

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.2245 of 2015

DATE OF DECISION: AUGUST 21, 2015

Sunil Kumar Arya son of Sh.Balwant SinghPetitioner

Versus

Chief Administrator, Haryana State Agriculture Marketing
Board, Mandi Bhawan and othersRespondents

CORAM:- HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.BS Rana, Senior Advocate with
Mr.RS Arya, Advocate for the petitioner.

Mr.Padamkant Dwivedi, Advocate for the respondents.

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TEJINDER SINGH DHINDSA, J.

The instant writ petition is directed against the order dated 11.8.2014, Annexure P12, passed by respondent No.1, the Chief Administrator, Haryana State Agricultural Marketing Board, Panchkula whereby the benefit of waiver of interest on the instalments falling due after 8.3.2003 i.e. the date of issuance of completion certificate of the shop in question has been declined. The petitioner further seeks the setting aside of the calculation sheet at Annexure P13 in terms of which the consequential demand of a sum of ₹17,00,820/- upto 1.9.2014 has been raised.

2. The petitioner was allotted shop No.29 in the Grain Market, Bapoli, District Panipat by way of auction conducted on

19.6.2002 for a total consideration of ₹10,15,000/-. Twenty five percent of the sale consideration amount i.e. ₹2,53,750/- was deposited by the petitioner at the time of acceptance of his bid and the balance sale consideration of ₹7,61,250/- was to be deposited in six equal half yearly instalments with interest @ 15% per annum as per condition contained in the allotment letter dated 22.8.2002. The first instalment was to be deposited on or before 1.3.2003. The petitioner having taken possession of the site in question completed construction thereupon by the end of December 2002 and on 8.1.2003 furnished a request to respondent No.2 - Secretary Market Committee, Bapoli, District Panipat for issuance of the certificate of completion. The completion certificate dated 8.3.2003 in respect of the shop in question was duly issued by the competent authority. The first instalment was deposited by the petitioner on 5.4.2003 along with interest on account of 35 days' delay that had occurred for deposit of the same.

3. In its meeting held on 28.3.2003, the Market Committee, Bapoli, District Panipat considered the agenda as regards waiver of interest on the remaining instalments to be paid by the petitioner on account of his having completed construction on the shop within the stipulated time frame and to give benefit of the instructions issued by the Haryana State Agricultural Marketing Board (for short 'the Board') in such regard. Copy of the proceedings dated 28.3.2003 placed on record and appended as Annexure P5 would show that a resolution was passed by the Market Committee to give the benefit of waiver of interest on

remaining instalments to be paid by the petitioner and to send the case for final approval to the Board Headquarters at Panchkula. Vide communication dated 25.4.2003, the matter was formally forwarded by the Market Committee, Bapoli, District Panipat to the Chief Administrator of the Board for grant of benefit of waiver of interest on the balance instalments by specifically stating that after issuance of allotment letter dated 22.8.2002, the allottee/present petitioner had completed the construction thereupon and had applied for completion certificate on 8.1.2003 and the same stood issued on 8.3.2003. It was further stated that the allottee had paid the first instalment along with interest on 5.4.2003.

4. Apparently, the issue with regard to grant of benefit of waiver of interest on the balance instalments to the petitioner remained pending with the Board over a considerable length of time. Pleading case of the petitioner is that he had repeatedly approached the Market Committee, Bapoli for deposit of the instalments i.e. principal amount, but the same was refused on the pretext that a final decision with regard to waiver of interest had not yet been taken. Under such circumstances, the petitioner had even got a legal notice dated 9.4.2007 served upon respondents No.2 and 3 by way of registered post calling upon them to grant benefit of waiver of interest as also to accept the instalments that had become due in the interregnum but limited to the principal amount. As no positive response was forthcoming, the petitioner filed a complaint before the District Consumer Disputes Redressal Forum, Panipat under the

Consumer Protection Act on 23.5.2007 by alleging that the in-action on the part of the Board on the request of the petitioner for waiver of interest on balance instalments in the light of the instructions of the Board amounts to "deficiency in service". Vide order dated 27.11.2007, the District Forum, Panipat allowed the complaint with directions to the respondent-Board not to charge interest on the balance instalments in respect of the shop and to accept the amount of instalments without any interest. One month's time from the date of receipt of certified copy of the order dated 27.11.2007 was granted to the petitioner to deposit the principal amount of instalments. The petitioner is stated to have deposited the entire principal amount of ₹6,34,400/- on 24.1.2008. It may be noticed that an appeal preferred by the respondent-Board against the order dated 27.11.2007 passed by the District Forum, Panipat was allowed by the State Consumer Disputes Redressal Commission, Haryana vide order dated 21.6.2011 and a view was taken that the complaint itself was not maintainable as the petitioner was not a consumer.

5. Petitioner thereafter preferred an appeal under Section 40 of the Punjab Agricultural Produce Markets Act, 1961 and under the Punjab Agricultural Produce Markets Act (General Rules, 1962 applicable to Haryana) against the charging of interest on the balance sale-consideration of the shop. Such appeal stands dealt with vide impugned order dated 11.8.2004 passed by the Administrator of Board. Petitioner has been directed to pay interest @ 15% per annum on the balance instalments. In furtherance of such order dated 11.8.2014 passed by the Chief

Administrator-respondent No.1, Market Committee, Bapoli, District Panipat has served upon the petitioner a calculation sheet dated 29.8.2014 at Annexure P13 raising a demand of ₹17,00,820/- i.e. interest calculated upto 1.9.2014.

6. Learned counsel for the parties have been heard.

7. The respondent-Board has issued consolidated instructions governing sale of plots by way of auction/allotment and the same stand appended and placed on record at Annexure P2. Such instructions govern the entire spectrum relating to sale of plots by the Market Committees, mode of sale, reservation and eligibility conditions, restriction for certain kinds of business, programme for auction, deposit of earnest money, mode of payment/instalments, penalty for irregular payment etc. Clause 13, sub-clause (1) stipulates that the allottee shall have to complete construction of the shop/booth within a period of two years from the date of allotment of the plot. Clause 14 of the consolidated instructions reads in the following terms:

"In case an allottee of plot of shop/booth completes his construction according to the approved plan/ma and also shifted his business to the said premises within the specified period of two years, then he will be given a concession in the shape of waiving off interest for the remaining period so that interest in such cases will be charged upto the date of issue of completion certificates of the building and not on the remaining instalments on the due dates without any default as contemplated in para 12(4) above."

8. A perusal of Clause 14 of the consolidated instructions, re-produced hereinabove, would make it clear that it is in the nature of grant of concession to an allottee of waiver of interest on the outstanding instalments provided he completes the construction as per approved plan and also shifts his business to such premises within a specific period of two years from the date of allotment. In such eventuality, interest is chargeable only upto the date of issue of the completion certificate.

9. In the present case, the date of allotment of the shop in question in favour of the petitioner is 22.8.2002. The petitioner completed the construction in December 2002 itself and thereafter the competent authority under the Market Committee even issued the completion certificate on 8.3.2003. The petitioner even shifted his business operations to the shop in question. The Market Committee in its proceedings held on 28.3.2003 had resolved to give benefit of waiver of interest on the remaining instalments to the petitioner and had forwarded such issue for final approval of the Board vide communication dated 25.4.2003. The facts noticed hereinabove are not in dispute.

10. The concession contemplated under Clause 14 of the consolidated instructions issued by the Board at Annexure P2 is with a clear and definite objective. An incentive as regards waiver of interest on the balance instalments is for such allottees who upon taking possession of the site in question construct immediately thereupon as per approved plan and in any case within a period of two years from the date of allotment and even shift their business to such premises. The objective is for

development of the new Grain Market under the concerned Market committee and to discourage speculation at the hands of the allottees.

11. The claim of the petitioner for grant of such concession under Clause 14 of the consolidated instructions remained pending with the respondent-Board from the year 2003 till the date of passing of the impugned order i.e. 11.8.2014. No justification whatsoever has been offered as regards such inordinate delay that has occurred in considering the claim of the petitioner for concession/incentive of waiver of interest on the balance instalments. Rather, the Chief Administrator of the respondent-Board in the order dated 11.8.2014 has himself observed that the Office has failed to pursue the matter diligently and the same remained pending for a long period. It is not even the case put forth on behalf of the respondent-Board that the petitioner was not eligible for the grant of concession envisaged under Clause 14 of the consolidated instructions. We would have no hesitation in holding that the action of the respondent-Board has been unjust and arbitrary.

12. We would also be inclined to accept the contention raised on behalf of the petitioner that he was ready and willing to deposit the principal amount of the instalments due in relation to the shop in question. In taking such view, we are influenced by the fact that nothing has been placed on record to show that the respondent-Board at any point of time raised a demand on the petitioner for deposit of the principal amount of instalments. To the contrary, the petitioner had got served upon the respondents

a legal notice dated 9.4.2007 for acceptance of the instalments due and limited to the principal amount. The factum of the claim of the petitioner regarding waiver of interest on the outstanding instalments having remained pending for more than a decade has gone uncontroverted. Readiness and willingness on the part of the petitioner to deposit the principal amount of instalments would be reflected from his conduct whereby after passing of the order dated 27.11.2007 passed by the District Consumer Disputes Redressal Forum, Panipat, the outstanding principal amount of ₹6,34,400/- was deposited on 24.1.2008. Yet another relevant fact which may be taken note of is that as per condition No.5 contained in the allotment letter dated 22.8.2002 issued to the petitioner, it was open for the Market Committee to resume the plot as also building constructed thereupon due to default of two successive instalments. Concededly, the Market Committee at no point of time initiated resumption proceedings. This, in itself, would support the stand of the petitioner that he had made repeated attempts to deposit the principal amount of instalments due and the same had not been accepted only on account of the issue pertaining to waiver of interest on instalments having not been decided.

13. For the reasons recorded above, the action of the respondent-Board in holding the petitioner liable to pay interest on the outstanding instalments @ 15% per annum is held to be bad in law. Impugned order dated 11.8.2014 at Annexure P12 and the consequential calculation sheet served upon the petitioner at Annexure P13 raising a demand of ₹17,00,820/- by

calculating interest upto 1.9.2014 are set aside.

14. In spite of having so held in favour of the petitioner, we are of the considered view that even if the concession/incentive was permitted to the allottee, he was still liable to pay the remaining instalments i.e. the principal amount as per the stipulated time frame contained in the allotment letter. In our view, the ends of justice would be met upon the petitioner depositing interest @ 8% per annum from the date the respective/successive instalment became due till the date of deposit of the entire outstanding amount made by the petitioner i.e. 24.1.2008. Ordered accordingly. Respondent-Board would now serve upon the petitioner within a period of four weeks from the date of receipt of a certified copy of this order a fresh calculation sheet in terms of the directions contained hereinabove. The petitioner, in turn, would be obligated to deposit the amount as per revised calculation sheet within a period of four weeks thereafter.

15. Petition disposed of in the aforesaid terms.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

AUGUST 21, 2015
SRM

Note: *Whether referred to Reporter? (Yes/No)*