

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

**CWP No.11795 of 2014
Date of decision: 08.7.2015**

M/s Madan Traders

.....Petitioner

Vs.

Punjab Mandi Board and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Sandeep Sharma, Advocate for the petitioner.

Mr. Sanjeev Sharma, Advocate for the respondents.

Ajay Kumar Mittal,J.

1. Prayer in this petition is for setting aside order dated 13.12.2006, Annexure P.2 passed by the Market Committee, Amritsar, whereby the bid of the petitioner for Plot No.286, New Anaj Mandi Bhagatanwala, Amritsar was cancelled and appeal and revision filed against the said order were dismissed vide orders dated 19.7.2007 and 28.10.2013, Annexures P.3 and P.4 respectively.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is working as commission agent in Mandi Bhagatanwala, District Amritsar for the last more than 15 years. The Market Committee, Amritsar - respondent No.3 also granted a licence under Section 10 of the Punjab Agriculture Produce Markets Act, 1961 (in short, "the Act") to the petitioner for doing business of purchase, sale, storage and processing of agricultural produce.

The Mandi Board conducted an open auction for sale of plots in New Anaj Mandi, Bhagatanwala, Amritsar on 23.11.2006. The petitioner participated in the said open auction by depositing ₹ 20,000/- as security amount by way of bank draft. The Market Committee, Amritsar issued receipt No.529 dated 23.11.2006 to the petitioner-firm. At the time of auction, the Arhtia Association had formed four batches of the bidders for participating in the auction and the petitioner firm was issued auction slip No.141. The petitioner firm succeeded in the auction by giving the highest bid of ₹ 10,96,000/- for plot No.286. As per terms and conditions of auction, the petitioner firm deposited ₹ 2,55,000/- with the respondent as 25% amount of total bid amount. However, after receiving 25% of the bid amount, the respondents instead of issuing allotment letter in favour of the petitioner firm, sent letter dated 13.12.2006, Annexure P.2 to the petitioner regarding cancellation of bid of plot No.286. The reason was that two auction slips were issued bearing the same No. i.e. 141 – one slip was issued to the petitioner and another was issued to one Gurcharan Singh. On enquiry made by the petitioner, it came to notice that its bid was cancelled as auction slip No.141 was also found issued to one Gurcharan Singh who had participated in the auction and had succeeded in getting Plot No.289. Aggrieved thereby, the petitioner filed appeal against the order dated 13.12.2006 which was dismissed vide order dated 19.7.2007, Annexure P.3 by the Secretary, Punjab Mandi Board on the ground that the petitioner had forged the auction slip and had changed its number from 529 to 141. The petitioner filed revision petition before the Joint secretary, Department of Agriculture, Punjab which was also dismissed vide order dated 28.10.2013, Annexure P.4. Hence the instant writ petition.

3. We have heard learned counsel for the parties.

4. Learned counsel for the petitioner submitted that the action of the respondents in cancelling its bid is illegal and arbitrary. Reliance was placed on judgments of this Court in ***Raghubir Singh vs. State of Haryana and others***, 2014(5) RCR (Civil) 142 and ***Surja Ram vs. State of Haryana and another***, 1984 PLR 584.

5. On the other hand, learned counsel for the respondents supported the impugned order. He relied upon judgments in ***Kalu Ram Ahuja and another vs. Delhi Development Authority and another***, (2006) 129 DLT 325 (Del.), ***Jasbir Singh Chhabra and others vs. State of Punjab and others***, (2010) 2 JT 637, ***BHEL – Employees Cooperative House Building Society Limited vs. The Goindwal Industrial and Investment Corporation, Punjab***, CWP No.123 of 1994 (P&H), decided on 7.8.2014, ***State of Haryana and others vs. Kundan Lal and others***, 2005(1) RCR (Civil) 381 (P&H) and ***Raghubir Singh vs. State of Haryana and others***, 2013 (1) Law Herald 25 (P&H) to submit that even the highest bidder has no right to compel the authority to accept his bid and confirm the sale in his favour. It is not necessary to even communicate the reasons for cancellation.

6. It is the admitted position that an open auction for sale of plots as per Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) Rules, 1999 (in short, “the Rules”) was held at New Anaj Mandi, Bhagtawal on 23.11.2006. The firms and individuals who deposited ₹ 20,000/- with the Market Committee, Amritsar as security amount for participating in the auction were duly issued auction slips. As per record, auction slip No.141 dated 22.11.2006 was issued to M/s Gurcharan Singh

and Company of Old Mandi Bhagtanwala to participate in the auction of plots. Being the highest bidder of Plot No.289, M/s Gurcharan Singh and Company was allotted the said plot. The petitioner firm also participated in the auction with the same auction slip No.141 and gave highest bid for Plot No.286. On enquiry made by the committee, it transpired that slip No.141 was issued to M/s Gurcharan Singh and Company who had already been allotted plot No.289 against the said slip. The original record was produced by the learned counsel for the respondents. On perusal thereof, it has been found that auction slip No.141 had been issued to M/s Gurcharan Singh and Company on 22.11.2006. On 23.11.2006, auction slip bearing No.529 had been issued to the petitioner. On the left side of the auction slip, No.529 has been written with blue ball pen while in the centre of the slip, No.141 has been written with black sketch pen which prima facie appears to be forged one. On the slip issued to M/s Gurcharan Singh and company, on both the places, same No. i.e. 141 has been written. From the perusal of the averments made in the writ petition and the original record, it appears that there is dispute on facts and, therefore, the present remedy of writ petition is not proper. In such a situation, we do not find justification to entertain this petition under Articles 226/227 of the Constitution of India.

7. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of facts are involved, a Division Bench of this Court in *N.C.Mahendra v. Haryana State Electricity Board and others*, AIR 1984 Punjab 26 had laid down that ordinarily a writ would not issued in favour of a person where disputed questions of facts are raised. The relevant portion reads thus:-

“12. An identical legal position ensures within this country and

High Courts have repeatedly held that the exercise of jurisdiction under Article 226 of the Constitution is discretionary and not obligatory without being exhaustive, it is settled law that the Court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ would be futile, and (vii) where the impugned law has not come into force. It would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extra ordinary remedy from the ordinary one by of a civil suit.” (Emphasis supplied).

The Hon'ble Supreme Court in State Cadre Authority and another v. K.S.Bajpal and others, (1990) Suppl. SCC 713, Bhagubhai Dhanabhai Khalasi and another v. The State of Gujarat and others, (2007) 4 SCC 241 and Mukesh Kumar Agrawal v. State of UP and others, (2009) 13 SCC 693 has held that wherever disputed question of fact is raised in writ proceedings, the writ petition was not an appropriate remedy. Reference may also be made to the judgment of the Apex Court in *Dwarka Prasad Agarwal (D) by Lrs. and another vs. B.D.Agarwal and others*, AIR 2003 SC 2686, wherein it was observed as under:-

“We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of India had been infringed. This Court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that

too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what extent being disputed, it cannot be said, that by reason of the impugned order dated 3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed.”

8. There is no quarrel with the proposition of law enunciated in the judgments relied upon by the learned counsel for the petitioner that refusal to accept the highest bid cannot foreclose the right of the highest bidder to put the action of the competent authority to judicial scrutiny. He can certainly challenge action on the ground that the order is arbitrary. However, the situation in the present case is different. There is dispute on facts qua the allotment of plots on the basis of auction slips issued to two persons of the same number. Thus, the petitioner cannot derive any benefit from these pronouncements.

9. In view of the above, finding no merit in the petition, the same is hereby dismissed.

10. The original record be returned to the learned counsel for the respondents under proper receipt.

(Ajay Kumar Mittal)
Judge

July 08, 2015
'gs'

(Rekha Mittal)
Judge