

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.

CWP-10124-2023
DATE OF DECISION: 13.07.2023

MD RENTALS PRIVATE LIMITED

.....PETITIONER

VS.

HARYANA SHEHRI VIKAS PRADHIKARAN AND ANOTHER

.....RESPONDENTS
2.

CWP-10127-2023

MD RENTALS PRIVATE LIMITED

.....PETITIONER

VS.

HARYANA SHEHRI VIKAS PRADHIKARAN AND ANOTHER

.....RESPONDENTS
3.

CWP-10129-2023

MD RENTALS PRIVATE LIMITED

.....PETITIONER

VS.

HARYANA SHEHRI VIKAS PRADHIKARAN AND ANOTHER

.....RESPONDENTS
4.

CWP-10156-2023

AKASH MIGLANDI

...PETITIONER

VS.

STATE OF HARYANA AND OTHERS

..RESPONDENTS
5.

CWP-10280-2023

VIMAL ARORA

...PETITIONER

VS.

STATE OF HARYANA AND OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Ashish Chopra, Senior Advocate, with
Mr. Gagandeep Singh, Advocate,
for the petitioner (s).
(in CWP Nos. 10124, 10127 and 10129 of 2023).

Mr. Akshay Bhan, Senior Advocate, with
Mr. Shantanu Bansal, Advocate,
for the petitioner (in CWP No. 10280 of 2023).

Mr. Kshitij Sharma, Advocate,
for the petitioner (in CWP-10156 of 2023).

Mr. Deepak Sabherwal, Advocate,
for the HSVP.

G.S.SANDHAWALIA, J. (ORAL)

1. This order shall dispose of CWP Nos. 10124, 10127, 10129, 10156 and 10280 of 2023. Since common questions of law and facts are involved, the facts are being taken from CWP-10124-2023.

2. By these petitions, though various issues have been raised under Article 226 of the Constitution of India, including the fact that respondent No. 1-Haryana Shehri Vikas Pradhikaran, Sector 6, Panchkula, should be registered under the Real Estate (Regulation and Development) Act, 2016. On the strength of the same, the petitioners seek to delay the payment of the balance sale consideration of Commercial Plot No. 3, situated in Sector 38, Urban Estate, Gurugram-II. Apparently, the same is also on the basis that there are some encroachments on the said plot and the Letter of Intent has been issued on 13.12.2022 (Annexure P-2), in pursuance of the fact that auction was done on the terms of the advertisement.

3. The grouse of the petitioners is rebutted by filing a short affidavit, dated 20.05.2023, of the Administrator of the HSVP, Gurugram, (in CWP-10124-2023), that the auction was on 'as is where is basis'. The Letter of Intent was accordingly issued on 31.12.2022 (Annexure P-2) for ₹15,07,10,000/- for an area of measuring 450 square meters. As per condition No. 2 of the Letter of Intent, dated 13.12.2022 (Annexure P-2), 15% of the quoted bid amount had to be deposited, which was to the tune of ₹2,26,06,500/- to make good of 25% of the total amount within 30 days. The same was already deposited but after the expiry of 30 days, i.e. 10.02.2023 and on account of the delayed payment, an interest ₹2,78,710/- was also paid by the petitioners. After paying the said amount, the writ Court jurisdiction of this Court has been invoked.

4. As per condition No. 3 of the aforesaid Letter of Intent, the remaining 75% of the total amount, i.e. ₹11,30,32,500/- was payable without interest in lump sum within 120 days from the date of dispatch of the aforesaid Letter of Intent (LOI) failing which it would be withdrawn without any further notice and 25% amount was to stand forfeited. Apparently, the time lapsed on 11.04.2023 and therefore, the regular allotment letter was never issued. Condition No. 3 reads as under:-

“Thereafter, remaining 75% amount, i.e. ₹11,30,32,500/- (Rupees Eleven Crores Thirty Lakhs Thirty Two Thousand Five Hundred only) of the bid amount of the above said plot/building/site shall be paid in lump-sum without interest within a period of 120 days from the date of dispatch of this Letter of Intent, failing which the LOI shall stand withdrawn without any further notice in this behalf and the 25% amount

deposited shall stand forfeited to the HSVP against which successful bidder shall have no claim for allotment of site/plot/building or damages or interest.”

5. The issue of any encroachment on the site in question which is stated to be a liquor vend was answered in the affidavit by submitting that the allotment of the liquor vend was to expire on 11.06.2023 as the liquor vend was allotted on 27.06.2022 much prior to auction. The fact that it was to be dismantled within 4-5 days after 11.06.2023 was the defence taken by the respondents. It has also been brought to our notice that the instructions dated 23.02.2021 (Annexure P-8) also gave latitude to the petitioners that if 75% of the bid amount is not deposited within due date, the allottees would be given the benefit to deposit the same with 15% penal interest for the delayed period subject to the condition that the payment shall be made within 30 days after the stipulated period. The grace period, was expired on 10.06.2023.

6. Keeping in view the same, an order was passed on 24.05.2023, by this Court wherein counsel for the petitioners was given time to take instructions as to whether the petitioners are ready and willing to deposit the amount due and payable by them, i.e. 75% of the balance amount with Registrar General of this Court. The matter was deferred to 26.05.2023, i.e. two days later. Counsel for the petitioners had taken time on that date and the matter was then adjourned to 01.06.2023.

7. On that date, i.e. 01.06.2023 the following order was passed by this Court:-

“On 24.05.2023, the petitioners had been given

time to seek instructions whether they are ready and willing to deposit the amount due and payable by them which was 75% of the balance amount in the Registry of this Court. Thereafter on 26.05.2023, the petitioners had taken time. Today, counsels for the petitioners submit that before the next date of hearing, the amounts due qua all the petitioners to the extent of 75% shall be deposited with the Registrar General of this Court and necessary affidavits will be furnished regarding the amounts which were payable by them as per the letter of intents.

Adjourned to 13.07.2023. It is made clear that if the said order is not complied with, the writ petitions will be dismissed without getting into the merits of the matters.

Photocopy of the order be placed on the files of connected cases.”

8. Today, we have been informed that the balance 75% amount has not been deposited by the petitioners. Apparently, the lifeline which had been given to the petitioners has not been availed of. Neither any replication has been filed to the extent that the liquor vends have not been removed. Thus, it is apparent that the petitioners having taken part in the auction and having known as to the factual position of the site in question, are now questioning or delaying the payment though they were bound by the terms and conditions of the auction. The order passed on the last date of hearing is crystal clear that the question of hearing on merits would not arise if the amount is not deposited with the Registrar General of this Court. The same was apparently to test the *bona fide* as such of the petitioners which is apparently lacking. It would also go on to show that a valuable property which has been auctioned is blocked on payment of a paltry amount of 25% and a chance is taken in litigation by invoking the

extra-ordinary writ jurisdiction. It is a settled principle of law that the extra-ordinary writ jurisdiction is to be exercised only in exceptional circumstances and where the parties come to the Court with clean hands. The said factor is missing and thus we do not see any reason to hear the petitioners further.

9. Accordingly, we find no merit in these writ petitions and the same are accordingly, dismissed.

10. Pending miscellaneous application (s), if any, also stand disposed of.

(G.S. SANDHAWALIA)

JUDGE

July 13, 2023
nitin

(HARPREET KAUR JEEWAN)

JUDGE

Whether Speaking	Yes
Whether Reportable	No