

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Writ Petition No.22475 of 2016 (O&M)
Date of Decision: 19.12.2016

M/s Beniwal Trading Company, New Vegetable Market, Madlauda, through
its proprietor Balbir Singh.

...Petitioner

versus

State of Haryana through Financial Commissioner and Principal Secretary,
Department of Agriculture, Haryana and others

..Respondents

Coram: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sunil Kumar Dhanda, Advocate, for the petitioner.

RAMENDRA JAIN, J.

CM No.14560 of 2016

Documents (Annexures P-9 and P-10) are taken on record.

Application stands disposed of accordingly.

CWP No.22475 of 2016

1. The respondents denotified the old vegetable market at Madlauda, District Panipat. The petitioner-firm applied for allotment of a plot in the new Vegetable Market, Madlauda on preferential basis, being an old licensee of category-II working in old notified market. When the respondents did not take any decision on the application, the petitioner-firm filed a writ petition in which directions were issued to the respondents, to consider the claim of the petitioner-firm, within three months. Thereafter the respondents-department invited applications in 'Form-A', from the

eligible old licensees for the allotment of plots in the new market, prescribing the last date as 21.11.2007. However, the petitioner-firm could not apply for the allotment of a plot owing to some conditions imposed upon it and consequently, applied for the same, late on 06.12.2007, i.e., after the prescribed date. The respondents-department rejected the application submitted by the petitioner-firm for the allotment of the plot on preferential basis. Therefore, the petitioner-firm preferred an appeal, which was dismissed on the ground that it did not submit its application form within time. Feeling aggrieved, the petitioner-firm preferred a revision against the order of dismissal before the revisional authority, which was allowed vide order dated 08.04.2010/14.8.2012 (Annexure P-1) directing the respondents to allot a plot to the petitioner-firm on reserved price to be calculated as per policy of the Marketing Board. Since the respondents-department did not challenge the aforesaid order passed by the revisional authority before any forum or this Court, therefore, it has attained finality. Thereafter, the petitioner-firm moved a representation, dated 11.9.2013 (Annexure P-2), before the respondents-department appending therewith the order, dated 8.4.2010/14.8.2012 (Annexure P-1) passed by the revisional authority, directing for the allotment of a plot on reserved price. However, the respondents-department did not take any action on the same. The petitioner-firm again moved another representation, dated 13.11.2014 (Annexure P-3) and ultimately, the respondents-department, after lapse of considerable time, issued allotment letter, dated 28.5.2015 (Annexure P-4), to the petitioner-firm, allotting plot no. 4, measuring 20 x 50, situated at new vegetable market, Madlauda, asking it to deposit an amount of Rs.12,20,000/-and further offered the possession, vide letter dated

28.05.2015 (Annexure P-5). The petitioner-firm challenged, by way of representation, dated 15.10.2015 (Annexure P-6), the said allotment price, asking the respondents to charge reserved price of Rs.6,40,000/- from the petitioner-firm, in view of the directions issued by the revisional authority instead of Rs.12,20,000/-. The petitioner-firm, however, deposited a sum of Rs.3,05,000/- as 25% of the bid, cost of the plot, and further Rs.2,21,125/- towards the first and second instalments of the same amount, on 28.5.2016. In the meanwhile, the petitioner-firm filed Civil Writ Petition No.8937 of 2016 to direct the respondents to allot the plot on reserved price of Rs.6,40,000/- instead of Rs.12,20,000/-, which was disposed of vide order dated 09.05.2016 (Annexure P-7), directing the respondents, to decide the representation, dated 15.10.2015, moved by the petitioner-firm, within four weeks. In compliance of the order dated 09.05.2016 passed by this court, the Chief Administrator (respondent no.2), while passing the impugned order, dated 18.7.2016 (Annexure P-8), illegally and arbitrarily rejected the representation of the petitioner-firm to allot it a plot on reserved price of Rs.6,40,000/-. Resultantly, the order, dated 18.7.2016 (Annexure P-8), asking for the reserved price of Rs.12,20,000/- from the petitioner-firm, was upheld.

2 By way of the present writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ of certiorari for quashing the letter of allotment, dated 28.5.2015 (Annexure P-4) and the order, dated 18.7.2016 (Annexure P-8), passed by the Chief Administrator, Haryana State Agriculture Marketing Board, Panchkula (respondent no.2), respectively. Further direction has been sought to pay the reserved price of Rs.6,40,000/- instead of Rs.12,20,000/- against the plot

allotted to it on the ground that the aforesaid order, dated 18.7.2016 (Annexure P-8), passed by respondent no.2, is illegal and arbitrary, inasmuch as the reserved price of Rs.6,40,000/- of the plot was intimated by the respondents-department, to the petitioner-firm vide letter dated 21.3.2016. The respondents-department has allotted plots to the other similarly situated allottees at the same rate of Rs.6,40,000/- and thus, was demanding Rs.12,20,000/- illegally, from the petitioner-firm, in violation of Articles 14 and 16 of the Constitution of India. The revisional authority had passed the order in favour of the petitioner-firm, in the year 2010 and, therefore, the petitioner-firm was liable to pay reserved price of Rs.6,40,000/-, which was determined, in the year 2008. The delay in the allotment of the plot to the petitioner-firm is on the part of the respondents for which the petitioner-firm can and should not be penalised.

3. After giving our thoughtful consideration to the submissions raised by learned counsel for the petitioner-firm, we find that the writ petition is devoid of any merit and deserves to be dismissed.

4. Admittedly, the petitioner-firm was allotted a plot, in the year 2015 vide allotment letter dated 28.5.2015 (Annexure P-4), which the petitioner-firm accepted. However, the petitioner-firm, after five months of the issuance of the allotment letter, raised a grouse that it (petitioner-firm) should be charged reserved price of Rs.6,40,000/- and not Rs.12,20,000/- and filed Civil Writ Petition No.8937 of 2016, challenging the reserved price of the plot, i.e., Rs.12,20,000/-, which was disposed of by passing the following orders:-

“ The petitioner was allotted a shop/booth in the New Vegetable Market, Madlauda on the terms and conditions contained in an

allotment letter dated 28.05.2015. The petitioner accepted the allotment without protest or demur. Five months later, by a letter dated 15.10.2015 (Annexure P-6), the petitioner contended that the reserve price ought to have been Rs.6,40,000/- and not Rs.12,20,000/-. There has been no response to this letter.

The petition is, therefore, disposed of by directing the respondents to reply to the petitioner's letter dated 15.10.2015 (Annexure P-6) within four weeks from today.

It is clarified that if the petitioner does not make payment of the installments as per the letter of allotment, it does so at its own risk. This order ought not to be construed as a stay of the payment of installments.”

5. The order dated 08.04.2010 allowing the revision of the petitioner had directed the allotment of the plot to the petitioner firm on the reserved price to be calculated as per the policy of the Board. The Chief Administrator of the respondents-department, while deciding the representation of the petitioner-firm, noticed that the reserved price for the allotment of a plot is to be calculated on the date of allotment of the plot as per formula approved by the Board. The plot was allotted to the petitioner-firm on 28.5.2015 and therefore, the reserved price of Rs.12,20,000/- was rightly asked for, from the petitioner to be paid. The grouse of the petitioner-firm is that though the revisional authority had allowed the revision, in the year 2010 and directed for the allotment of plot vide order dated 08.04.2010, therefore, the reserved price prevalent in the year 2010 or 2012 when the order was received by the petitioner, ought to have been charged. The revision petition was accepted on 08.04.2010 and the said

order was communicated to Mr. Ravi Kapur, Advocate, House No.39, Sector 15-A, Chandigarh as also to the Chief Administrator, Haryana, State Agricultural Marketing Board, Panchkula, vide endorsement dated 14.8.2012. Thereafter, the petitioner approached the respondents-department vide letter dated 11.9.2013 (Annexure P-2), to allot a plot on reserved price, which was allotted on 28.05.2015 (Annexure P-4) after complying with all the formalities. The fact remains that the plot was, ultimately, allotted on 28.05.2015 (Annexure P-4).

6. Keeping in focus the totality of facts and circumstances, it is discernible from the above sequence of events and dates that the delay in allotting the plot cannot be solely attributed to the respondents-department and, therefore, the petitioner-firm cannot be permitted to claim that it is entitled to allotment of a plot at the reserved price prevailing, in the year 2010/2012.

7. The facts and circumstances, relied upon by the learned counsel for the petitioner-firm, in the case reported as Brij Mohan and others versus Haryana Urban Development Authority and another (2011) 2 Supreme Court Cases 29, are distinguishable from the facts of the case in hand, inasmuch as the judgment, referred to above, relates to the oustees policy of the government. In the case cited above, the land of the appellants was acquired, in the year 1990 and according to the allotment policy of the respondents, allotment price to be charged had to be strictly in accordance with the Development Authority Scheme, which contemplated allotment of plots at normal allotment rates. In this situation, the Development Authority was directed to charge only Rs.1032/- per square meter, i.e., initial rate of allotment and not rate revised in year 1993, when the land was acquired.

The factual matrix being different, hence, no benefit of the same can be granted to the petitioner-firm.

8. In view of the foregoing discussion, we do not find any reason to interfere in the impugned order dated 18.07.2016 (Annexure P-8) passed by the Chief Administrator, Haryana State Agriculture Marketing Board (respondent no.2) and as such, finding no merit in the writ petition, the same is dismissed.

9. The registry is directed to bring this judgment to the notice of the respondents so as to avoid any concealment of this judgment by the petitioner-firm or the other similarly situated persons, if any, while filing any such petition before this court in future.

(RAMENDRA JAIN)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

19.12.2016
VK

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No