

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

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CWP No.28151 of 2017  
Date of Decision: 10.07.2020

Vineet Thakral ...Petitioner

Versus

State of Haryana and others .....Respondents

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

Present: Mr. Shakti Mehta, Advocate,  
for the petitioner.

Mr. P.P.Chahar, Deputy Advocate General, Haryana,  
for respondent No.1.

Mr. Deepak Balyan, Advocate,  
for respondent Nos.2 to 4.

**KARAMJIT SINGH, J.**

The petitioner has filed this petition for issuance of a writ in the nature of certiorari for quashing the order/Action Taken Report dated 15.11.2017 (Annexure P-11) whereby a decision was taken by C.M Window Grievance Cell to refund the amount deposited by the petitioner in lieu of Booth No.19-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 were to be auctioned in Sector 4, Panchkula, were measuring  $2.75 \times 8.25 = 22.688$

square meters and their reserve price was Rs.43.60 lacs. The e-auction was held on 29.12.2016 and he being highest bidder was allotted booth No.19-P, Sector 4, Panchkula, against total sum of Rs.43,90,000/-. The allotment letter of the same date (Annexure P-3) was issued in his favour. The petitioner deposited Rs.87,200/- as EMD/Security amount, along with the participation fees of Rs.1,000/-, on 27.12.2016 and Rs.3,51,800/- on 30.12.2016 as 10% of the bid amount and he further deposited Rs.13,17,500/- on 08.02.2017 and Rs.24,15,000/- on 22.02.2017 and in total, he deposited Rs.41,71,500/- as entire cost of the said booth, as the respondents gave 5% discount on the full payment of the booth within two months from the date of the auction. The copy of the allottee account statement in this regard is Annexure P-4. The petitioner was offered possession of the allotted 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 18.03.2017. However, possession was never delivered to him by the authorities. On this, he gave representation dated 25.5.2017 (Annexure P-6) asking respondents No.2 and 4 to hand over possession of the booth to him. The petitioner also lodged a complaint regarding his grievance in C.M Window Grievance Cell, vide Annexure P-6/1 (colly.). 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.19-P, Sector 4, Panchkula. The petitioner went to the office of respondent Nos.2 to 4 on 28.07.2017 to participate in mini draw but to his surprise the mini draw was cancelled by the authorities without assigning any reason. The petitioner gave another representation dated 07.08.2017 to the respondents and the Hon'ble

Chief Minister of Haryana with a request to address his grievances. On 12.09.2017, the petitioner was called to the office of respondent No.4 and an assurance was given to him that the possession of booth would be handed over to him, but only after the refund of the amount deposited by the petitioner. On this, the petitioner received demand draft of Rs.42,73,447/- on 12.09.2017. Lateron, the petitioner was informed on 15.11.2017 that the complaint lodged by him in C.M. Window Grievance Cell has already been disposed of and his request for possession of Booth No.19-P or for allotment of alternative site was declined. The copy of the final Action Taken Report is Annexure P-11. The petitioner had posed challenge to the said Action Taken Report and also prayed for issuance of a writ of mandamus directing respondent Nos.2 to 4 to hand over possession of Booth No.19-P, Sector 4, Panchkula, to him on the basis of allotment letter (Annexure P-3) or in the alternative to allot Booth No.72, Sector 4, Panchkula, to him.

On notice of motion, the writ petition was contested by respondents No.2 and 4 and they filed written statement contesting the claim of the petitioner. The said respondents admitted that Booth No.19-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 meters, having reserve price of Rs.43.60 lacs. Respondents No.2 and 4 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 Rs.43.90 lacs was given to him on 21.02.2017. 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 to the petitioner in lieu of booth No.19-P. However, said offer was also 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. Accordingly, amount of Rs.42,73,447/- was refunded to the petitioner. It was pleaded that there is no illegality in the Action Taken Report (Annexure P-11).

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-11). It is contended that the petitioner participated in e-auction of commercial sites and was allotted booth No.19-P, Sector 4, Panchkula for Rs.43,90,000/-, being the highest bidder. He had already paid the entire cost of the said booth. The respondents were having no right to cancel the said allotment, for their own fault. It is further contended that Annexure P-11 being illegal, should be quashed. To substantiate his arguments, learned counsel for the petitioner referred to decision dated 11.02.2020 of this Court in **C.W.P**

**No.20014 of 2017 (O&M) titled Parmod Kumar Vs. State of Haryana and others.**

On the other hand, counsel for the respondents contended that there is no illegality in the Action Taken Report (Annexure P-11). 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.19-P. Accordingly, the amount was refunded to the petitioner along with interest at the rate of 5.5% per annum and the same was accepted by the petitioner without any objection. It is further contended that the writ petition deserves to be dismissed.

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 Rs.43.60 lacs. The petitioner being highest bidder was allotted Booth No.19-P, Sector 4, Panchkula for a sum of Rs.43,90,000/- and he was issued allotment letter (Annexure P-3). The petitioner was given 5% discount and he deposited Rs.41,71,500/- being the total cost of the booth.

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 Rs.43.60 lacs and that is why, its allotment was cancelled and the deposited amount was ordered to be refunded to the petitioner, along with interest.

There is no doubt that the petitioner was not responsible for the aforesaid mistake. Rather, the mistake was committed by the official of the HUDA, against whom the departmental action has been initiated. At the same time, it is clear that total amount deposited by the petitioner, i.e., Rs.41,71,500/-, along with interest at the rate of 5.5% per annum, was refunded to the petitioner by the authorities through demand draft and the same was received by the petitioner on 12.09.2017. The said demand draft was worth Rs.42,73,447/-. The present writ petition was filed by the petitioner on 30.11.2017. There is nothing on the record to show that the petitioner refused to accept the refund, or raised any objection regarding the same to the authorities, promptly, before the filing of the writ petition. The petitioner has also failed to establish that the above-said refund was made to him, forcibly by the respondents. The petitioner has failed to prove any *mala fide* on the part of the respondents.

In *Pramod Kumar's case (supra)*, which has been relied upon by the learned counsel for the petitioner, no refund was ever accepted by the petitioner before the filing of the writ petition. So, the judgment passed in *Parmod Kumar's case (supra)* is not of any help to the petitioner-Vineet Thakral.

In view of the above discussion and particularly taking into consideration the fact that the petitioner had already availed refund before the filing of the writ petition, we do not find any reason to interfere with the impugned order.

Consequently, this writ petition is hereby dismissed.

**(RAJAN GUPTA)**  
**JUDGE**

**(KARAMJIT SINGH)**  
**JUDGE**

**10.07.2020**

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|-------------------------------|---|--------|
| Whether speaking/non-speaking | : | Yes/No |
| Whether reportable            | : | Yes/No |