '1954 Act') was enacted to provide for payment of

compensation and rehabilitation granted to the displaced persons and for matters connected therewith. It is worth noticing that under 1954 Act, the term 'displaced person' has been defined under Section 2(b) of 1954 Act, which reads under :-

“S. 2(b) "displaced person" means any person who, on account of setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of West Pakistan, has after the first day of March, 1947, left, or been displaced from, his place of residence in such area and who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan, and also includes the successors-in-interest of any such person;”

6.2 Concededly, the open auction in question was held under the provisions of 1976 Act, whereunder the package deal property has been defined under Section 2 (1-A), which reads as under :-

“2 (1-A) 'package deal property' means the surplus evacuee property taken over by the State Government and referred to in the Government of India letter --

- (i) No. 3(35) Pol. II/60-Land & Rent, dated 3rd June, 1961, read with letter No. 3(54)/Pol. II/60-L&R, dated 5th March, 1962.*
- (ii) No. F.18(40) J/61/prop/Comp. & Prop. dated 23rd March, 1963 and,*
- (iii) No. F.18(40)/61/Prop-Comp. & Prop, dated 29th March, 1963, reproduced in the Schedule of this Act; but excluding such property as may be required for transfer or allotment, by way of compensation to a*

displaced person, as defined in the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and rural agricultural land required for similar allotment to a displaced person of non-Punjabi extraction in pursuance of the Directions of the Central Government given under section 32 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, read with sub-rule (2) and rule 66 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955;”

6.3 Therefore, once the property had been put to an open auction, wherein petitioner (Shamsher Singh) was the highest bidder and the objections submitted by Parkash Singh (original respondent No. 5) to the aforesaid open auction stood dismissed, vide order dated 26.04.1984 (Annexure P-1), which was never challenged further by Parkash Singh, accordingly, he had no locus standi to challenge order dated 15.05.1986, passed by Sales Commissioner, Kharar, whereby the sale in favour of petitioner (Shamsher Singh) was confirmed after dismissal of his (Parkash Singh's) objections to the open auction.

7. In view of what has been discussed above, impugned order dated 15.07.1992 (Annexure P-5), passed by learned Financial Commissioner is unsustainable in the eye of law and same is accordingly set aside. Further, the order dated 30.08.1985 (Annexure P-2), passed by Chief Settlement Commissioner, upholding rejection of objections submitted by respondent No. 5-Parkash Singh and others, to open auction, vide order dated 26.04.1984 (Annexure P-1) and subsequent confirmation of sale by Sales Commissioner, Kharar, vide order

dated 15.05.1986 and also the order dated 15.06.1988 (Annexure P-4),
are hereby maintained.

8. The writ petition stands disposed of in the aforesaid terms.
9. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

03.07.2025
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No