

2025:PHHC:047182



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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-495-1994 (O&M)
Date of Decision: 07.04.2025**

Sohan Singh and others

..... Petitioners

Versus

Financial Commissioner, Revenue-cum-Secretary to Government of Punjab,
Chandigarh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Jasinder Singh Thind, Advocate for the petitioners.

Mr. Nirmaljit Singh Diwana, Senior DAG, Punjab.

HARSH BUNGER J.

Petitioners have filed the instant writ petition, *inter alia*, seeking a writ in the nature of Certiorari to set aside impugned order dated 08.12.1987 (Annexure P-4) passed by the learned Financial Commissioner, Revenue, Punjab.

2. Briefly, on 25.11.1965, an area measuring 14 Kanal-11 Marla was sold by way of auction conducted by the Tehsildar (Sales), in favour of respondent No.2 (Bhagat Ram son of Baru Ram). According to petitioners, the aforesaid sale was made under the Package Deal Rules, 1962, which were framed for disposal of Surplus Rural Evacuee Land, received by the

Punjab Government from the Central Government by way of Package Deal in the year 1961. The said sale is stated to have been confirmed by the Settlement Commissioner and a Sale Certificate was also issued in favour of respondent No.2 (Bhagat Ram). Respondent No.2 is stated to have deposited the entire sale price on 09.12.1968.

2.1 It transpires that respondent No.2 sold the above referred land in favour of the present petitioners by way of two Sale Deeds for an amount of Rs.21,000/- and 15,000/-, respectively.

2.2 In the year 1975, Naib Tehsildar (Sales), Kapurthala made a reference under Section 10 of the Punjab Package Deal Properties (Disposal) Act, 1976 (in short 'the 1976 Act) to the Chief Sales Commissioner, Jalandhar, Punjab, who, vide its order dated 28.09.1978 (Annexure P-1) cancelled the auction sale made in favour of respondent No.2 (Bhagat Ram).

2.3 Petitioners herein challenged the aforesaid order dated 28.09.1978 (Annexure P-1) by way of filing a revision petition before the learned Commissioner, Jalandhar, however, the same was also dismissed vide order dated 21.05.1984 (Annexure P-2). A further revision petition filed before the learned Financial Commissioner, Revenue, Punjab was also dismissed vide impugned order dated 08.12.1987 (Annexure P-4).

3. In the aforementioned circumstances, petitioners have filed the present writ petition before this Court, seeking relief(s) as noticed hereinabove.

4. Learned counsel for the petitioners submits that the authorities below have erred in law and fact in passing the impugned order(s). It is submitted that respondent No.2 (Bhagat Ram) had paid full price of the land in question on 09.12.1968, whereupon, he had become full owner of the said

land and was free to deal with it. Learned counsel submits that restriction as regards the sale of land for a period of ten years was not applicable to the case in hand. It is further submitted that even otherwise, petitioners are *bona fide* purchasers for valuable consideration and their interest is protected under Section 41 of the Transfer of Property Act.

4.1 With the aforesaid submissions, learned counsel for the petitioners has prayed for setting aside impugned order dated 08.12.1987 (Annexure P-4) passed by the learned Financial Commissioner, Revenue, Punjab.

5. On the other hand, learned State counsel has opposed the aforesaid submissions made by learned counsel for the petitioners by submitting that the land in question was auctioned in favour of respondent No.2 (Bhagat Ram) on 25.11.1965, when a Memorandum of Offer (Annexure R-2) was signed by respondent No.2 (Bhagat Ram), wherein as per Clause 7, Sh. Bhagat Ram could not have sold the said land till the expiry of ten years from the date of purchase. It is submitted that respondent No.2 (Bhagat Ram) sold the said land to the present petitioners in two transactions in the years 1968 and 1971, respectively. It is submitted that respondent No.2 had paid the entire sale consideration of the land in question on 09.12.1968, whereas, he had already sold a part of the land prior to the said date, therefore, the conditions of Sale were clearly violated by him; and on that account, auction sale in his favour was rightly cancelled by the Chief Sales Commissioner, Jalandhar, Punjab. It is further submitted that in the peculiar facts and circumstances of this case, the petitioners cannot be considered as *bona fide* purchasers and they are not entitled for protection under Section 41 of the Transfer of Property Act. Accordingly, prayer for

dismissal of the instant writ petition has been made.

