

CWP No. 10258 of 2017

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

**CWP No. 10258 of 2017
Date of Decision : 23.05.2017**

Sri Hans Enterprises

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: ***HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL***

Present: Mr. Aalok Jagga, Advocate for the petitioners.

Mr. Sandeep Moudgil, Addl. Advocate General, Haryana.

S.J. VAZIFDAR, C.J.(Oral)

The petitioners have sought a writ of certiorari to quash an order dated 03.05.2016 (Annexure P-15) passed by respondent No. 2 cancelling a letter of intent (LOI) dated 20.07.2015 issued in their favour, an order dated 04.01.2017 also passed by respondent No. 2 by which their representation dated 12.04.2016 was rejected and a sale notice dated 17.04.2017 inviting bids at the auction of the same mining. The petitioners have also sought a writ of mandamus directing the respondents to restore the LOI dated 20.07.2015 and in the alternative to refund the amount of ₹94.20 lacs paid by the petitioners under the earlier LOI and to restrain the respondents from recovering an amount of about ₹1.42 crores as arrears of land revenue.

2. The petitioners' bid being the most competitive at an auction held in July, 2015 was accepted. The respondents issued an LOI dated 20.07.2015 accepting the petitioners' bid of ₹9.42 crores against the reserved price of ₹4.40 crores. The petitioners deposited ₹94.20 lacs being 10% of the bid amount. The petitioners, however, failed to pay ₹1.41 crores being 15% of the bid amount within 12 months i.e. by 20.07.2016. The petitioners also failed to execute the agreement within 90 days of the issuance of the LOI. The petitioners refused to deposit the amount of 15% and to execute the agreement contending that over 90% of the area could not be mined for a variety of reasons including that the area had hills and was a forest area. The respondents deny the same. It is neither necessary nor possible to decide these disputed questions of facts in this writ petition.

3. The question of granting the petitioners specific performance of the LOI dated 20.07.2015 in the facts and circumstances of the case and especially in a writ petition cannot arise. It is sufficient to refer to only one letter addressed by the petitioners in this regard. By the letter dated 12.04.2016 the petitioners stated that on account of the aforesaid facts "it is impossible to carry out any mining activities upon the said land"; that most of the area are natural hills where again mining is either impermissible or impossible and that the respondents had in fact, therefore, wrongly without verifying the nature of the land offered the same for mining. The letter concludes by requesting the respondents to refund the amounts of ₹94.20 lacs with interest within 15 days.

4. This is as clear an expression of an intent to refuse to perform

the contract as any. Whether the petitioner was justified in doing so or not in another matter and we do not intend expressing any opinion in that regard. Be that as it may, the question of compelling the respondents to permit the petitioners to implement the LOI dated 20.07.2015 cannot arise.

5. Mr. Jagga then submitted that the order of blacklisting for a period of five years and also forfeiting the amount deposited is too harsh. These issues raised not merely disputed questions of fact but seriously disputed questions of facts. The respondents have, in fact, raised the reserve price of ₹4.40 crores fixed in the year 2015 to ₹9.42 crores this year. The respondents, therefore, are not under the impression that the area cannot be mined.

It is not possible for us in this petition to accept Mr. Jagga's submissions on behalf of the petitioners that the area is not capable of being mined.

6. The petitioners must file appropriate proceedings not merely for damages and compensation but also to challenge the order of blacklisting. One of the issues that will arise while considering the validity of the order of blacklisting is whether the petitioners' contention regarding the area not capable of being mined is, in fact, well founded or not.

7. In fairness to the petitioners, we must clarify one aspect of the matter. The petitioners' offer to implement the LOI dated 20.07.2015 at first blush suggests that the petitioners themselves were of the view that the area could not, in fact, be mined. It would be unusual in that event for the petitioners to agree to implement the LOI on the same terms and conditions.

However, Mr. Jagga submitted that the petitioners had made this offer

because of the predicament that they found themselves in, namely blacklisting for five years, having their EMD of ₹94.20 lacs forfeited and facing a demand of over ₹1.42 crores which the respondents had by one of the impugned notices stated they would recover as arrears of land revenue. This is indeed possible.

8. The petitioners had earlier filed CWP No. 17472 of 2016, which was disposed of by an order and judgment dated 27.08.2016 of Division Bench. The Division Bench directed the respondents to consider the petitioners' said representation dated 12.04.2016. That representation, however, was only for a refund of the EMD. In the event of the petitioners making an offer to the respondents to work the mine and to implement the LOI dated 20.07.2015 on the terms and conditions stipulated therein together with interest on the amounts that would have been payable to them, the respondents are always at liberty to consider the same.

9. The writ petition is, accordingly, disposed of.

**(S.J. VAZIFDAR)
CHIEF JUSTICE**

**(ANUPINDER SINGH GREWAL)
JUDGE**

23.05.2017
kanchan

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No