

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.27435 of 2022 (O&M)
Date of decision : December 14, 2022

Max Healthcare Institute Limited ... Petitioner
Versus
Haryana Shehari Vikas Pradhikaran and others ... Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Ashwani Chopra, Sr.Advocate assisted by
Mr. Vidul Kapoor, Advocate for the petitioner.

Mr. Deepak Sabharwal, Advocate for the respondents.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to respondent - HSVP to perform its legal obligations as per the Statute, Rules and Policies in favour of the petitioner, which has complied with all obligations on its part. It has also been urged that the respondents be restrained from taking any coercive action and from withdrawing possession from the petitioner without observing due process of law and affording reasonable opportunity of hearing.

The petitioner- Max Healthcare Institute Limited is a health care organization registered under the Companies Act.

Respondent – HSVP issued public notice dated 27.08.2021 inviting bids through e-auction in respect of land ad-measuring 24747.99 sq. meters comprising Khasra No.311, 312, 2395 and 2411 situated within the revenue estate of village Wazirabad, Sector-53, Gurugram. The auction process was to be governed by the auction policy dated 27.08.2021

(Annexure P-1).

In order to participate in the auction, the petitioner made earnest money deposit of Rs.4,08,35,200/- equivalent to 5% of the price of the property through RTGS on 07.09.2021 (Annexure P-2). The e-auction was held on 11.09.2021. The petitioner was the highest bidder with a bid Rs.98,45,84,000/-. He deposited 10% of the bid amount i.e. Rs.5,76,24,000/- on 11.09.2021 (Annexure P-3) towards 10% of the price of the plot within the time stipulated in the e-auction brochure.

Respondent HSVP issued LOI dated 30.09.2021 (Annexure P-4) in favour of the petitioner. The petitioner deposited Rs.14,76,87,600/- being Rs.15% of the bid amount on 26.10.2021 i.e. within 30 days of the dispatch of the LOI. The remaining 75% of the bid amount of Rs.69,93,50,015/- was deposited on 20.12.2021 i.e. within 120 days of the date of dispatch of the LOI.

Upon deposit of the entire bid price, the respondent issued letter of allotment dated 28.12.2021 (Annexure P-6) in favour of the petitioner allotting it the Hospital Site in Sector 53, Urban Estate, Gurgaon-II on free hold basis. The petitioner was offered possession of the site vide communication dated 28.12.2021 (Annexure P-7). He took possession of the site on 23.02.2022. The possession certificate dated 23.02.2022 (Annexure P-8) was issued. The demarcation-cum-zoning plan of the hospital site was prepared and issued on 13.06.2022 (Annexure P-10). As the petitioner wanted to commence work of the multi-speciality hospital, representation dated 17.06.2022 (Annexure P-11) was submitted to the respondent – HSVP requesting it to execute a conveyance deed of the plot in

favour of the petitioner. After the issuance of allotment letter in its favour, the petitioner paid property tax of Rs.16,00,774/- (Annexure P-14) to the Municipal Corporation and was issued No Due Certificate by the Municipal Corporation Gurugram.

It has been averred that rather than executing the Conveyance Deed in favour of the petitioner, the respondents have credited an amount resembling the amount deposited by the petitioner with HSVP in its Bank Account. Even as the petitioner was trying to figure out the reasons for such deposit, a group of muscle men came to the spot and tried to dispossess the petitioner, strengthening the apprehension of the petitioner that it was being done at the instance of HSVP.

In the aforesaid background, the present petition has been filed seeking the reliefs as aforesaid.

A short reply by way of affidavit of Dharamvir Singh, Administrator (Hq), HSVP, Panchkula has been filed on behalf of the respondents. The facts regarding conduct of the auction, the deposit of amount, the issuance of LOI and the allotment letter have been admitted.

