

sons holding partly in one capacity and partly in another, were also brought within the ambit of the provisions. It is for land of such landowners whose area fell beyond the ceiling limit and had been declared surplus, that compensation had to be paid. And compensation necessarily had to be paid to those persons who were entitled as landowners and who had been sought to make way for the claims of the State. On this understanding of the matter, it becomes plain that though the holding of the petitioner had to be reckoned for the purpose of computing surplus area as it stood on the appointed date 'January 24, 1971', compensation had to be paid for the land declared surplus to the person who made way for the State to take it over. Admittedly, on the facts of the present case, the petitioner transferred his area somewhere after January 24, 1971, but before June 30, 1976, to a set of vendees who are not parties to these proceedings. The State reckoned the surplus area on the legal fiction that the area kept belonging to the petitioner, ignoring at that stage the transfers. Its claim at the later stage that it would pay compensation to the vendees, in the scheme of things seems to me, perfectly justified for it took possession from the vendees and needs to compensate them for the purpose. This is in keeping with the scheme and the provisions of the Act. It is precisely for this purpose, as said earlier, that both proprietorial and the possessory interests in the land have to be kept in view to work out the scheme of the Act. No fault at all can be found in the stance adopted by the State. The petitioner is not entitled to the compensation.

(4) For the foregoing reasons, there is no merit whatsoever in this petition. It accordingly fails and is dismissed with costs.

N. K. S.

Before J. M. Tandon, J.
BAKHSHO—Petitioner.

versus

PAKHAR SINGH AND ANOTHER—Respondents.

Civil Revision No. 1233 of 1984

December 17, 1984.

Code of Civil Procedure (V of 1908)—Order 21, Rules 90 and 92 and Order 43, Rule 1(j)—Sale of property by auction in execution of a decree—No objections filed under Rule 90 against the auction—Executing Court confirming the sale—Order confirming the sale—Whether appealable.

Bakhsho v. Pakhar Singh and another (J. M. Tandon, J.)

Held, that where the judgment-debtor did not file objections under Order 21, Rule 90 of the Code of Civil Procedure before the sale was confirmed in favour of the auction-purchaser, then in the absence of objections under Rule 90 it was obligatory for the executing Court to confirm the sale in favour of the auction-purchaser. The judgment-debtor having not filed objections, the question of setting aside or refusing to set aside the sale in favour of the auction-purchaser did not arise. In other words, the executing Court would have either set aside the sale in favour of the auction-purchaser or refused to set it aside, if the objections had been filed under Rule 90. The order of the executing Court setting aside the sale or refusing to set aside the sale is appealable under clause (j) of Order 43, Rule 1. The order of the executing Court *per se* confirming the sale in favour of the auction-purchaser in terms of Order 21 Rule 92 in the absence of objections cannot be treated as an order refusing to set aside the sale and is, therefore, not appealable.

(Paras 2 & 3).

Petition under Section 115 C.P.C. for revision of the order of the Court of Mrs. Bimla Gautam, Additional District Judge, Jalandhar, dated 12th April, 1984 affirming that of Shri M. R. Garg, PCS, Sub-Judge, 1st Class, Phillaur, dated 22nd December, 1983 confirming the sale in favour of Balbir Singh for Rs. 42,000. Further Ordering that sale certificate be issued. Cheque of Rs. 18,600 be issued in favour of the decree-holder, on his furnishing receipt and proper identification.

Civil Misc. No. 2239-C-II of 1984

Application under sections 5 and 14 of the Limitation Act praying that the application be accepted and the delay, if any, may be condoned.

Satya Pal Jain, Advocate, for the Petitioner.

N. S. Gujral, Advocate, for the Respondent.

— JUDGMENT —

J. M. Tandon, J.:

(1) Pakhar Singh obtained a decree for Rs. 16,374 with future interest against Bakhsho, petitioner. In execution of the decree, the land of the petitioner was auctioned. Balbir Singh, respondent gave the highest bid for Rs. 42,000. No objections were filed against the auction. The executing Court,—*vide* order, date 22nd December,

1983, confirmed the sale of the land in favour of Balbir Singh, respondent. A cheque of Rs. 18,600 was ordered to be issued in favour of the decree-holder. The petitioner filed appeal against the order of the executing Court, dated 22nd December, 1983, confirming the sale of the land in favour of the auction purchaser which was disposed of by the Additional District Judge, Jalandhar,—*vide* order, dated 12th April, 1984. The Additional District Judge held that the appeal against the order of the executing Court, confirming the sale in favour of the auction-purchaser was not maintainable. The appeal was consequently dismissed. The petitioner has filed the present composite revision against the order of the Additional District Judge, dated 12th April, 1984 and the executing Court, dated 22nd December, 1983. The petitioner has moved Civil Miscellaneous No. 2239-C-II of 1984 under sections 5 and 14 of the Limitation Act, for condonation of delay in filing the Civil Revision against the order of the executing Court.

(2) The learned counsel for the petitioner has argued that the learned Additional District Judge has wrongly held that the appeal against the order of the executing Court, confirming the sale in favour of the auction-purchaser is not maintainable and in support of this contention, reliance has been placed on the provisions contained in Order 43, Rule 1 of the Code of Civil Procedure.

Clause (j) of Order 43, Rule 1, reads:—

“APPEAL FROM ORDERS—

1. *Appeals from orders*:—An appeal shall lie from the following orders under the provisions of section 104, namely:—

* * * * *

- (j) an order under Rule 72 or Rule 92 of Order XX-I setting aside or refusing to set aside a sale;

* * * ”

The relevant part of order 21, Rules 90 and 92 read :—

“Application to set aside sale on ground of irregularity of fraud:—

- (1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser,

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or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

* * *

92. Sale when to become absolute or be set aside:—

- (1) Where no application is made under Rule 89, Rule 90 or Rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

* * * ”

It is not disputed that in the instant case, the petitioner did not file objection under Order 21, Rule 90 before the Sale was confirmed in favour of the auction-purchaser. In the absence of objection under Rule 90, it was obligatory for the executing Court to confirm the sale in favour of the auction-purchaser. The executing Court consequently confirmed the sale under Rule 92 in favour of Balbir Singh, respondent.

(3) The petitioner having not filed objection under Rule 90, the question of setting aside or refusing to set aside the sale in favour of Balbir Singh auction-purchaser did not arise. In other words, the executing Court would have either set aside the sale in favour of the auction-purchaser or refused to set it aside, if the petitioner had filed objection under Rule 90. The order of executing Court setting aside the sale or refusing to set aside the sale is appealable under clause (j) of Order 43, Rule 1. The order of the executing Court *per se* confirming the sale in favour of the auction-purchaser in terms of Order 21, Rule 92 in the absence of objection under Rule 90 cannot be treated an order refusing to set aside the sale. It is not disputed that the order of the executing Court confirming the sale in favour of Balbir Singh auction-purchaser would not be appealable if it is not covered by Clause (j) of Order 43, Rule 1.

The learned Additional District Judge has rightly held that the order of the executing Court, dated 22nd December, 1983, confirming the sale in favour of the auction-purchaser is not appealable.

(4) The learned counsel for the petitioner has contended that in view of the fact that the petitioner filed appeal against the order of the executing Court, dated 22nd December, 1983, the delay in filing the present revision against the same order of the executing Court may be condoned. Keeping in view the facts of the case, the delay in filing the present revision against the order of the executing Court, dated 22nd December, 1983 is condoned and Civil Miscellaneous Application No. 2239-C-II of 1984 allowed.

(5) The learned counsel for the petitioner has contended that the sale in favour of the auction-purchaser was confirmed by the executing Court on 22nd December, 1983. The petitioner did not file objection under Order 21, Rule 90, as she did not come to know about the auction for want of proclamation of sale in terms of Order 21, Rule 66 of the Code. The sale in favour of the auction-purchaser stood confirmed by the time the petitioner came to know of it. The petitioner did not approach the executing Court for relief, because the sale already stood confirmed. It is under these circumstances that the petitioner has filed the present revision wherein the prayer made is that the sale by auction in favour of Balbir Singh respondent be set aside for want of proclamation under Order 21, Rule 66 of the Code. This contention is also without any merit. The petitioner has not sought the relief of getting the sale set aside from the executing Court so far. It is incorrect that the petitioner could not seek relief in this respect from the executing Court, because the sale in favour of the auction-purchaser stood confirmed. If the petitioner had filed objections for getting the sale set aside, the order passed would have been appealable under Clause (j) of Order 43, Rule 1 of the Code. The present revision against the order of the executing Court, confirming the sale in favour of the auction-purchaser in the absence of objection under Order 21, Rule 90 of the Code is rather misconceived.

(6) In view of the discussion above, the revision fails and is dismissed.

N. K. S.