

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

**CWP-20014-2017 (O&M)
Date of decision: 11.2.2020**

Parmod Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Harkesh Manuja, Advocate,
for the petitioner.

Mr. P.P. Chahar, DAG, Haryana.

Mr. Deepak Balyan, Advocate,
for respondents No.2 and 3.

KARAMJIT SINGH, J. (Oral)

The petitioner has filed this petition for issuance of a writ in the nature of certiorari for quashing the order/action taken report dated 24.7.2017 (Annexure P-10) whereby a decision was taken by CM Window Grievance Cell to refund the amount deposited by the petitioner in lieu of Booth No.27-P, Sector 4, Panchkula which was allotted to the petitioner in public auction.

It is the case of the petitioner that in December, 2016, he participated in e-auction of commercial sites at Panchkula, on the basis of e-auction notice (Annexure P-1). The terms and conditions of auction were contained in the brochure available on the website of HUDA and copy of the same is Annexure P-2. As per the said brochure, all the booths which

22.688 square meters and their reserve price was ₹ 43.60 lacs. The e-auction was held on 29.12.2016 and he being highest bidder was allotted booth No.27-P, Sector 4, Panchkula against total sum of ₹ 62,40,000/-. The allotment letter of the same date (Annexure P-3) was issued in his favour. The petitioner deposited 10% of the bid amount, i.e., ₹ 6,24,000/- on 2.1.2017 and he deposited another 30% of the bid amount, i.e., ₹ 18,72,000/- on 9.2.2017. The petitioner also deposited another sum of ₹ 6,24,000/- as first instalment. In total, the petitioner deposited a sum of ₹ 31,20,000/- and copy of the allottee account statement in this regard is Annexure P-4. He was offered possession of the said booth on 21.2.2017 (Annexure P-5). The petitioner submitted all the requisite documents to take actual possession of the booth and he was informed that possession would be handed over to him on 12.4.2017. However, possession was never delivered to him by the authorities. On this, he served legal notice dated 18.5.2017 asking respondents No.2 and 3 to handover possession of the booth to him. Copy of the legal notice is Annexure P-6. The petitioner received letter dated 24.7.2017 (Annexure P-7) informing him that mini draw will be held on 28.7.2017 for allotment of alternative site in lieu of booth No.27-P, Sector 4, Panchkula. On this, the petitioner filed objections (Annexure P-8), by way of representation and a copy of the same was also sent to Chief Minister-cum-Chairman, HUDA. Then the petitioner was called by the Grievance Cell of Chairman, HUDA. After deliberations, the department dropped the idea of holding mini draw of lots in lieu of the aforesaid booth. On this, the petitioner showed satisfaction vide letter dated 28.7.2017 (Annexure P-9). However, thereafter, he received copy of action

Window Grievance Cell, Haryana, as per which, it was conveyed to the petitioner that HUDA had taken a decision to refund the amount deposited by him in lieu of the aforesaid booth. The petitioner had posed challenge to the said action taken report and had also prayed for issuance of a writ of mandamus directing respondents No.2 and 3 to handover possession of booth No.27-P, Sector 4, Panchkula to him in accordance with letter of allotment (Annexure P-3) or in the alternative to allot Booth No.72 to him.

On notice of motion, the writ petition was contested by respondents No.2 and 3 and they filed written statement contesting the claim of the petitioner. The said respondents admitted that booth No.27-P, Sector 4, Panchkula was put to auction and as per e-auction notice, its size was mentioned as $2.75 \times 8.25 = 22.69$ square meter having reserve price of ₹ 43.60 lacs. Respondents No.2 and 3 took the plea in their written statement that it being corner booth having 2.75 meter wide side *veranda*, so its actual size was $5.50 \times 8.25 = 45.375$ square meters. However, due to oversight, the area of said *veranda* was not mentioned in the e-auction notice. At the same time, it was admitted that the said booth was allotted to the petitioner in e-auction held on 29.12.2016, he being the highest bidder. It was also admitted that offer of possession of the said booth which was allotted to the petitioner for ₹ 62.40 lacs was given to him on 21.2.2017. When HUDA came to know about the above said mistake, immediately a departmental action was initiated against the erring official. The petitioner was given an option to pay actual reserve price of the booth as per its actual size but he refused to pay the additional amount. The respondents, in the alternative, offered booth No.72, Sector 4, Panchkula without side corridor