It is stated that demarcation-cum-zoning plan was approved by the Chief Administrator, HSVP, Panchkula vide drawing No.DTP(G)2453/2021 dated 20.09.2021 and conveyed by CTP, HSVP, Panchkula vide memo dated 14.03.2022. Thereafter, District Town Planner, Gurugram vide memo dated 27.06.2022 supplied the revised demarcation-cum-zoning plan dated 13.06.2022 of hospital site in Sector-53, Gurugram and also intimated that the petitioner has requested to provide smaller set back as provided in hospital site of Sector-56, Gurugram. Further, District

Town Planner, Gurugram reported that in the proposed zoning setbacks have been reduced and accordingly zoned area would also increase due to which the basement area has also increased. New Zoning Plan was prepared by District Town Planner and sent to o/o Administrator, HSVP, Gurugram.

It is stated that meanwhile DLF Limited raised the objections that area of 2.58 acres which was the part of the present site auctioned to the petitioner was owned by it and this had not been transferred to HSVP. It is asserted that the petitioner knew about these objections as it had submitted an application dated 07.09.2022 (Annexure R-1) to Estate Officer-II, HSVP, Gurugram disputing the claim of DLF to allotted hospital site.

It is further asserted that DLF Limited was granted the licence No.120 of 2011 dated 30.12.2011 by the Director, Town and Country Planning, Haryana and one condition of the licence was that :-

“The area 2.58 acres earmarked for medical facility i.e. Health Centre in the layout plan being approved thereby, will be transferred to HUDA or health Department as may be directed free of cost and also cost of construction of the building on the same shall be deposited as per norms to the government/health Department.”

It is stated that to resolve the issue arising due to the objection of DLF Limited with regard to the inclusion of area measuring 2.58 acres, the matter was discussed by the Chief Administrator, HSVP with the Senior Town Planner Gurugram and other officers on 19.09.2022, 22.09.2022 and 29.09.2022. The Administrator, HSVP, Gurugram also gave the personal hearing to the DLF Limited on 30.09.2022, however the matter could not be resolved.

In view of the fact that dispute had arisen in respect of 2.58 acres out of the total area of 6.13 acres allotted to the petitioner, there was no alternative but to cancel the allotment. It was, accordingly, decided to cancel the allotment and refund the amount deposited by the petitioner as per policy.

It is further stated that the HSVP land measuring 3.55 acres (*6.13 acres – 2.58 acres*) has no direct approach. The only approach available to it is through the remaining land of 2.58 acres which as per conditions of licence was to be handed over to HSVP and qua which dispute has now arisen.

It is stated that it was only after allotment, that dispute has been raised by DLF. Thereafter, the matter was inquired into and it is found that that there was civil suit between DLF Limited and Tejpal and another in which there is a stay by the Court. DLF is not in a position to hand over the licensed land to Senior Town Planner. Therefore, the possession given of the auctioned site to petitioner was rendered inconsequential.

The office of Chief Administrator issued the letter dated 28.10.2022 conveying that M/s DLF has not yet transferred the 2.58 acres land earmarked for medical facility to HSVP in compliance of condition of its licence. Hence, HSVP is unable to hand over the physical possession of complete hospital site measuring 6.13 Acres to the successful bidder of e-auction in Sector-53, Gurugram. Estate Officer was requested to cancel this allotment and refund the deposited amount as per policy.

It is also stated that as per policy issued vide memo dated 28.02.2007 the revision of only upto 5% variation in individual plot area

from approved demarcation plan is permissible. In the case of the petitioner on account of the non-availability of 2.58 acres the variation was much more.

It is also asserted that the allotment of the hospital site was cancelled vide letter dated 11.11.2022 (Annexure R-3) by Estate Officer-II, HSVP, Gurugram. The deposited amount, after withholding the amount of TDS, has been refunded through RTGS dated 21.11.2022. The interest is being refunded separately. This action has been sought to be justified in terms of clause 36 of the e- auction policy dated 27.08.2021 and condition No.6 of the allotment letter as per which “if due to stay by the Court or litigation or any other circumstances beyond control i.e. force majeure, HSVP is not able to deliver possession of the property within three months after deposit of full (100%) of the bid amount, the full amount deposited by the allottee shall be refunded back. The allottee/bidder will not have any claim, on this property or any other property of the HSVP.”

