

**203 IN THE HIGH COURT OF PUNJAB & HARYANA
 AT CHANDIGARH**

**CWP No. 22258 of 2012(O&M)
Date of decision: 1.04.2016**

Ravinder Kumar @ Rimp

.....Petitioner

versus

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ramesh Chand Sharma, Advocate
for the petitioner.

Mr. Suresh Singla, Addl.AG, Punjab.

Mr. Ajaib Singh, Advocate
for respondents No. 2, 3 and 5.

Rakesh Kumar Jain, J.(Oral)

This petition is filed with a prayer to direct respondent No. 3(Marketing Committee, Abohar) to restrain it from recovering any amount from the petitioner that he had taken the Orchard of Kinnow/Malta from the Horticulture department in the year 2003-2004.

The cause of action, as alleged by the petitioner, arose in view of the Resolution No. 10 dated 3.12.2004 in which the following proceedings were recorded:-

“Sh. Ravinder Kumar @

Rimpy son of Sh. Mal Chand, Gali No. 12

Tehsil Abohar had purchased

Kinnow/Malta from the Horticulture

department in the year 2003-04 amounting to Rs. 11,00,000/-. To deposit the market fee and RDF of which, a letter No. 4971 dated 19.7.2004 had written to purchaser, i.e. market fee Rs. 22,000/-, RDF Rs. 22,000/-, Penalty Rs. 22,000/- and interest Rs. 3,960/-, but till today he did not deposit this amount. Therefore, recommendation may be made to send the case to District Collector Ferozepur for recovery of the above said amount under the Arrears of Land Revenue Act.”

Counsel for the petitioner has submitted that the Resolution was wrongly recorded because the information supplied to him by the Horticulture Department on 18.04.2011 is that *“Lease/Theka of the Government Orchard and Nursery Gobindgrah for the year 2003-04 of Kinow orchard was given to Sh. Des Raj son of Sh. Mala Ram resident of Gobindgarh Tehsil Abohar District Ferozepur”*.

It is thus, sought to be argued that the said Orchard was never given on lease by the Horticulture department to the petitioner, therefore, any kind of recovery by virtue of the impugned resolution is illegal.

After notice, respondents have filed the reply in which two preliminary objections have been raised. Firstly, the petitioner has a remedy of filing an appeal under Section 40 of the Punjab Agricultural Produce Markets Act, 1961 (fort short, 'the Act')

against the order of the Secretary Market Committee, Abohar and Secondly, the petitioner had earlier filed a civil suit in the Court of Addl.Sub Judge(Sr. Divn.) Abohar, titled as Ravinder Kumar vs. Tehsildar etc. for permanent injunction which was withdrawn and then the writ petition is filed because no stay was granted in the said suit. However, in para 2 on merits, it is averred that the petitioner has got the said Orchard from one Jasbir Singh son of Ajmer Singh resident of village Khipawali @ of Rs. 11,00,000/-.

Since there are disputed questions of facts and the petitioner has a remedy of appeal as stated by counsel for the respondent, under Section 40 of the Act, therefore, I am of the considered opinion that it would be appropriate to relegate the petitioner to the remedy of appeal.

The present petition is thus, hereby disposed of with liberty to the petitioner to file an appeal under Section 40 of the Act, as stated by counsel for the respondents. In case, the appeal is filed within 30 days from today the recovery shall remain stayed subject to filing of an application by the petitioner in appeal for stay which shall also be considered by appellate authority along with the appeal and shall be decided as early as possible preferably within a period of 3 months. It is also made clear that respondent shall not raise any objection regarding the limitation of the appeal.

1st April, 2016**Shivani Kaushik****[Rakesh Kumar Jain]
Judge**