rejected by the petitioner. So the department decided to refund the amount deposited by the petitioner along with interest @ 5.5% per annum. The petitioner moved a complaint to CM Window Grievance Cell on which the action was taken and the action taken report is Annexure R-1, as per which, it was decided to refund the amount deposited by the petitioner. It was pleaded that there is no illegality in the said action taken report.

We have heard the counsel for the parties and gone through the record of the petition.

Counsel for the petitioner has challenged action taken report (Annexure P-10). It is contended that the petitioner participated in e-auction of commercial sites and was allotted booth No.27-P, Sector 4, Panchkula for ₹62,40,000/-, being the highest bidder. He had already paid half of the said amount and is ready to pay the balance amount along with extra charges, if any. The respondents were having no right to cancel the said allotment, for their own fault. It is further contended that Annexure P-10 being illegal, should be quashed.

On the other hand, counsel for the respondents contended that there is no illegality in the action taken report (Annexure P-10). The petitioner was given an option to pay actual price of the booth as per its size and in the alternative, he was offered booth No.72 in the same sector. However, said options were not acceptable to the petitioner, so the only alternative left with the respondents was to refund the amount deposited by the petitioner in lieu of booth No.27-P.

We have considered the submissions made by the counsel for the parties.

The undisputed facts are that the petitioner participated in e-

auction of commercial sites at Panchkula in December, 2016 on the basis of e-auction notice (Annexure P-1). The terms and conditions of the auction were contained in the brochure (Annexure P-2), as per which, the booths which were to be auctioned in Sector 4, Panchkula were of the size $2.75 \times 8.25 = 22.688$ square meters and their reserve price was ₹ 43.60 lacs. The petitioner being highest bidder was allotted booth No.27-P, Sector 4, Panchkula for a sum of ₹ 62,40,000/- and he was issued allotment letter (Annexure P-3). The petitioner deposited ₹ 31,20,000/- out of the total sale price.

The plea of the respondents is that the actual size of the said booth was $5.50 \times 8.25 = 45.375$ square meters which also included 2.75 meters wide side *veranda*, it being corner booth. However, due to mistake, its area was wrongly mentioned as $2.75 \times 8.25 = 22.688$ square meters in the brochure and e-auction notice. Its actual reserve price was much more than ₹ 62.40 lacs and that is why, its allotment was cancelled and the deposited amount was ordered to be refunded to the petitioner.

The petitioner was not responsible for the aforesaid mistake. Rather the said mistake was committed by the official of HUDA, against whom, departmental action has been initiated. The petitioner cannot be penalized for the mistake committed by the officials of HUDA, by cancelling his allotment with regard to booth No.27-P, Sector 4, Panchkula. As per policy of HUDA, 10% extra is to be added for corner sites. So, we are of the view that the action taken report (Annexure P-10) whereby it has been decided to cancel the aforesaid allotment and to refund the amount deposited by the petitioner is not sustainable in the eyes of law.

hereby quashed. As the matter is lingering on for the last three years, we are of the view that the allotment of booth No.27-P, Sector 4, Panchkula shall remain in the name of the petitioner subject to the condition that he is to pay 10% extra of the auction price along with interest @ 5.5% per annum on the said extra amount from today till its actual payment.

With these observations, this writ petition stands disposed of.

	(RAJAN GUPTA)	(KARAMJIT SINGH)
	JUDGE	JUDGE
February 11, 2020		
Paritosh Kumar	Whether speaking/reasoned	: Yes/No
	Whether reportable	: Yes/No