Mr. Chopra Ld. Senior Counsel for the petitioner has contended that on the issuance of the allotment letter to the petitioner after deposit of 100% of the bid amount, a binding contract had come into existence between the parties. The respondents are required to execute conveyance deed in favour of the petitioner. The allotment could not have been cancelled by resorting to Cl. 36 of the e-auction policy .

He emphasized that on issuance of allotment letter, a vested right had accrued in favour of the petitioner and the allotment could not have been cancelled without giving notice to the petitioner. The cancellation is in violation of the legal and constitutional rights of the

petitioner.

He further argued that this matter became sub-judice on 01.12.2022 and the respondent – HSVP had notice of the same. Despite that on 10.12.2022 at the instance and with the support of HSVP the licensee (DLF) in clear violation of law and in a totally illegal manner entered upon the plot allotted to petitioner, dug the land and erected some fencing. This action has been recorded by the petitioner in the video and photographs.

It is also contended that when the case came up for hearing on 01.12.2022 notice of motion had been issued to the respondents. However, the order which was uploaded was as under:-

“Mr.Sabharwal prays for time to have appropriate instructions in the matter. List on 12.12.2022.”

He argued that taking advantage of the typographical mistake in the order, HSVP by conniving with the licensee has committed contempt by their aforesaid actions while intruding into the land allotted to and in the possession of the petitioner when the matter was pending before this Court.

He stated that the cancellation order dated 11.11.2022 stated to have been sent by speed-post to the petitioner is against the policy of HSVP because as per their policy all notices are sent through e-mail.

Mr. Sabharwal denied the allegations that any official of respondent- HSVP was directly or indirectly involved in the alleged intrusion into the plot allotted to the petitioner. He has drawn attention to the reply filed on behalf of the respondents, wherein, it has clearly denied that any official of the respondents has visited the site as alleged. He stated

that the petitioner had in a communication dated 07.09.2022 (Annexure R-1) addressed to the Estate Officer, HSVP referred to the illegal claim being raised by DLF in respect of the hospital site allotted to the petitioner. In the said communication, it has been stated that the previous day, one Dharmender Yadav, who introduced himself as a security team member of DLF Limited, approached the hospital site and stated that the land belonged to it. He threatened the guards of the petitioner to vacate the same. Sometime thereafter, one Manish Behl who introduced himself as Security and Infrastructure Head of the DLF came on the site and threatened to bring JCB and musclemen and forcibly occupy the site. No reference had been made therein to any intrusion by the official/s of HSVP.

Mr.Sabherwal has also referred to a complaint dated 07.09.2022 made on behalf of the petitioner before the SHO, Police Station Sector-3, Gurugram regarding criminal tress-pass and threat issued by the aforesaid officials of the DLF. He stated that the respondent HSVP has no concern or connection with any alleged act on behalf of the DLF.

The petitioner has not sought to controvert this assertion of the respondent by seeking to file a replication.

The licensee (DLF) is not a party to the present petition. No comment or observation can be made regarding any alleged action on its part.

We desist from making any observation regarding the alleged typographical error in the order that was uploaded, in the absence of any application for correction of the same.

In any case, the aforesaid contention is not material in view of

the categoric stand of the respondent-HSVP that no official of HSVP visited or intruded into the plot allotted to the petitioner.

As regards the contention of the petitioner that the cancellation order is illegal, has been passed without giving opportunity of hearing and that it impairs the vested rights of the petitioner, it only needs to be said that the cancellation order is not assailed in the present petition. The cancellation order is dated 11.11.2022. The amount has been refunded through RTGS dated 21.11.2022. Both the cancellation and the refund are prior to the institution of the present petition.

Mr.Chopra has contended that the petitioner did not receive the cancellation order. In any event, the cancellation order has been annexed with the reply filed in Court today.

In the light of the allotment having been cancelled, no relief can be granted in the present petition. Accordingly, this petition is disposed of giving liberty to the petitioner to take appropriate remedy to assail the cancellation order. It would be open to the petitioner to also take all the grounds taken in this petition.

(HARINDER SINGH SIDHU)
JUDGE

(LALIT BATRA)
JUDGE

December 14, 2022

gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No