

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

CWP No. 4108 of 2016

DATE OF DECISION : 22.11.2016

Ram Kishan and another

.... PETITIONERS

Versus

State of Haryana and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Jai Bhagwan, Advocate,
for the petitioners.

Mr. Deepak Sabharwal, Advocate,
for respondent Nos. 2 and 3.

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RAMENDRA JAIN , J.

1. Briefly stated, the facts of the case are that in an open auction held on 26.03.2001, the petitioners were successful bidders for plot No. 17, measuring 20" x 50" situated in New Vegetable Market, Pundri, for ₹ 8,25,000/-. Accordingly, they deposited a sum of ₹ 2,06,250/-, being 25% of the cost of the plot. Vide allotment letter dated 31.05.2001 (Annexure P-1), they were allotted the said plot. Thereafter, vide letter dated 01.05.2013 (Annexure P-2), respondent No.2 demanded a sum of ₹ 23,45,133/- from the petitioners, as outstanding amount, comprising the principal amount, interest and extension fee, despite the fact that they had already deposited the principal amount of ₹ 6,18,750/- on 06.05.2010. Against the said demand, the petitioners filed an appeal before respondent No.3, which was

dismissed vide order dated 25.05.2015 (Annexure P-3). Feeling aggrieved against the said order, the petitioners filed revision petition dated 18.06.2015 (Annexure P-4) before respondent No.1. During the pendency of the said revision petition, respondent No.2 passed the resumption order dated 04.07.2015 (Annexure P-5). Finally, vide order dated 10.12.2015 (Annexure P-8), respondent No.1 dismissed the revision petition.

2. By way of the instant writ petition under Articles 226/227 of the Constitution of India, the petitioners have sought issuance of a writ in the nature of certiorari to quash the aforesaid letter dated 01.05.2013 (Annexure P-2) as well as the orders dated 25.05.2015, 04.07.2015 and 10.12.2015 (Annexures P-3, P-5 and P-8) passed by respondent Nos. 3, 2 and 1, respectively. Further, the petitioners have also sought issuance of a writ in the nature of mandamus directing the respondents to stay the implementation of the impugned order dated 04.07.2015 (Annexure P-5).

3. During the pendency of the instant writ petition, vide order dated March 11, 2016, resumption of the site was stayed by this court, subject to depositing a sum of ₹ 10 lacs by the petitioners within two weeks without prejudice to the legal rights of both the parties. In compliance with the said order, the petitioners deposited the said amount on 22.03.2016.

4. Learned counsel for the petitioners argued that a notification dated 05.03.2002 was issued by the State of Haryana under the Punjab Agriculture Produce Markets Act, 1961, to the effect that interest on the instalments shall accrue only after the offer of possession of the site by the concerned Market Committee, and possession can be offered only after providing of the basic amenities by the respondents, like roads; water

supply; sewerage; electric connections; common platform; covered platform; cattle shed; farmer's rest house; drinking water; bank; and for the outlet of rainy water etc. Undisputedly, the basic facilities in the New Vegetable Market, Pundri, were completed only on 31.05.2008. Hence, the respondents can not charge any interest from the petitioners prior to the said date. In this regard, reliance has been placed upon an order dated 30.06.2011 (Annexure P-9) passed by the Financial Commissioner and Principal Secretary to Govt. Haryana, Agriculture Department, in a revision petition filed by Vijay Kumar and others of the same Mandi, i.e. New Vegetable Market, Pundri. In the said order, while relying upon a judgment of the Apex Court in **Haryana State Agricultural Marketing Board and another Versus Raj Pal** (Civil Appeal No. 1550 of 2011), reported in **(2011) 13 SCC 504**, the revisional authority ordered to charge simple interest @ 15% per annum from the similarly situated allottees of the same Mandi. The penal interest on the instalments was also waived off. In addition to this, the extension fee for non construction was also waived off till 31.05.2008, the day when all the basic facilities were completed in the Mandi yard. Learned counsel for the petitioners, thus, submitted that the petitioners being similarly situated are entitled to the same relief, on parity basis.

