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when the decree-holder actually took possession of the property in dispute in execution of the decree on June 15, 1973. Mr. Puri on the other hand states that the decree-holder was aware of the stay order and that an application for contempt proceedings has already been filed by his client against the decree-holder. We refrain from expressing any opinion on that matter.

(8) In the above-mentioned circumstances we do not find any justification whatsoever for allowing C.M. 1919-C of 1973, for extension of time, and have no hesitation in dismissing the same with costs. Counsel's fee Rs. 200.

(9) As the appeal is admittedly barred by time it shall stand dismissed *in limine*. Since no notice of the appeal has so far been issued, there can be no order as to costs therein. C.M. 1918-C of 1973, in which the *ex-parte* stay order was granted stands dismissed in view of the appeal itself having been dismissed.

B.S.G.

MISCELLANEOUS CIVIL

Before Balraj Tuli, J.

DILAWAR SINGH—Petitioner.

versus

THE STATE OF PUNJAB, ETC.—Respondents.

C.W. No. 2747 of 1972.

October 31, 1973.

Constitution of India (1950)—Articles 14 and 15—Land belonging to the Government notified for sale by auction restricted to landless workers of Scheduled Castes—Such restricted auction—Whether discriminatory and hit by Articles 14 and 15 of the Constitution.

Held, that where the State Government is the owner of the land, which is notified for sale by auction confining it to landless workers of the Scheduled Castes, such a restricted auction does not amount to discrimination and is not hit either by Article 14 or by Article 15 of the Constitution of India. The course adopted by the State is

for the amelioration of the lot of landless workers belonging to the scheduled castes and is in accordance with the declared policy of the Constitution of India to uplift the members of the Scheduled Castes for whom special provisions have been made. There is no reservation made in favour of the scheduled castes as a whole, but the auction of the land is confined only to a well recognised section of the community which had remained fallen and down trodden for a long time, in order to avoid their further exploitation by the persons holding land on which they were destined to work for the land owners.

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari, or any other appropriate writ, order or direction be issued quashing the proposed auction of land as contained in the notice, dated 25th July, 1972 contained in Annexure 'C' and directing the respondents that the area in possession of the petitioner be transferred to him on reserve price and further praying that the proposed auction of the land in possession of the petitioner, fixed for 24th August, 1972, be stayed and the petitioner's dispossession be also stayed till the final disposal of the writ petition.

Harbans Lal, Advocate, for the petitioner.

Nemo, for the respondents.

JUDGMENT

TULI, J.—This order will dispose of Civil Writs Nos. 2645 of 1972 (Piara Singh and others v. State of Punjab and others), 2747 of 1972 (Dilawar Singh v. The State of Punjab and others), 2748 of 1972 (Malook Singh and others v. The State of Punjab and others), 2808 of 1972 (Shingara Singh and others v. The State of Punjab and others) and 2903 of 1972 (Joginder Singh and others v. The State of Punjab and another as some common questions of law and fact are involved. In all these cases, the respondents have not chosen to appear or file their written statements and, therefore, these cases have to be decided on the material which has been brought on record by the petitioners and without any assistance from the respondents for deciding the constitutional point involved.

(2) In order to decide the common question of constitutional validity of the impugned notification, it is sufficient to state the facts of Civil Writ No. 2747 of 1972. The petitioner in this case is a landless person belonging to Rai Sikh community. He has been cultivating land measuring 90 Kanals 8 marlas in village Lakhmirke Hithar, Post Office Mamdot, district Ferozepur, since 1953, the details

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of which are mentioned in paragraph 2 of the petition. All the evacuee properties were acquired by the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and unallotted rural evacuee land was transferred to the State of Punjab by means of the 'Package Deal' in 1961. The land in dispute forms part of that package deal.

