

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 23864 of 2015 (O&M)  
Date of Decision: 31.03.2016

Jasbir Kaur and another .....Petitioners

Versus

State of Haryana and others ..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.  
HON'BLE MR. JUSTICE ARUN PALLI.**

Present : Mr. Arun Bansal, Advocate, for the petitioners.  
Mr. Rahul Dev Singh, Deputy Advocate General, Haryana.  
Mr. Deepak Sabharwal, Advocate, for respondent No.3.

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**S.J.VAZIFDAR A.C.J.** (Oral)

The petitioners have sought a writ of certiorari to quash a letter dated 20.11.2014 and a writ of mandamus directing the respondents to refund the amount deposited by them together with interest at 21% per annum.

2. The respondents had issued a notice regarding auction of plots in New Anaj Mandi, Cheeka. The auction was held on 11.02.2014. The petitioners' bid having been accepted, a letter of allotment dated 31.07.2014 was issued in their favour.

(A) (i) Clause-2 of the allotment letter reads as under:-

“2. The following particular site hereby allotted to you on the terms and conditions announced at the time of draw of lots/at the time of open auction and as laid down in the Haryana State Agricultural Marketing Board, (Sale of Immovable) Rules, 2000 and mentioned hereunder:-

| Shop/Booth Plot | Booth No. | Size of Booth | Price of Booth | Name of Purchaser(s)                                                                                                          |
|-----------------|-----------|---------------|----------------|-------------------------------------------------------------------------------------------------------------------------------|
| Booth           | 1         | 12'x27.5'     | 57,10,000/-    | Smt. Jasbir Kaur w/o Sh.Darshan Singh, village Ramthali & Smt.Ompati w/o Sh.Chander Bhan, R/o Advocate Colony, Cheeka, Tehsil |

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(ii) Rule 5-A of the Rules referred to in Clause-2 reads as under:-

“5A-Surrender of plot, Section 18- If any plot holder wishes to surrender the plot, the Market Committee shall accept the surrender of plot and will refund the deposited amount after deducting ten percent of the cost of the plot and due payable interest. For the purpose of calculation of interest, the date of application of surrender shall be deemed to be the date of surrender.”

(B) Clause-7 of the allotment letter reads as under:-

“The possession of the plot shall be offered to you within 30 days from the date of issue of allotment letter provided that minimum basic facilities i.e. roads, water supply, sewerage and electrification are existing and if the said basic facilities are not existing then after providing the said basic facilities.”

3. Prior to the auction held on 11.02.2014, a Division Bench of this Court passed an order dated 10.02.2014 in case of *Satpal and another v. State of Haryana and others* Civil Writ Petition No. 2432 of 2014. The petitioners in that case claimed to be the licencees in the old grain market. Their grievance was that they had not been allotted booths/plots in the new grain market on preferential and concessional basis. The Division Bench disposed of the writ petition by directing the State Government to consider the petitioners’ claim and to decide the same by a speaking order. It is important to note that the Division Bench directed that the auction of the plots in the meanwhile in the new grain market would be without prejudice to the rights of the petitioners therein and that the claim of the petitioners shall be decided before confirmation of the auction. Thus in view of the

order of this Court dated 10.02.2014, the auction could not have been confirmed in favour of the petitioners before us and accordingly the letter of allotment dated 31.07.2014 could not have been issued.

4. This is in fact recognized by an interim order passed by the Principal Secretary to Government of Haryana, Agriculture Department. He rightly observed that a grave error had been committed by issuing allotment letters of auctioned plots prior to deciding the claims of the petitioners in the said writ petition. It was further observed that the directions of the High Court had not been complied with in letter and spirit. It was accordingly ordered that allotment letters issued in favour of the successful bidders including the petitioners pursuant to the auction held on 11.02.2014 would be suspended till the final adjudication of the claims of the petitioners in the said writ petition and other licencees in the old market. In fact, a committee was constituted for fixing the responsibility of the officers concerned for the lapse.

5. In view thereof the respondents were not in a position to offer possession of the plot to the petitioners whether under clause-7 of the allotment letter or otherwise. Under clause-7 the petitioners were entitled to possession of the plot within 30 days. The possession could not have been offered validly in view of the order of this Court dated 10.02.2014.

6. A communication to this effect dated 22.11.2014 was addressed by the respondents to the petitioners. The petitioners, however, did not choose to rescind the contract contained in the letter of allotment and they kept their options open. They applied for surrender of the allotment only by their communication dated 23.09.2015. In these circumstances, the petitioners were entitled to rescind the contract and they exercised their option by letter dated 23.09.2015 validly. The petitioners would be entitled

to interest on the amount deposited but only from 23.09.2015 as till that date they had kept their option under letter of allotment alive/open. Having done so, they cannot claim interest for the period prior to 23.09.2015.

7. The contention that the respondents are entitled to deduct 10% of the cost of the plot in view of Rule 5-A of the said rules set out earlier is not well founded. Clause 5-A would not entitle the respondents to deduct any amount where the allotment is surrendered on account of the respondents' default. The respondents cannot be permitted to take advantage of their own wrong. Rule 5-A operates only where the plot holders wishes to surrender the plots of their own volition and without any default on the part of the respondents. In the present case, there was a clear default on the part of the respondents in having confirmed the auction and issuing letter of allotment dated 31.07.2014. The Principal Secretary to Government of Haryana has also rightly acknowledged the same in the said interim order dated 17.11.2014. The position would not change on account of the respondents having subsequently on 15.12.2014 rejected the claim of the petitioners as that was after the petitioners exercised their option to rescind the agreement contained in the letter of allotment.

8. The petition is, therefore, disposed of by the following order:-

- i) The petitioners' unequivocal and unconditional surrender of the plot and the rights under the letter of allotment dated 31.07.2014 is recorded. The petitioners confirm that they will not seek any right in respect of the said plot in future irrespective of the outcome of the litigation in respect thereof or otherwise.
- ii) In view thereof, the respondents shall refund the entire amount deposited by the petitioners towards the allotment of the said

plot together with interest thereon at 10% per annum from  
23.09.2015 till payment and/or realization.

- iii) The amount shall be paid by 31.05.2016 failing which the  
interest shall stand enhanced to 12% per annum thereafter.

(S.J.VAZIFDAR)  
ACTING CHIEF JUSTICE

31.03. 2016  
'ravinder'

(ARUN PALLI)  
JUDGE