

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

CWP No. 6176 of 2021
Date of decision 17.03.2021

Brijinder Singh and anr. ...Petitioners

Vs.

State of Haryana and ors. ...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Nonish Kumar, Advocate,
for the petitioners.

Ritu Bahri, J.

This petition has been filed under Article 226/227 of the Constitution of India for issuance of writ in the nature of certiorari for setting aside order dated 30.04.2019 (P-8) passed by respondent No. 2 and order dated 13.06.2018 (P-6) passed by respondent No. 3.

Brief facts of the case are that respondents advertised for open auction of plots of shops and booths in extension New Grain Market and New Subzi Mandi, Pundri, District Kaithal. The bid has taken place and petitioners had taken part in the said auction. Booth No. 143 was allotted to the petitioners, vide allotment order dated 19.05.2008 (P-2). The price of booth was Rs.10,70,000/- and 25% of the allotment price of the booth was paid by the petitioners and balance 75% of price of the booth was to be paid in six half yearly installments by the petitioners. After allotment, the petitioners had started the construction and respondent No. 4 issued notice dated 04.07.2016 (P-3) to the petitioners for the pending installment including the charge of Basement. The petitioners then filed an appeal under Haryana Agriculture Produce Markets Act, 1961 along with Haryana State Agriculture Market Board (Sales of immovable Property) Rules,

2000 (P-5). The appeal was dismissed, vide order dated 13.06.2018 (P-6). Against this order dated 13.06.2018 (P-6), they filed revision before learned Addl. Chief Secretary, Government of Haryana, which was also dismissed on 30.04.2019 (P-8)

Learned counsel for the petitioners has argued that the petitioners are not liable to pay the charges of 15% for the construction of basement. The allotment was of the year 2008 but the permission and possession was given at a later stage. Reference has been made to notification dated 17.04.2009 (P-4) issued by Agriculture Department wherein there is a provision that who so ever intends to construct basement shall have to pay an additional amount equal to 10% of the allotment price of the plot. Learned counsel further submits that the basement was constructed after issuance of the notification dated 17.04.2009 (P-4) and as per clause of the notification, the petitioners are liable to pay 10% of the basement charge and there is nothing in the Rules or in the notification that permission is required from Chief Administrator to construct the basement.

Heard learned counsel for the petitioners at length.

Reference at the very outset can be made to Rule 3 (xiii) of Rules, 2000 added by Haryana Government notification dated 17.04.2009 (P-4), which provides *“The allottees of shop/booth/plots , who intend to construct basement shall have to pay an additional amount equal to 10% of the allotment price of plot. Similarly, if an allottee of booth/plot intends to construct upper storey up to first floor such allottee shall have to pay an additional amount equal to 10% of the allotment price of plot. No second storey shall be allowed to be constructed on these booths. Further Rule 3 (xiv) provides “Where basement in shop/booths and upper storey of booths have already been constructed by the allottees without taking approval, the same shall be regularized after composition of such violation by charging an amount equal to 15% of the total allotment price of their respective plot with the prior approval of the Chief Administrator. Thereafter, the completion certificate in respect of such shops/booths shall be*

issued by the concerned authority.”

It is not in dispute that the allotment was made on 19.05.2008 and basement was constructed without taking permission from the market committee. The provision of Rule 3 (xiv) is applicable to the petitioners as they have constructed basement of the booth without taking permission from the Marketing Committee. The petitioners have not placed on record any document to show that they have sought permission from the Marketing Board for construction of basement. Had the petitioners informed the Marketing Board about the construction of the basement, they would be charged 10% of the allotment price of plot.

Learned counsel for the petitioners has further argued that since the petitioners had constructed basement after publishing of notification dated 17.04.2009 (P-4), therefore, they were not liable to deposit extra 15% amount.

This argument is also liable to be rejected, as this aspect has been considered by the Revisional Authority by observing that the allotment in question was made on 19.05.2008 (P-2) and the basement was constructed without taking permission from the Market Committee.

The best case of the petitioners would have been that before the issuance of notification dated 17.04.2009 (P-4), the petitioners had constructed the basement on the booth. However, no evidence was led by the petitioners to show that the basement was constructed before the issuance of notification on 17.04.2009 (P-4). Hence, the claim of the petitioners has rightly been rejected, vide impugned order dated 30.04.2019 (P-8) passed by respondent No. 2 and order dated 13.06.2018 (P-6) passed by respondent No. 3, by relying upon Rule 3 (xiv) of notification dated 17.04.2009 (P-4), whereby the allottee has to take prior permission from the Marketing Board for construction of basement otherwise he will be charged an amount equal to 15% of the total allotment price of respective

plot.

In view of above facts and circumstances, the present writ petition is
dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

17.03.2021
G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No