5. On the other hand, learned counsel for respondent Nos. 2 and 3 argued that the petitioners cannot escape the payment of instalments and interest on the ground that some amenities were not available. They had entered into a legal contract with the respondents by making the highest bid and depositing 25% of the total consideration, after having full knowledge

with regard to the development of plots at that point of time.

6. After giving our thoughtful consideration to the rival contentions of learned counsel for both the parties, we do not find any substance in the arguments advanced by learned counsel for respondent Nos. 2 and 3.

7. Admittedly, the basic facilities in the New Vegetable Market, Pundri, were completed by the respondents only on 31.05.2008, i.e. more than seven years after the auction of plots in the said Mandi. Undisputedly, vide order dated 30.06.2011 (Annexure P-9), passed by the revisional authority, Vijay Kumar and others, allottees of the same Mandi were granted the similar relief as claimed by the petitioners. Learned counsel for the respondents has not been able to point out any reason to discriminate the petitioners, and for not granting the same relief to them. The respondents, who are government functionaries, cannot be allowed to treat two sets of similarly situated persons in different ways. Once vide order dated 30.06.2011 (Annexure P-9), the revisional authority ordered to charge simple interest @ 15% per annum from some of the allottees of the same Mandi, and waived off penal interest on the instalments, besides waiving off the extension fee till 31.05.2008, the day when all the basic facilities were completed in the Mandi yard, action of the respondents to discriminate the petitioners and decline the same relief to them, who are similarly situated, cannot be appreciated at all.

8. Consequently, the impugned letter dated 01.05.2013 (Annexure P-2) issued by respondent No.2, as well as the orders dated 25.05.2015, 04.07.2015 and 10.12.2015 (Annexures P-3, P-5 and P-8) passed by

respondent Nos. 3, 2 and 1, respectively, are set aside. Treating the case of the petitioners on parity with the case of Vijay Kumar and others, concerning the same Market Committee, they are held liable to pay only simple interest at the rate of 15% per annum. To make it more clear, the Market Committee, Pundri, will not charge the penal interest from the petitioners, in view of the peculiar facts of the case. The extension fees for non-construction is also waived off upto 31.05.2008, the date when all the basic facilities were completed in the Mandi yard. However, the petitioners are held liable to pay the extension fees after 31.05.2008 as per policy of the Board. Market Committee, Pundri, is hereby directed to re-calculate the balance amount as per the aforesaid directions. If any excess amount is found to have been paid by the petitioners, Market Committee, Pundri, shall refund the same to them within a period of one month from today, failing which it will be liable to pay simple interest @ 15% per annum. In case any balance amount is payable by the petitioners, the same shall be paid within a period of six months from today along with simple interest @ 15% per annum.

9. Before parting with the order, it is observed that this court is flooded with huge litigation of such like disputes, where allotments of plots/booth sites, commercial sites, have been made by the respective Governments of the States of Punjab and Haryana, including their Corporations; government undertakings, like HUDA and PUDA, without completing the development works and providing all basic amenities and facilities. Such action of the Government is not only a disadvantage to the Government itself, but also to the public at large, who has to indulge in litigation and spend valuable time of their lives, hard earned money and

energy in the courts for years. The time has now come that such type of actions of the Government to allot sites without making the same litigation free and without completing the development works and providing all basic amenities and facilities, have to be curbed down, because such actions lead to multifarious litigation wasting precious time and energy of the court, which can be utilised in disposal of some genuine litigation. Such casual approach of the concerned officers has to be dealt with severely. Therefore, Chief Secretaries of the States of Punjab and Haryana as well as Adviser to Administrator, Union Territory, Chandigarh, are hereby directed to ensure that no government site or site through any government agency shall be offered by way of allotment, auction or otherwise, until and unless the same is completely litigation free, i.e. without any encumbrance etc., and is fully developed, provided with all basic amenities. Moreover, all the allottees have to be treated on parity without any discrimination, because every citizen of this country before Government functionaries is equal before it.

10. Petition is, accordingly, allowed, in the aforesaid terms.

11. Copy of this order be sent to the Chief Secretaries of States of Punjab and Haryana as well as Adviser to Administrator, Union Territory, Chandigarh, for information and strict compliance of this order.

(RAMENDRA JAIN)
JUDGE

November 22, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes