IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1140 of 2012(O&M)
Date of decision:18.2.2015

Ashwani Kumar Arora and others ….Petitioners

VERSUS

State of Punjab and others .....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. A.K. Chopra, Senior Advocate with
Ms. Rupa Pathania, Advocate for the petitioners.

Mr. P.S. Bajwa, Additional Advocate General, Punjab for respondents No1 and 2.

Mr. Sandeep Khunger, Advocate and
Mr. Kulwinder Singh, Advocate for respondent No.3.

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HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to an order dated 26.07.2011 (Annexure P-13) passed by the Secretary to Government Punjab, Department of Local Government and the second order passed by the same officer on 14.09.2011 (Annexure P-15) whereby the representation made by the petitioners in terms of directions of this Court in CWP No.3804 of 2011 titled Sunil Sally and others v. State of Punjab and others, decided on 03.03.2011 was declined.

The respondent No.3-Improvement Trust, Batala published an advertisement for sale of various commercial and residential sites on free hold basis including at Leekwala Tank and Shashtri Nagar Schemes. The relevant extract from the advertisement (Annexure P-1) reads as under:-

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"OFFICE OF THE IMPROVEMENT TRUST, BATALA

PUBLIC NOTICE

xx xx xx xx xx

Kind of site	Total no. of units	Unit no.	Area in sq. yds.	Reserve price	Earnest money
LEEKWALA TANK SCHEME					
Booth site	12	1 to 12	26.80, 26.70, 26.50, 26.00, 25.80, 25.50, 25.00, 24.90, 24.63, 23.60, 21.95, 24.60	18250.00 Per Sq. Yard	50000.00
xx	xx	xx	xx	xx	

DETAIL OF AUCTION

TERMS AND CONDITIONS

1. xx xx xx

3. Balance 75% will be recovered in five six monthly installments alongwith 12% interest per annum. In case of late/deficiency in payment under the rules (1) in first month 13% (2) second month 14% (3) third month 15% (4) fourth month 16% (5) fifth month 17% (6) six month 18% (7) in the event of delay for more than six months, the allotment would be cancelled and full right for its re-auction will be with the Trust.

4. xx xx

5. The bidder is requested to inspect the site before auction properly, the remaining work in the built up property would have to be carried out by the purchaser himself and the Trust will not be responsible to get any work done. The sale of the properties is being made 'where is as is' basis.

6 to 9. xx xx

10. The corridor in the built up units will remain vacant and no material will be placed (those properties which have attached such corridor). This corridor shall remain vacant for the use of general public. The ownership of the roof of the built up booths would be of the Trust.

11 to 17. xx xx

18. Design plan for the construction of the vacant sites will be supplied by the Trust to the successful bidder after deposit of due

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fee alongwith expenses of the designing plan in the Trust fund. 19. xx xx."

The petitioners are the successful bidders of booth sites in the Leekwala Tank Scheme. The petitioners have deposited 25% of the total sale consideration but thereafter a dispute has arisen as to whether 6 feet wide corridor is part of the size of the plot offered for auction or 6 feet wide corridor is other than the plot size put to auction.

Earlier, the writ petition filed by the petitioner was disposed of with direction to the respondents to pass an order on the representation of the petitioner and thereafter the learned Secretary, Government Punjab, Department of Local Government has passed an order on 26.07.2011 (Annexure P-13) pointing out that the standard design of the booth was approved by the Trust on 03.09.2010 which has since been approved by the State Government. Vide the subsequent order dated 14.09.2011 (Annexure P-15), the Improvement Trust was directed to provide civic amenities to the allottees. Therefore, the six feet wide corridor is part of the dimensions of the booth put to auction.

On the other hand, the respondents rely upon the lay-out plan (Annexure R-2) prepared on 25.10.2007. A perusal of the said lay-out plan shows that shop No.1 measures 30 feet 4 inches on the eastern side including 2 feet wide passage between the existing pavements of the booths in question and six feet wide corridor between the booths and the road. As per the petitioners, 6 feet wide corridor, adjoining road, is excluding the area of the booths sold by

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auction whereas as per the respondents, 30 feet 4 inches includes 6 feet wide corridor, not only in respect of shop No.1 but also in respect of shop Nos.2 to 12 as well. Mr. Khunger also referred to the standard design of booth prepared on 01.09.2010 in which 6 feet wide corridor is said to be part of the booth.

We have heard learned counsel for the parties and find that the terms of auction were not clearly specified as to whether 6 feet wide corridor is part of the area which is being put to auction. Thus, one can infer that the parties were not ad-idem in respect of the size of the booths put to auction. The standard design was prepared after auction. We find that the contention of the petitioners that 6 feet wide corridor is other than the booth sold also cannot be accepted as it would diminish the road width. It would not be in public interest to reduce the width of the road so as to cause inconvenience to the public. In view thereof, the dispute raised by the petitioners that the corridor is over and above the plot size sold to the petitioners does not merit any acceptance.

During arguments, an option was given to the petitioners that since the parties are not ad-idem on the size of the plot, the respondents can be directed to refund the auction money so that the rights of the parties are not jeopardized in any manner. However, learned counsel for the petitioners states that instead, the Trust be directed to seek option from the petitioners. Those who are not willing to accept the position that 6 feet wide corridor is part of the booth size sold, the amount deposited by them can be ordered to be refunded.

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Learned counsel for the petitioners has also pointed out that since the petitioners have not deposited the balance 75% amount, therefore, in terms of the auction conditions, the petitioners are liable to pay simple interest, whereas the respondents are likely to claim compound interest.

We have heard learned counsel for the parties on this aspect as well. We find that the terms and conditions of the allotment does not contemplate charging of compound interest. In view of the judgment of 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, the respondents can charge only simple interest. It has been held that unless the charging of the compound interest is specifically mentioned in the Rules or under the terms of the allotment, the same cannot be charged.

Mr. Khunger has not been able to show any Rule which empowers the Improvement Trust to claim compound interest nor do the terms and conditions of the auction permit the respondent-Improvement Trust to claim compound interest. Therefore, the apprehension of the petitioners that the respondents will charge compound interest is not found out from any law or any Rule.

In view thereof, we dispose of the present writ petition with direction to the respondent-Improvement Trust to seek consent of the petitioners who are willing to pay the auction amount in terms of the conditions of auction within one month. If any of the petitioners does not communicate their acceptance, the Trust shall refund the amount deposited alongwith interest at the rate of 12% per annum

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within next one month. The Trust shall also claim balance amount from the petitioners to be calculated in accordance with the directions contained hereinabove.

(HEMANT GUPTA)
JUDGE

FEBRUARY 18, 2015 **(HARI PAL VERMA)**
'D. Gulati' **JUDGE**

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