6. I have heard learned counsel for the parties and perused the paper book with their able assistance.

7. Concededly, respondent No.2 (Bhagat Ram) had purchased the land in question in an open auction conducted on 25.11.1965, under the Package Deal Rules, 1962, for an amount of Rs.1,500/- and at the relevant time, a Memorandum of Offer (Annexure R-2) was signed between the then Tehsildar (Sales) and respondent No.2 (Bhagat Ram) on 25.11.1965.

Relevant conditions thereof, read as under:-

“I, Bhagat Ram son of Biru Ram of Village Khakhar Jadid, Tehsil and District Kapurthala, hereby acknowledge that I have this day made an offer for the purchase of the property described in the schedule hereto annexed on the terms and conditions appearing hereunder at the price of Rs.1500/- and I hereby agree to complete the purchase if my offer is accepted by Government.

CONDITIONS:

1. xxxx

2. xxxx

3. *That I shall pay the price by 20 equal instalments in 10 years under rules Revenue Department by transfer credit to the head of account. I-II Miscellaneous Amount received from the Central Government for the disposal of Rural Evacuee Properties through the respective Government Treasury within 15 days from the date of communication of the acceptance of the bid, and that if I fail to do so the land may be put to re-auction by Government, I further agree that in the event of re-auction, if the Government suffers any loss, the same be made good by me.*

4. *In case of default in the event of paying of 2 Succession instalments good shall to the right to resume the land and forfeit of money paid by me.*

5. I agree to pay all rates, cesses taxes, fees, batterment charges and land revenue etc. in respect of the said property chargeable under any law for the time being in force.

6. That the Sale is subject to the approval of the Settlement Commissioner or an officer appointed by him for the purpose. There shall be no sale unless the offer is accepted and communicated to me. The Settlement Commissioner or the other officer shall not be bound to disclose reasons therefore.

7. I agree that I shall not be entitled to resell, transfer or mortgage the purchased land till final payment of the land with interest of the loan obtained from Government for the purchase of the said land, or till the expiry of 10 years from the date of purchase, whichever is later, and in the event of default of this condition, Government, shall be empowered to resume, the land and to forfeit the amount thus paid.

As witness my hand this day of

25.11.65

Signature of purchaser

Purchaser money Rs.1500/-

Deposit paid Rs.100/-

Balance due Rs.1400/-

Schedule of Sale.

As agent for the President of India, I Harchand Singh, Tehsildar (Sales)-cum-Managing Officer, Kapurthala accept that of Rs.1500/- made by Bhagat Ram son of Biru Ram for the property mentioned in the Schedule above, subject to confirmation of the sale by the competent Authority.”

7.1 In terms of Condition No.7 of the Memorandum of Offer (Annexure R-2), respondent No.2 (Bhagat Ram) could not have sold the land until the final payment of the land or till the expiry of ten years from the date of purchase, whichever is later.

7.2 It is not disputed that on 09.12.1968, respondent No.2 had paid the entire sale price of the land purchased in auction, whereupon, a Conveyance Deed (Annexure R-1) was executed in favour of respondent

No.2 (Bhagat Ram). Clause 5 thereof reads as under:-

“5. So far as the proprietary right is not transferred to him, by that time, the vendee will not further sell any part or whole of the above property, or mortgage it or dispose it of in any other manner or leave possession of that property.”

7.3 It is noticed that respondent No.2 (Bhagat Ram) sold a part of the land in question in favour of the present petitioners vide Sale Deed dated 08.07.1968 (although petitioners claim the date of Sale as 08.07.1969); and the subsequent sale was made in favour of petitioners herein by respondent No.2 on 18.06.1971.

8. Be that as it may; respondent No.2 (Bhagat Ram) could not have sold the land purchased by him in auction for a period of ten years from the date of purchase, i.e. up to 24.11.1975, however, he sold the land up to 1971, and in those circumstances, the bar mentioned in Memorandum of Offer (Annexure R-2) as well as Conveyance Deed dated 09.12.1968 (Annexure R-1) was clearly violated.

8.1 Once there was a condition in the Memorandum of Offer (Annexure R-2) and also the Conveyance Deed (Annexure R-1) then respondent No.2 was bound to comply with the same.

8.2 Evidently, the sale in favour of respondent No.2 (Bhagat Ram) was made on account of him belonging to the Scheduled Caste Community coupled with the condition that he was not owning 5 standards acre of land. The purpose of Sale was to uplift the persons belonging to the Scheduled Caste Community and the same was not meant for them to make a profit out of it.

9. I have also considered the plea of petitioners that they are *bona fide* purchasers, therefore, their interest is protected under Section 41

of the Transfer of Property Act, however, I do not find any merit in the same.

10. Here, it would be apposite to refer to few judicial pronouncements.

10.1 This Court in **“Amar Nath Vs. State of Punjab”, 1992 (2) RRR 273** has observed as under:

“I am, therefore, of the view that the circumstances of the case did require, without any manner of doubt, that the sale made to Balwant Kaur, being in contravention of the stipulation contained in the sale letter, required to be struck down in accordance with the settled law. It is also pertinent to point out that this Court has held in Joga Singh's case and Jagir Singh's case (supra) that the subsequent transferee is not absolved of the responsibility from going through the sale certificate which expressly prohibits the sale certificate within a period of ten years. It has also been held in the former case that the condition prohibiting the sale for a period of ten years is a valid and enforceable one and cannot be the subject-matter of a successful challenge. In Jagir Singh's case (supra), the subsequent transfer was held to be not bona fide as the purchaser had not, in fact, looked at the sale certificate and the Court found that this was not one of the matters which was required to be seen in order to determine the bona fide of the subsequent transfer.”

10.2 Further, this Court in **“Hardial and others Vs. The Commissioner, Jalandhar Division, Jalandhar and others”, 2004 (3) RCR (Civil) 540** has observed as under:

“14. Learned counsel for the petitioners could not draw my attention to any decision of this Court or of the Supreme Court taking contrary view. This being the position, it must be held that the restriction imposed in memorandum of offer dated 1.2.1965 executed by Banta Ram and sale certificate issued by the competent authority was legally correct and binding on

Banta Ram and he did not have the authority to transfer the land to Harbans Lal before expiry of ten years. As a logical corollary to this conclusion, it must be held that the so-called sale deed dated 18.4.1972 executed by Banta Ram in favour of Harbans Lal was nullity and no right can be said to have been acquired by Harbans Lal which he could transfer in favour of the petitioners.

15. I am further of the view that restriction contained in the memorandum of offer and the sale certificate was in consonance with the scheme of the constitutional provisions contained in the Preamble and Article 46 of the Constitution. Therefore, the same was mandatory in character and alienation of the property in favour of late Shri Harbans Lal was void ab initio.”

11. Keeping in view the aforesaid facts and circumstances, it is held that the restriction imposed in Memorandum of Offer dated 25.11.1965 (Annexure R-2) and Clause 5 of Conveyance Deed/Agreement (Annexure R-1) was binding on Bhagat Ram and he did not have authority to transfer land to the petitioners before expiry of ten years. It is further held that the Sale Deeds executed by Bhagat Ram in favour of the petitioners were nullity and petitioners cannot be held to be *bona fide* purchasers, so as to claim benefit of Section 41 of the Transfer of Property Act.

12. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

13. All pending application(s), if any, shall also stand closed.

07.04.2025
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No