(3) The State of Punjab, by means of press-notes from time to time, declared its policy of transferring the lands to the occupants, provided their occupation was continuous from a particular crop, on reserve price, thus enabling them to purchase the same. The petitioner has filed a copy of the press note issued by the State Government in the Rehabilitation Department on July 13, 1967, according to which an occupant of the evacuee land was entitled to purchase the land in his occupation upto 5 standard acres or 10 ordinary acres, whichever was less, provided he was in continuous possession thereof from Rabi 1965 or earlier and provided his possession was intact according to the entries appearing in the *Khasra Girdwaris*. All persons considering themselves eligible for the transfer of surplus evacuee lands were directed to apply to the Tahsildar (Sales) of their respective jurisdiction by October 16, 1967, at the latest, after which no application was to be entertained. Admittedly, the petitioner did not apply for the transfer of land under this press note. Thereafter, another public notice was issued wherein it was mentioned:—

“.....persons belonging to Scheduled Castes and Rai Sikhs, who are in possession of evacuee lands from Rabi 1970 onwards, will be transferred such lands on the basis of their possession at the rate of Rs. 500 per standard acre for Scheduled Castes and Rs. 1,000 per standard acre for Rai Sikhs. Applications for the purchase of the lands should be filed upto November 18, 1971, in the office of Tahsildar (Sales) Kapurthala. Those who do not apply within the prescribed date will not be entitled to get land.”

(4) The applicants for land were also directed to file certain documents, the details of which need not be stated. The petitioner admittedly did not avail of this opportunity as well. Thereafter, the State Government decided to sell evacuee lands by auction restricted only to the members of the Scheduled Castes. The land of the petitioner was notified by notice dated July 25, 1972, for such an auction to be held on August 24, 1972. It is at this stage that the petitioner filed the present petition on August 21, 1972, for quashing

the auction notice and for issuance of an appropriate writ directing the respondents to transfer to the petitioner the area in his possession on reserve price.

(5) The validity of the restricted auction confined only to the members of the Scheduled Castes has been challenged by the petitioner as amounting to discrimination on ground only of caste which is prohibited under Article 15(1) of the Constitution. Article 15 reads as under :—

“15 (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to :—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing *ghats*, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”

(6) In order to decide whether there is a discrimination on the ground of caste alone it is necessary to set out the relevant conditions of auction as contained in the auction notice, copy of which is Annexure ‘C’ to the writ petition. These conditions, rendered in English, read as under :—

“11. Only landless workers of the Scheduled Castes will be entitled to participate in the restricted auction which also includes tenants, *Sepi*, *Sanjhi* and the workers depending on the cultivator but he must know how to plough etc. The successful bidder will not be entitled to transfer, sell or surrender the purchased land to any person who is not a member of the Scheduled Castes for 20 years.

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14. Any intending purchaser, who is head of family, can purchase land upto 5 standard acres or 10 ordinary acres, including other land owned by him or his dependents.
15. A minor cannot take part in the auction nor any body else on his behalf.
16. No Government employee or his dependent will be allowed to participate in the auction but Members of Parliament, Members of Legislative Assembly, Ex. M.L.Cs. and their dependents belonging to a Scheduled Caste shall be entitled to participate in the auction.
17. (a) In case, in the restricted auction, the bid of the auctioned land is less than the reserve price, this land shall be put to re-auction and in the re-auction the Rai Sikhs can participate. But if even then the bid amount is less than the reserve price, the auction will be open to all.
- (b) The successful bidder amongst the Rai Sikhs or in open auction, shall be required to pay 25 per cent of the bid amount on the fall of the hammer and the remaining amount will be paid within 15 days of the sanction of the bid.
19. If any member of the Scheduled Castes has sold any land purchased by him on any previous occasion or has misused the concession given to him by the Government, he will not be allowed to participate in the present auction."

