

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

Date of decision:4.2.2015

1. CWP No.16974 of 2000(O&M)

Chander Bhan and othersPetitioners

VERSUS

The Chief Administrator and anotherRespondents

2. CWP No.20382 of 2002

Ganga RamPetitioner

VERSUS

The Chief Administrator and anotherRespondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Pankaj Jain, Advocate for the petitioners.

Mr. Atul Gaur, Advocate for respondents.

HEMANT GUPTA, J.(Oral)

This order shall dispose of CWP Nos.16974 of 2000 and 20382 of 2002 wherein the petitioners have invoked the writ jurisdiction of this Court claiming a writ of mandamus for directing the respondents to issue Conveyance Deed in favour of the petitioners.

However, for the facility of reference the facts are being taken from CWP No.16974 of 2000 wherein the petitioners claim to

be the highest bidders of plots situated in Anaj Mandi, Palwal, in an auction conducted on 20.01.1964. The auction notice has been attached with the writ petition as Annexure P-1. The first condition is that a sum of Rs.500/- will be got deposited for taking part in the open auction and that the highest bid will be communicated to Haryana State Agricultural Marketing Board (for short 'the Board') which may either accept or reject it without assigning any reason.

Herein the petitioners were the highest bidders having given bid of Rs.250/- each i.e. even less than the initial money required for participation in the auction. The petitioners rely upon a communication dated 17.03.1964 (Annexure P-3) issued by Secretary, Marketing Committee, Palwal, permitting the vendee to raise construction. The document has been said to be sale deed.

In CWP No. 15304 of 1993 titled Kiran Singh v. The Chief Administrator and others, decided on 7.8.2014, a Division Bench of this court, of which one of us was a member was seized of actions of the Chairman of the same Market Committee allowing transfer of a plot, though the auction was not confirmed by the Board. The challenge was to show cause as to why the loss of Rs.2,00,000/- caused by him to the Market Committee be not recovered from him for his actions of allowing change of plot without confirming the auction proceedings by the Board. This Court directed the Chief Administrator of the Board to proceed further with the show cause notice and pass an appropriate order, in accordance with law that is under Section 29 of the Act.

Admittedly, the Board has not approved the auction and in our opinion rightly so for the reason that the petitioners are said to be successful bidders of the plot on even half of the participation money. Still further, in terms of Section 18 of the Punjab Agricultural Produce Markets Act, 1961 (for short 'the Act'), no permanent transfer of any immovable property could be made without prior approval of the Chief Administrator of the Board. In fact the Market Committee had passed resolution No.3, dated 16.10.1970, whereby it was decided that the plots sold before 26.05.1961 are approved, whereas plot sold on or after 26.05.1961 are not approved. As the applications for allotment of plot on or after 26.05.1961 were rejected, therefore, there was no question of allotment of the plot to the petitioners. The Secretary of the Committee could not sign the sale deed, as, in the absence of the Chairman of the Committee; the Vice-Chairman can issue the letter. The allotment can only be issued after the approval from the competent authority.

The claim of the petitioners is based upon the fact that a Civil Suit No.336 of 1964 titled Gian Chand and others v. The Market Committee, Palwal and others, by some of similarly situated allottees was filed which was decreed on 31.07.1965 and accepting such decree, the plots have been allotted. However, a perusal of the judgment of the learned Additional District Judge in Civil Appeal No.142 of 1966 titled Gian Chand v. The Market Committee Palwal, decided on 18.04.1967 (Annexure P-7) is the judgment whereby judgment of the trial Court dated 31.07.1965 was set aside and the

matter remitted back to the trial Court but what is the decision after remand has not been placed on record.

Still further, the petitioners have invoked the writ jurisdiction of this Court by filing CWP No.4766 of 2000 titled Chander Bhan and others v. The Chief Administrator and others. The said writ petition was dismissed on 28.04.2000 but an opportunity was given to file a fresh petition or avail other alternative remedy by placing on record the judgment and decree passed in the case of Gian Chand and others (supra) and produce on record other evidence to show that their cases are identical to those of Gian Chand and others (supra). The only change in the present writ petition is the judgment passed by learned first Appellate Court remitting the matter to the trial Court. However, the said judgment is a judgment of remand and not of decree.

In the said case, this Court found that the bid was not approved by the Board and that for 19 years, the petitioners had not taken any steps for securing approval of their bids by the Board. The Court found that no mandamus can be issued for granting approval to the acceptance of bids given by the petitioners in the auction held in the year 1963-64. It has been also noticed that in reply to the legal notice, the categorical stand of the Board is that the bids given by the petitioners were not accepted. It has been also noticed that the Court did not agree with the argument raised by the petitioners that acceptance of price of the plots by respondent No.2 should be treated as an act of approval by the Board as the Board has specifically not approved allotment of plots to the petitioners.

We find that the present writ petition is gross abuse of process of law. The reliance is placed upon a judgment which does not decree the suit but remands the matter. All other arguments have been rejected by the Division Bench of this Court earlier. The reliance on the communication dated 17.03.1964 (Annexure P-3) is wholly misconceived and not legally permissible. If it is a sale deed as it is sought to be conveyed it has to be a registered instrument as admittedly the value of the property said to be purchased by the petitioners was Rs.250/-. In the absence of any registered document, no right would accrue to the petitioners. In fact, the petitioners have understood that the communication dated 17.03.1964 (Annexure P-3) is not the sale deed, therefore, they are asking for execution of the Conveyance Deed. Therefore, writing dated 17.03.1964 (Annexure P-3) by the Secretary of the Market Committee will not confer any enforceable right in favour of the petitioner in the absence of acceptance of bid by the Board as per the terms and conditions in the auction and as per Section 18 of the Act.

The entire auction process in which petitioners claim to be the highest bidders is tainted with fraud to usurp public property by conniving with the officials of the Market Committee.

In view thereof, we dismiss both the writ petitions with costs of Rs.10000/- to be deposited by each petitioner with the respondents within two months.

(HEMANT GUPTA)
JUDGE

February 4, 2015
‘D. Gulati’

(HARI PAL VERMA)
JUDGE