

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

Civil Writ Petition No.21203 of 2016

Date of decision: **November 21, 2017**

M/s Inder Mal Suresh Kumar		...Petitioner
	Versus	
State of Haryana and others		...Respondents

2. **Civil Writ Petition No.21263 of 2016**

M/s Rati Ram Narinder Kumar		...Petitioner
	Versus	
State of Haryana and others		...Respondents

AND

3. **Civil Writ Petition No.21350 of 2016**

M/s Moman Chand Om Parkash		...Petitioner
	Versus	
State of Haryana and others		...Respondents

**CORAM:HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Arun Bansal, Advocate for the petitioner/s.

Mr.Sandeep Moudgil, Advocate for
respondents No.2 and 3 - HSAMB.

HARINDER SINGH SIDHU, J.

This judgment shall dispose of three writ petitions i.e. CWP No.21203, 21263 and 21350 of 2016, as common question is involved therein.

For adjudication of the petitions the facts are being taken from CWP No.21203 of 2016

This petition has been filed praying for directions to quash the Memorandum of Offer dated 13.06.2014 (Annexure P-4) and the order

dated 13.07.2016 (Annexure P-3) passed by respondent No.2- the Chief Administrator, Haryana State Agricultural Marketing Board whereby he has held that the offer of the allotment of the plot to the petitioner in New Mandi Narwana for a price of Rs.12.05 lacs is legal and valid and in accordance with the earlier order dated 23.07.2013 of the Chief Administrator directing that the petitioner be considered for allotment of plot at the reserve price.

The petitioner is a proprietary firm and was carrying on business in the Old Mandi, Narwana District Jind.

The Executive Officer, Market Committee, Narwana (Jind) through public notice dated 15.06.2009 invited applications for allotment of shop/ plot from old licensees of category II (*katcha artiyas*) of the old Mandi to be de-notified. The allotment was to be on a reserve price through draw of lots. The petitioner applied for the same, but its application was rejected on the ground that the firm was operating its business from the first floor of the old grain market. It filed an appeal there-against, which was dismissed by the Chief Administrator HSAMB vide his order dated 15.12.2010 on the ground of limitation. The petitioner preferred a revision petition before the Financial Commissioner, Agriculture, Haryana, who vide his order dated 09.06.2011, after condoning the delay, remanded the case to the Chief Administrator with directions to decide the same on merits. After the remand, the appeal was heard by the Chief Administrator, HSAMB. The appeal was allowed vide order dated 23.07.2013 and the petitioner was declared eligible for considering his case for allotment of plot on reserve price.

The grievance of the petitioner is that instead of allotting the plot to him on reserve price of Rs.6,80,000/- which was charged from similar licencees of the old Mandi who were allotted the plots in the year 2009 (when the petitioner was illegally held to be ineligible), the respondents re-fixed the reserve price to be charged from it at Rs.12.05 lacs. Respondent No.3 - the Administrator, Market Committee, Narwana got a Memorandum of Offer (Annexure P-4) signed from the petitioner, whereby, the petitioner offered to purchase the plot at the price of Rs.12,05,000/- . Twenty five per cent of the price i.e., Rs.3,05,000/- was paid . The balance along with interest was to be paid and the purchase completed in accordance with the conditions in this Memorandum of Offer. It is the case of the petitioner that it did not sign the Memorandum of Offer and make the payment voluntarily, but it was done under coercion as otherwise it would not have been given the plot. It was only after receipt of 25% of the re-fixed/ enhanced reserved price that the respondents allotted the plot to the petitioner vide allotment letter dated 13.08.2014. The petitioner was, thereafter, offered possession of the plot on 27.08.2014.

Aggrieved of the action of the respondents in allotting it the plot at the price of Rs.12,05,000/-, whereas, the other allottees had been allotted the same for a sum of Rs.6,80,000/-, the petitioner served a legal notice dated 27.01.2015 (Annexure P-8) requesting the respondents to re-fix the reserve price of the plot at Rs.6,80,000/-. As there was no positive response to the petitioner's request to re-fix the reserve price at Rs.6,80,000/-, it preferred CWP No.21685 of 2015 seeking directions to quash the Memorandum of Offer dated 13.06.2014 and for directing the

respondents to allot the plot at the reserve price of Rs.6,80,000/- in terms of the order of the Chief Administrator dated 27.03.2013. The said writ petition was disposed of vide judgment and order dated 09.10.2015 observing that the petitioner ought to seek a clarification of the order dated 27.03.2013. In the event of the clarification being against the petitioner, he was given liberty to challenge the same. The petitioner, thereafter, filed the application for clarification of the order dated 27.03.2013, which has been dismissed vide order dated 13.07.2016.(Annexure P-21). It has been held that the allotment price as charged from the petitioner is legal and valid and in accordance with the order dated 23.07.2013 passed by the Chief Administrator.

Assailing this order, Sh. Arun Bansal, Ld. Counsel for the petitioner contended that the petitioner was entitled to allotment of plot on reserve price as fixed by the Board at the time of inviting applications on 15.06.2009. He argued that the petitioner had initially been wrongly held to be ineligible. Later, the said order was set aside and he was held entitled to a plot at the reserve price. Other allottees who applied along with the petitioner were allotted plots on 31.12.2010 for Rs.6,80,000/-, whereas, the petitioner not only suffered delay of four years in the allotment solely because of the fault of the respondents, but is being charged an enhanced rate of Rs.12,05,000/-. He relied on a decision of this Court in **CWP No.1314 of 2013 Ishwar Chand and another Vs. State of Haryana and ors** to contend that the reserve price would be the reserve/ control price which would have been chargeable by the respondents at the time of inviting applications and not the reserve price prevalent at the time of actual

allotment when initially the allotment had been illegally and arbitrarily denied to it.

Sh. Sandeep Moudgil, Ld. Counsel for the respondents on the other hand contended that the judgment relied by the Ld. Counsel for the petitioner is distinguishable. The petitioner did not suffer any loss as made out by him. The petitioner, in fact, continued to carry on business from the old mandi till 22.05.2013 when the old mandi was de-notified, which was not so in the case relied on by the petitioner. He further argued that a plot of the same size as allotted to the petitioner was sold in open auction in the Mandi on 7.5.2015 for Rs.71.21 lacs, whereas, the petitioner has only been charged the reserve price of Rs.12.05 lacs. He further argued that the price charged from the petitioner is strictly as per the decision of the Board of Directors of the respondent Board in its meeting held on 12.09.2011, where it approved Supplementary Agenda Item No.3 as per which the reserve price for old licencees whose cases were rejected by the allotment committee but accepted by the Chief Administrator, were to be fixed by adding 15% simple interest per annum to the original reserve price on which the allotment was made to their counterparts.

We have heard Ld. Counsel for the parties and perused the record.

The petitioner's application for allotment of a plot in the New Grain Market was rejected on the ground that it had been operating the business from the first floor of Old Grain Market which could not be considered an independent premises, which was a condition for eligibility for allotment. Its appeal there against was dismissed by the Chief

Administrator on 15.12.2010 on the ground of limitation. However, the revisional authority vide its order dated 09.06.2011 condoned the delay and remanded the case to the Chief Administrator for decision on merit. Thereafter, the matter was reconsidered by the Chief Administrator. The Chief Administrator noticed that the petitioner had been working as category-II licensee for the last 22 years and had a good and consistent turnover in the past. It was noticed that as per Rule 3 (1) (iv) of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules 2000, there was a requirement to have an independent premises. But the Board had passed a supplementary agenda No.3 dated 25.02.2009, vide which, certain clarifications were given with regard to independent premises. Taking into considerations that clarification and the fact that in certain similar cases operating from the first floor, relief had been given and taking a liberal view the appeal of the petitioner was allowed and he was held eligible for consideration of his case for allotment of plot on reserve price.

The relevant part of the order is extracted below:

“From the perusal of Rules 2000 and the resolution passed by the Board, it comes out that the allotment of plots on reserve price to the old licensees of category-II is made under the rehabilitation policy. It also comes out that the conditions, prescribed under the policy, are to check unscrupulous elements who may otherwise take undue benefit by getting allotment of plots on reserve price. The spirit of the rehabilitation policy is to grant the benefit to genuine and bonafide Commission Agents (Arthiyas). The Hon'ble Supreme Court of India is also of opinion, as expressed in M/s Labha Ram and Sons & ors. vs. State of Punjab & ors., that a liberal view should be taken in allotment of plots on reserve price to old commission agents. In view of above said legal position and spirit of the rehabilitation policy, I am of the considered view that the purpose of

eligibility criteria is to sift the bonafide old licensees of category-II from others.