(7) From these conditions of auction, it is quite clear that the classification is not based only on caste. In order to be eligible to bid at the restricted auction, a member of the Scheduled Castes has to be (1) a landless worker, including tenants, *Sepi*, *Sanjhi* and the workers depending on the cultivator and (2) he must know how to plough. The intending purchaser can purchase land only upto 5 standard acres or 10 ordinary acres if he is the Head of a family, including other land owned by him or his dependents. A minor cannot take part at the auction nor a Government employee or his dependent even if he belongs to a Scheduled Caste. In case, the land put to auction does not fetch the reserve price, it will be re-auctioned at which Rai Sikhs can also participate along with the members of the Scheduled Castes. If even then the reserve price is not fetched, the land will be re-auctioned which will be open to all. It is thus evident that the underlying object of confining the restricted auction only to landless workers of the Scheduled Castes

who know ploughing etc., in the first instance, was to benefit only a section of the Scheduled Castes and not every member thereof. So the discrimination was not only on the ground of caste but some other qualifications were also required. Even from amongst the members of the Scheduled Castes, every body was not eligible. It is true that the landless workers knowing ploughing etc., must be available in other castes and communities also, but it is the declared policy of the Constitution to uplift the members of the Scheduled Castes for whom various special provisions have been made. The object of the restricted auction was not to realize the market value of the land but only its reserve price from the specified lower strata of the community and to transfer the land to persons possessing the prescribed qualification who were expected to make the cultivation of their land their source of livelihood. A restriction was imposed that the land purchased at the auction was not to be disposed of by the purchaser for a period of 20 years except to members of the Scheduled Castes. I am, therefore, not satisfied that the restricted auction amounted to discrimination within the meaning of Article 15(1) of the Constitution on the ground of caste alone and it cannot be held to be constitutionally invalid.

(8) The learned counsel for the petitioner then argued that the reservation in favour of the Scheduled Castes could not be made of the entire land, but it could only be made upto 50 per cent thereof. I am unable to appreciate this argument. There was no reservation being made in favour of the Scheduled Castes but the sale of the land was confined only to a well-recognised section of the community which had remained fallen and down-trodden for a long time, in order to avoid their further exploitation by persons holding land on which they were destined to work for the landowners. It was a laudable object of the Government to make landless workers of Scheduled Castes landowners of a limited area of land and to induce them to stick to that land for a period of 20 years so that they could develop self-respect, self-reliance and acquire a status in the community. The Scheduled Castes are a defined section of the community and their list is contained in the Constitution (Scheduled Castes) order, 1950, as amended from time to time. The course adopted by the State is for the amelioration of the lot of the landless workers belonging to the Scheduled Castes and this measure was resorted to after adequate opportunities had been afforded to the occupants of the land for a period of ten years or so to purchase the land in their possession on the reserve price. The State Government is admittedly the owner of the land which was notified for

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sale by auction and it cannot be denied the right to deal therewith and to sell it by private negotiation, by calling tenders or by auction. Once that right is conceded, reliance on Article 19(1) (f) and (g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the Government nor can there be any infringement of Article 14, if the Government decides to sell its property to the landless workers of the Scheduled Castes as an ameliorative measure. The Constitution enjoins special care to be taken of this weaker section of the community which had been treated as untouchables for centuries. Reference in this connection may be made to the decision of the Supreme Court in *State of Orissa v. Harinarayan* (1), wherein the pertinent observations are to be found in paragraph 17 on page 1822. The Supreme Court judgment in *Rasbihari v. State of Orissa* (2) relied upon by the learned counsel for the petitioners is clearly distinguishable. That case related to monopoly rights acquired by the State Government in respect of trade in Kendu leaves and it was decided to invite offers for advance purchase of Kendu leaves from a limited class of persons. It was held that the action of the Government was not valid in law as the object of acquiring monopoly of purchasing Kendu Leaves was to derive maximum benefit therefrom for the State and not to confer benefit on a limited class of persons. The relevant observations are to be found in paragraphs 15 to 20 of the report which need not be reproduced. Suffice it to say that the scheme of selling Kendu leaves to selected purchasers or of accepting tenders from a specified class of purchasers was held to be not protected by Article 19(6) (ii) of the Constitution as it did not satisfy the requirement of reasonableness under the first part of Article 19(6). The classification was held to be arbitrary. The same cannot be said of the action of the Government in the instant cases. There is no allegation, much less proof, that the State Government acquired the unallotted evacuee property with a view to enrich itself by selling it at the maximum price available. On the other hand, it is quite manifest that the land was acquired with the object of passing it on to the tilers who were in occupation thereof or to those who did not possess any other land. That is why reserve price was stated in each press note. In the first instance the option of purchase was extended to all the occupants without any distinction for about 8 years and in 1970 it was restricted

(1) A.I.R. 1972 S.C. 1816.

(2) A.I.R. 1969 S.C. 1081.

to Scheduled Castes and Rai Sikhs. It was only in 1972 that the restricted auction confined only to the landless workers belonging to Scheduled Castes was decided upon. By that time, I believe most of the occupants of the lands interested in their purchase must have exercised their option and it was only the remainder that was left for restricted auctions then ordered. It has not been stated that the lands put to restricted auctions were more than fifty per cent of the land acquired under the Package Deal by the State Government; it must have been far less. The restricted auctions are in accord with the directive principles of State Policy enshrined in Articles 38 and 39(a) (b) and (c) of the Constitution and the pious aspirations solemnly expressed in its Preamble as the bidders at these auctions will be provided with adequate means of livelihood and the ownership and control of land will be distributed to subserve the common good. It will secure social and economic justice, promote equality of status and opportunity thus assuring the dignity of the individual who for centuries has been kept under the heels of the landowning classes and looked down upon as a sub-human being. This policy will result in the uplift of an important and well-defined section of the Society and enable the State Government to carry out its obligation under Articles 38 and 39 of the Constitution. The impugned restricted auctions are, therefore, not open to challenge.

(9) The petitioner in this case claims to be in occupation of the land since 1953 but he did not avail of any of the concessions which were notified between 1962 and 1970, from which it can be clearly inferred that he was never interested in the purchase of the land on the reserve price, otherwise he would have applied for the purchase of the same. He only wanted to hold on to the land by paying a nominal amount on account of its use and occupation or by way of lease money. He has no equity in his favour now to require the Government to transfer the land to him on reserve price.

(10) For the reasons given above, there is no merit in this petition which is dismissed, but the parties are left to bear their own costs.

Civil Writ No. 2784 of 1972.

(11) The facts of this petition are identical with the facts of Civil Writ No. 2747 of 1972 and for the reasons stated therein, this petition is also dismissed but without any order as to costs.

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Civil Writ No. 2645 of 1972.

(12) The petitioners in this case are neither members of the Scheduled Castes nor Rai Sikhs. They belong to some other agricultural community. They were landless agricultural labourers in district Lahore prior to partition and are displaced persons. They, however, did not avail themselves of the opportunities allowed to the occupants of the land for purchasing the same on reserve price and they have no right now to the transfer of the land in their favour on reserve price. The challenge made by them to the validity of the restricted auction is repelled for the reasons stated in the order disposing of Civil Writ No. 2747 of 1972. This petition is accordingly dismissed but without any order as to costs

Civil Writ No. 2808 of 1972.

(13) The petitioners in this case came in possession of the land from *kharif* 1966, as was found by the Assistant Settlement Commissioner with powers of Settlement Commissioner, Punjab, by his order dated May 27, 1969. They were, therefore, not entitled to purchase the land under the press note dated July 13, 1967. They are neither members of the Scheduled Castes nor Rai Sikhs and, therefore, are not entitled to the transfer of the land under the press note issued in 1970. They have also challenged the validity of the restricted auction, but for the reasons stated in the order disposing of Civil Writ No. 2747 of 1972, the same is repelled. The petition is accordingly dismissed but without any order as to costs.

Civil Writ No. 2903 of 1972.

(14) The petitioners in this case are displaced persons in possession of the land, but they are neither members of the Scheduled Castes nor are Rai Sikhs. They did not avail themselves of the opportunities to purchase the land under the various press notes of the Punjab Government and their challenge to the restricted auction is also repelled for the reasons stated in the order disposing of Civil Writ No. 2747 of 1972.

(15) There is thus no merit in this petition which is dismissed, but without any order as to costs.

B.S.G.