

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

**CWP No.8590 of 2014
Date of Decision.03.04.2017**

Ishwar Singh Bagri

.....Petitioner

Vs

State of Haryana and others

.....Respondents

Present: Mr. Atul Lakhanpal, Senior Advocate with
Mr. R.S. Chahal, Advocate
for the petitioner.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The petitioner has sought indulgence of this Court by issuing writ in the nature of certiorari quashing the order dated 03.12.2013 (Annexure P-11) and reply dated 25.02.2014 (Annexure P-12) to the legal notice whereby his claim for removal of the surplus earth has been declined, with a further writ in the nature of mandamus directing the respondent No.4 namely the Executive Engineer, Panipat, Water Services Division, Panipat to allow the petitioner to lift the earth from RD 104642 to 139000 auctioned on 14.03.2002.

Mr. Atul Lakhanpal, learned Senior Counsel assisted by Mr. R.S. Chahal, Advocate appearing for the petitioner submits that respondent No.4 conducted an auction for surplus earth from the main drain No.2 in RD 104642 to 139000. On 02.05.2003 (Annexure P-1), respondent No.4 wrote a letter to the Sub Divisional Officer, Panipat to get the deposit of 10% of amount offered by the petitioner as per the terms and conditions of the auction held on 14.03.2002 so that the case of the petitioner could be sent for approval to the competent authority. However, respondent No.2 vide letter dated

Engineer, which fact is evident from letter dated 22.05.2003 (Annexure P-2).

He has drawn the attention of this Court to the terms and conditions of the auction, particularly, condition No.11, which reads as under:-

“11. The surplus earth shall be lifted within one year period. Thereafter, a surcharge of 5% of bid amount per month will be levied.”

By referring the aforementioned condition, he submits that the earth could be lifted within one year. However, there was no contingency or condition of termination of the contract as the State can levy a surcharge of 5% of bid amount while allowing the petitioner to lift the earth. In this regard, a request for extension of period of removal was made in 2005 but the same was rejected and thereafter, in 2013 vide Annexure P-5 dated 20.05.2013, another letter written to the Executive Engineer for extension of period for removal of surplus earth and the Executive Engineer vide Annexure P-7 dated 26.09.2013 sought the approval of Superintending Engineer, who vide letter dated 09.10.2013 (Annexure P-8) requested the Chief Engineer to grant extension, which has erroneously been rejected vide impugned letter dated 29.10.2013 (Annexure P-9) and as well as letter dated 25.02.2014 (Annexure P-12) whereby the legal notice has been rejected.

He submits that the petitioner is willing to deposit the entire 5% surcharge for allowing the petitioner to lift the earth as he could not do so within the time prescribed. Only 20 to 30% earth has so far been lifted. The State would also be benefitted on receipt of 5% surcharge, thus, the impugned orders rejected the extension are wholly erroneous. The terms and conditions of the auction did not envisage cancellation of the contract, though one year time was granted to lift the earth. The action of the respondents rejecting the

thus, urges this Court for setting aside of the same.

Per contra, Mr. Sandeep S. Mann, Sr. DAG, Haryana submits that writ petition is highly belated as the work was allotted to the petitioner by way of auction in the year 2002 but he failed to complete the same, despite extension granted upto 05.02.2006, though the earlier period was 25.05.2003 to 24.05.2004 and had remained silent for almost 7 years by making representation in the year 2013, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book. The terms and conditions of the auction are sacrosanct. From condition No.11 it is deciphered that the petitioner was to lift the earth within a period of one year and thereafter, 5% surcharge of bid amount will be levied but that could not continue for the infinite period i.e. till date. The extension granted earlier is indicated in the written statement i.e. upto 05.02.2006, though has not been explained in the writ petition but thereafter had been rejected in 2013. No explanation has come forth what the petitioner had been doing from 2006 to 2013.

The relief sought in the writ petition is highly belated and hit by doctrine akin to delay and latches. The orders rejecting the case of the petitioner are perfectly legal and justified and cannot be said be passed arbitrarily or against the principles of natural justice. No ground for interference is made out. The writ petition is dismissed.

(AMIT RAWAL)
JUDGE

April 03, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No