In the present case, the appellant is working from last 22 yeas and have consistent and good turnover in the past. He has an independent premises in the old Grain Market which is to be denotified though on the first floor. My predecessor has already given the relief to such licencees operating their business from 1st floor in the same mandi. Therefore, I am left with no option except to extend the same relief to the present appellant.

In view of the above said peculiar facts and circumstances of the case and keeping in view the orders passed by my predecessor, I am of the view that a liberal view may be taken in the present case as the appellant is a bonafide and genuine old licensee of category-II working in the old Grain Market which is to be denotified.

In sequel of the above said observations, the appellant is hereby declared as eligible for considering his case for allotment of plot on reserve price. The E.O.-cum-Secretary, Market Committee, Narwana is hereby directed to take the appropriate action immediately. Therefore, the appeal is disposed of in above said terms.”

Ld. Counsel for the petitioner had placed strong reliance on an order dated 28.08.2015 passed on a clarification application moved in CWP No.1314 of 2013 Ishwar Chand and another Vs. State of Haryana and ors.

In that case, the claim of the petitioner to a plot in the New Grain Market Narwana was rejected on the ground that he was a *Pucca Arthiya*. A Division Bench of this Court on perusal of the record found this reason to be wholly untenable as the petitioner had, in fact, been issued a licence as a *Katcha Arhtiya*. Hence, it allowed the writ petition vide its judgment and order dated 19.08.2013 and held the petitioner therein to be entitled to a plot on the reserve price/ control rate. In view of its finding that the officials of the Board and the Market Committee had intentionally

withheld the record relating to the grant of licence and had put up a false defence in the written statement knowing it to be false they were burdened with costs of Rs.50,000/- to be paid by the official responsible. SLP against this order was dismissed on 27.10.2014.

As the respondents sought to charge the current reserve price (as on the date of actual allotment) for the plot instead of the reserve price prevalent in 2009 (when the allotment of the plot was illegally denied) the petitioner therein filed an application seeking clarification about the reserve price. The Court in its order dated 28.08.2015 clarified that as the petitioner was denied a plot in the year 2009, the reference to the reserved/ control price in the order dated August 19, 2013 clearly and unambiguously referred to the reserved/ control price as would have been charged from the petitioner had the plot been allotted to him in the year 2009.

This decision may not be of any help to the petitioner. As rightly pointed out by the Ld. Counsel for the respondent, the facts of the present case are different from that in Ishwar Chand's case. In the present case, the petitioner continued to carry on business from his premises in the old Mandi till it was de-notified on 22.05.2013. Such does not appear to be the case in Ishwar Chand's case. In any case, the effect thereof vis- a -vis the reserve price to be charged has not been adverted to in that case. Nor has it been held and declared as a principle of law that in all such cases where application is initially rejected and subsequently allowed in appeal/ revision the allotments should be made at the reserve price prevailing at the time of inviting applications. The Division Bench also did not opine on the validity of the price fixation mechanism approved by the Board of Directors

of the Haryana State Agricultural Marketing Board as per which the reserve price for old licencees, whose cases were rejected by the allotment committee but accepted by the Chief Administrator, was to be fixed by adding 15% simple interest per annum to the original reserve price on which the allotment was made to their counterparts. In fact, it appears, that this decision of the Board was not even placed before the Court nor any argument addressed thereupon as there is no reference to this decision in the judgment.

Thus, the decision in Ishwar Chand's case has to be read as being rendered in the fact situation obtaining therein, where the allotment was illegally denied on wholly un-sustainable grounds and totally wrong assertions contrary to the record were made before the High Court. It cannot be read as disclosing a ratio of general application regarding charging of reserve price prevailing at the time of inviting applications from the old licencees in the old de-notified mandis in cases where after initial rejection the claim is accepted later in appeal or revision and thereafter allotment is made.

A decision more fully applicable in the facts of this case is the decision of a Division Bench in **C.W.P. No.2206 of 2017 M/s. Ganesh Trading Co. and Ors. Vs The State of Haryana and Ors.** 2017(2) Law Herald 1159. In this case, the Court upheld re-fixation of reserve price after charging of interest as per the decision dated 12.9.2011 of the Board of Directors of the respondent Board. Thus, the ratio of this case is fully attracted in present case.

