

CWP No.8313 of 2002

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP No.8313 of 2002****Date of Decision:-26.02.2015**

Dharambir

...Petitioner

Versus

State of Haryana and others

...Respondents

***CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA***Present:- Mr. Raman B. Garg, Advocate
for the petitioner.

Mr. R.D. Sharma, Deputy A.G., Haryana.

HEMANT GUPTA J.(Oral)

The petitioner has invoked the writ jurisdiction of this Court for directing the respondents to provide basic amenities such as water, sewerage etc. and also a direction to vacate the roads, individual platforms and covered common platform handed over to the Haryana State Co-operative Supply and Marketing Federation Limited (HAFED) for storing wheat/paddy since the year 1996. The petitioner also sought a writ of mandamus directing the respondents to waive off the interest including penal interest till the date the aforesaid basic amenities are actually provided.

The petitioner was successful bidder of plot No.10, New Grain Market, Narnaund in an open auction conducted on 10.6.1994. A letter of allotment was issued on 8.3.1995. The petitioner deposited 25% of the price and opted to pay the remaining 75% money in installments. The petitioner deposited the first installment on 16.6.1995. However, on 22.10.2001 a demand was raised for depositing of the balance amount

besides interest and penal interest. A show cause notice was later issued on 20.12.2001 calling upon the petitioner to deposit an amount of Rs.5,75,689/- including an amount of Rs.1,97,274/- as principal amount within a period of seven days. The petitioner submitted a reply disputing the charges of interest until and unless the water connection is provided. Subsequently, the petitioner issued a notice for waiving of the interest on the ground that the respondents have failed to provide the basic amenities. The writ petitioner relies upon an order passed by the Division Bench of this Court in CWP No.8083 of 2001 titled 'Giani Ram Shiv Lal vs. State of Haryana' decided on 6.2.2002, wherein the payment of interest was ordered to be deferred till the basic amenities are provided. It is that stage the petitioner has invoked the writ jurisdiction of this Court.

The issue of payment of installments in the absence of basic amenities has since been concluded by the Supreme Court in the judgment reported as UT Chandigarh Administration and Anr. v. Amarjeet Singh and Ors., (2009) 4 SCC 660, wherein the Court has examined somewhat similar issue regarding right of Chandigarh Administration to claim interest on delayed payment for the reason that amenities were not provided. It has been held that the lack of amenities cannot be made basis to not to pay the amount of the balance 75%, which is deferred payment of the sale consideration and also the overdue interest.

After the aforesaid judgment of the Hon'ble Supreme Court, a Division Bench of this Court in LPA No. 933 of 2009 titled as Haryana Urban Development Authority and another v. Vinod Mittal and others, decided on 16.10.2012 has examined the similar provisions relating to levy of interest in respect of allotments of plots by Haryana Urban Development Authority under the Haryana Urban Development Authority Act, 1977. The relevant extract from the judgment reads as under:-

“61. In view of the discussion above, we hold that:

(i) xx xx xx xx

(ii) In the event of non-payment of installments along with interest thereon, the Authority is justified in charging interest as the rate of 18% p.a. Such interest is to ensure the timely payment of the installments and is aimed at mitigating the extreme hardship which may result from resort to the last measure of resumption of land or building. However, the rate of interest at the rate of 18% cannot be compounded, as there is no provision either in the Act or in the Regulations or in the Circular for compounding of such interest.....”

It has been held that in the absence of any condition in the Act or the rules framed thereunder, the interest cannot be compounded.

We find that the petitioner has invoked the writ jurisdiction of this Court against the show cause notice. Since the petitioner has invoked the writ jurisdiction of this Court without permitting the Market Committee to pass an order, we dispose of the present writ petition with direction to the respondents to pass a speaking order pursuant to the show cause notice issued in the light of the Supreme Court judgment in Amarjeet Singh’s case (supra) and Vinod Mittal’s case (supra). If any amount is due and payable, the same shall be communicated to the petitioner within two months of the receipt of the certified copy of the order after providing an opportunity of hearing to the petitioner in accordance with law. The parties shall be at liberty to avail their remedy in accordance with law thereafter.

(HEMANT GUPTA)
JUDGE

February 26, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE