

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

CWP No. 12703 of 2018
Reserved on: 10.02.2020
Date of decision: 18.02.2020

Saurabh Garg and others

.....Petitioners

V/s.

State of Punjab and others

.....Respondents

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Gaurav Mohunta, Advocate and
Mr. Sudhir Kashyap, Advocate,
for the petitioners.

Ms. Akshita Chauhan, Assistant Advocate General, Punjab.

Ms. Neha Sharma, Advocate, for respondent No.2.

Mr. A.S. Miglani, Advocate, for respondent No.3.

Sanjay Kumar, J.

The petitioners, three in number, participated in the auction held on 22.12.2011 by the Improvement Trust, Kotkapura, District Faridkot, in relation to sale of sixteen constructed shops in Guruteg Bahadur Nagar and Ambedkar Nagar Markets at Kotkapura. They were declared the successful bidders in relation to Shop Nos. 36 and 44 in Guruteg Bahadur Nagar (petitioner No.1), Shop No. 38 in Guruteg Bahadur Nagar (petitioner No.2), Shop No.39 in Guruteg Bahadur Nagar (petitioner No.3), Shop No.37 in Ambedkar Nagar (petitioner No.1) and Shop No.39 in Ambedkar Nagar

(petitioner No.3). They were issued allotment letters on 09.04.2012 indicating the total sale consideration that had to be deposited by them in installments.

The admitted fact, as on date, is that out of the five equated installments payable by them, the petitioners paid four and one installment remains outstanding in relation to each of the shops. It is however their case that basic amenities were not provided by the authorities in the vicinity of the shops and therefore, it became extremely difficult for them to carry out any business or trading activities, by putting the said shops to use. They claim to have submitted representations dated 25.07.2013 (Annexure P-3) and 09.11.2014 (Annexure P-4) to the authorities in this regard but to no avail.

The petitioners then approached the District Consumer Disputes Redressal Forum at Faridkot (hereinafter, 'the Consumer Forum') and basing upon the Local Commissioner's report dated 03.04.2017 (Annexure P-6), stating to the effect that there was no development in the area and that the place was in a dilapidated condition, the Consumer Forum passed order dated 27.07.2017 (Annexure P-5) directing the authorities to refund the amount paid by the petitioners along with interest.

Aggrieved thereby, the Improvement Trust approached the State Consumer Disputes Redressal Commission, Punjab, and its appeals were allowed, *vide* common order dated 24.01.2018 (Annexure P-8). The State Commission set aside the order of the Consumer Forum on the ground of jurisdiction as the petitioners were not consumers.

In the meanwhile, it appears that the Improvement Trust had

issued notice dated 01.08.2016 (Annexure P-7) imposing penal rent upon the petitioners for not depositing the last installment payable by them and for the delayed deposit of two earlier installments.

The petitioners filed the present writ petition on 17.05.2018 asserting that the situation still remained the same and sought a direction to the authorities to provide basic amenities for the upkeep and maintenance of both the markets where the auctioned shops are located.

The Improvement Trust filed its written statement. Therein, it asserted that it had sold the shops in question on an 'as is where is' basis and the petitioners had willingly purchased the same after participating in the auction. As they failed to deposit some installments in time and the last installment had not been paid at all, despite reminders, the Trust justified imposition of penal rent upon them. It further stated that the area near the shops was being maintained properly now and that there was no garbage lying around as proper sewerage and drainage facilities, along with street lights, had been provided. It further pointed out that no complaint had been received from the occupants of the other shops and denied receipt of the representation dated 25.07.2013 or any other representation from the petitioners.

The petitioners were allotted the subject shops as long back as in April, 2012, upon being declared the highest bidders in the auction held on 22.12.2011. Though they claim to have submitted representations dated 25.07.2013 and 09.11.2014 to the authorities, the receipt thereof has been denied and there is no material produced in proof of the petitioners having

actually served the said representations upon the Improvement Trust. Admittedly, they approached the Consumer Forum only on 14.10.2016, after issuance of the notice dated 01.08.2016 (Annexure P-7) by the Improvement Trust levying penal rent upon them. Though the petitioners claimed that the aforestated notice was ante-dated, there is no evidence produced in proof of this allegation.

It is therefore manifest that after being allotted the subject shops in April, 2012, the petitioners did nothing in the matter till October, 2016. It is hardly believable that, if the situation was so deplorable that they could not even put the shops purchased by them to use, the petitioners would not have remained somnolent for so long. Further, as rightly pointed out by the Improvement Trust, the fact that none of the auction purchasers of the remaining shops came forward with any grievance weighs against the petitioners.

It is an admitted position that the vicinity around the shops is being maintained properly now and it is only the shops themselves that may need to be attended to. The present disrepair of the shops would also be attributable to the petitioners as they have not been put to use since April, 2012.

Further, the petitioners have neither cleared the balance sale consideration due and payable by them nor the penal rent visited upon them. No issue is raised in this writ petition in that regard. Without clearing their lawful dues, it is not open to the petitioners to assert any ownership rights at this stage. As this Court is now informed that the Improvement Trust has been revived and that necessary steps would be taken by the Trust and the

municipal authorities to ensure that proper basic amenities are provided in this area, this Court sees no reason to issue any directions.

The writ petition is accordingly dismissed.

No order as to costs.

(SANJAY KUMAR)
JUDGE

18.02.2020
rakesh

whether speaking/non speaking	:	<i>Yes/no</i>
<i>whether reportable/non reportable</i>	:	<i>Yes/no</i>