In this case, the petitioners were originally carrying on their

trade from their shops in the old Grain Market, Julana, which had been in existence since 1927. Applications were invited for allotment of plots in the new market from traders in the old Market. Initially, only 85 traders were found eligible for allotment. The petitioners therein, were denied such allotment on some technical grounds. They filed their individual appeals, under Rule 11 of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Amendment Rules, 2008 which were allowed by similar, but separate orders dated 28.7.2010 in which, it was held that they were bona fide and genuine old licensees of Category-II working in the old Grain Market, and that rejection of allotment of shops/ plots on reserve price to them was not justified. The original 85 successful traders were allotted plots at the price of Rs.22.50 lacs whereas in the case of the petitioners an interest component of 15% per annum apart from certain enhancement cost was added to the reserve price of Rs.22.50 lacs on account of the time factor as their allotments were made only in the year 2012. The final reserve price for the petitioners came to Rs.29,53,125/- which was then rounded off to Rs.30 lacs by the Board.

The petitioners were in particular, aggrieved of the charging of interest. The interest was charged in terms of the decision of the Board of Directors vide its supplementary agenda item No.3 in its meeting held on 12.09.2011 as per which the reserve price for such old licencees whose cases had been rejected by the allotment committee but accepted by the Board or the State Government was to be re-fixed by adding 15% simple interest per annum to the original reserve price on which allotment was made to their counterparts.

Upholding the said charge and dismissing the petition, this Court observed as under:

“7. The rationale for imposition of interest on the subsequent allotment is contained in the Board's decision in the form of Annexure P-18, wherein it is noted that in the event of subsequent acceptance of certain applications for allotment originally rejected after the delay of many years, the Board/Market Committee stands to lose interest on its investment, having also to pay the interest on its borrowing and thereby suffers uncalled for financial loss, on account of which updation of the concessional price from time to time is inevitable. Consequently, the decision was taken to raise the same at the rate of 15% per annum as simple interest, as against the original practise of compound interest for the same amount. This rationale of including the interest factor in case of subsequent allotments is therefore, also logical and applicable in the facts of the present case. We say so because perusal of the relevant similar order dated 28.7.2010 passed by Respondent No.2 in relation to the separate appeals of various petitioners under Rule 11 of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Amendment Rules, 2008 read with Sections 18 and 43 (1) (2) and (vi) of the Punjab Agricultural Produce Markets Act, 1961, which have been collectively filed as Annexure P-1 go to show that the various appeals were allowed in the 'peculiar facts and circumstances' of each case with the further observation I am of the view that a liberal view may be taken in the present case.....' There is no observation anywhere to the effect that non-allotment of the shop plots to the various appellants in each case was on account of any mala fide or extraneous reasons. It was essentially a question of interpretation of the Rules, and the Appellate Authority in its ultimate decision did away with the technical disabilities, which had come in the way of the concerned appellants for the purpose of the original allotments. In the absence of any visible mala fide or motivated approach, we do not find any justification to consider waiver of interest on the reserved price on account of delayed allotments in favour of the petitioners.....”

The Court accepted the rationale of including the interest factor in case of subsequent allotments as logical. For , otherwise, on subsequent acceptance of applications for allotment which were originally

rejected, the Board/Market Committee would suffer uncalled for financial loss as it would not only lose interest on its investment, but also have to pay the interest on its borrowing. It was held that, in the absence of any visible mala fide or motivated approach in the initial rejection, there was no cause or justification for waiver of this interest .

In the present case also, there is no finding that the initial rejection of allotment was for mala fide or extraneous reasons. To the contrary the Chief Administrator in its order dated 23.07.2013 extracted earlier has noted that a liberal view has been taken in the case of the petitioner in view of similar relief granted by his predecessor.

Further, it has been admitted that the petitioner continued to carry on business from the old premises till 22.05.2013 when the old mandi was de-notified. It has also been pointed out that a plot of the same size has been auctioned on 07.05.2015 for Rs.71.21 lacs, whereas, the petitioner has been charged only Rs.12.05 lacs. The price has been re-fixed as per the decision of the Board dated 12.09.2011, which has been upheld in the case of M/s Ganesh (*supra.*)

Thus, we find no illegality in the impugned order. Accordingly, the petitions are dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

November 21, 2017

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Whether Speaking / Reasoned Yes Whether Reportable Yes / No