IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Neutral Citation No. 2023:PHHC:116486 -DB

(1) **CWP-11598-2015**

Ash Mohammad & others

....Petitioners

Versus

State of Haryana & others .... Respondents

(2) **CWP-13849-2021**

Noor Mohd.

....Petitioner

Versus

State of Haryana & others .... Respondents

(3) **CWP-4022-2016**

Market Committee Punhana, District Mewat through its Secretary/Executive Officer

....Petitioner

Versus

Principal Secretary to Government of Haryana, Agricultural Department, Civil Secretariat, Chandigarh & others

.... Respondents

Decided on: 22.08.2023

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

Present: Mr.Ravinder Malik (Ravi), Advocate
for the petitioner in CWP-11598-2015
and for respondents No.34 & 35 in CWP-4022-2016.

Mr.Afzal Hussain, Advocate
for the petitioner in CWP-13849-2021.

Mr.Aman Bahri, Advocate, for the petitioner in CWP-4022-2016
and for the respondent-Market Committee, Punhana
in CWP-11598-2015 & CWP-13849-2021.

Mr.Arun Beniwal, DAG, Haryana.

Mr.Akshay Bhan, Sr.Advocate
with Mr.Sushant Kareer, Advocate
for the respondents No.2 to 11, 13 to 15 in CWP-4022-2016.

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G.S. Sandhawalia, J.

The present judgment shall dispose of CWP-11598-2015, CWP-13849-2021 and CWP-4022-2016. Facts have been taken from CWP-11598-2015 as all the petitions emanate from the common order dated 02.05.2013 passed by Principal Secretary to Government of Haryana, Agriculture Department whereby 39 revisions of the allottees were disposed of with the direction to deposit the balance amounts of the plots in New Grain Market, Punhana within 4 months from the recalculation of the Market Committee as per the schedule prescribed in the allotment letters. The necessary compliance certificates were to be accordingly taken and the payment along with interest was to be received and the allottees were protected from eviction proceedings which had been started against them. However, in case the needful was not done, the Secretary, Market Committee was to proceed to resume the plots as per the instructions issued by the Haryana State Marketting Board (HSMB).

2. The said order thus in sum and substance confirms the order of the Chief Administrator of the Board dated 29.03.2013 whereby he had directed the allottees to pay the balance principal amount within 7 days except the direction to deposit the compound interest which was to be compounded yearly within a period of 6 months and to obtain the completion certificates. Liberty had also been granted regarding the penal interest and extension fees that if the needful was not done by the petitioners, the Market Committee was to charge the penal interest and extension fees and directions were mainly issued not to proceed with the eviction proceedings if the three conditions were complied with.

3. Similarly CWP-13849-2021 has been filed challenging the said order at a belated stage though the first writ petition was also filed

after a period of 2 years and therefore, we are of the considered opinion that the writ petition is not liable to be entertained on the ground of delay and laches also as the said order could not be challenged in a leisurely manner after a period of 8 years.

4. CWP-4022-2016 has again been filed belatedly in February, 2016 by the Market Committee challenging the order of the authorities i.e. after more than 2 ½ years of the order being passed and after they had put in appearance as respondents in CWP-11598-2015 and thus suffers from the same ailment of delay and laches. Thus, in principle, all the three writ petitions suffers from the belated challenge to the order dated 02.05.2013 and even the first writ petition filed was after a period of 2 years having been filed on 22.05.2015 by the three allottees.

5. It is settled principle that the writ jurisdiction has to be invoked at the earliest though there is no limitation prescribed and the usual period is between six months to one year and after that it is for the petitioners to explain the delay which they have failed to do so. Thus, we are not inclined to interfere in our extraordinary writ jurisdiction in the order passed by the Principal Secretary on this ground alone.

6. Coming on to the merits of the case, the dispute in question pertains to the issue of liability of interest on account of the allotment of plots which had been done in the year 2001 in the New Grain Market, Punhana, District Gurugram. The allotment was as per the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000, as per clause 2 of the allotment letter dated 10.08.2001 (Annexure P-1). The 25% amount which had been received before was adjusted and the balance 75% was to be paid without interest within 30 days of the date of issuance of the letter or in 6 half-yearly instalments with 15% interest or at

such rate of interest as may be specified by the Board from time to time. Clause 5 further provided that on failure to deposit the instalment in time, penal interest of 4% per annum to be compounded half-yearly and was to be charged in addition to the normal interest. In case of default of 2 successive instalments, the plot/building was to be resumed after giving opportunity of being heard. The possession of the plot was to be offered within 30 days of the issuance of the allotment letter as per clause 7. The allottees were under contractual obligation to construct the building within a period of 2 years of the date of offer of possession which could be further extended by the Market Committee to the maximum period of 3 years on payment of extension fee of Rs.10,000/-, Rs.15,000/- and Rs.20,000/- for each year of extension. Clause 18 provided that the leveling of the uneven sites was not the responsibility of the Market Committee.

7. Apparently, there was a dispute regarding the facilities which were to be provided at the site which led to the allottees approaching this Court in CWP-7045-2003 titled *Hakim Ali & others Vs. The Haryana State Agricultural Marketing Board & another.* Keeping in view the stand taken by the Board, the writ petition was dismissed on 21.10.2003 (Annexure P-7) by accepting the contention of the Board that the petitioners were defaulters and had not paid the installments in time and therefore the penal interest was liable to be charged from them. The basic amenities were stated to have been provided. The relevant observations of the Co-ordinate Bench are as under:

> "We find that by and large all the facilities had been provided to the petitioners before the possession was handed over to him. The judgment dated 5.8.1993 in CWP No.4241 of 1992

passed by this Court (Annexure P-11) cited by the petitioner is not applicable to the case of the petitioners.

We accordingly find no merit in the petition. Dismissed."

8. On account of the Market Committee issuing notices in 2010 to the allottees for depositing the amount plus interest and penal interest, the Chief Administrator had been approached by way of filing as many as 39 appeals. The Chief Administrator noted that the allotments in question were of 24.08.1998 and 01.02.2001 and the allottees had chosen to deposit the balance amount in 6 half-yearly instalments but did not comply with the said conditions of depositing the interest accrued on the principal amount and only 4-5 allottees had chosen not to deposit the principal amount. It was noticed that this Court had already dismissed their writ petitions and observed that basic facilities were available to run the business in the Mandi. Reliance was placed upon the letter dated 30.06.2009 that the facility of water supply and sewerage were only completed on 30.06.2009 (Annexure P-3) as it is a letter written by the SDO(PH) to Executive Engineer (PH). It was noticed that extraordinary time had been consumed for laying the water-lines in the Mandi. However, since there was no condition precedent in the allotment letter for providing of basic facilities, therefore, waiving off the interest on account of lack of basic facilities could not be granted as the said condition had only been put subsequently on 05.03.2002 and it would have prospective but not retrospective applicability. However, taking a lenient view, directions were given to pay the balance amount within 7 days and to deposit the compound interest which was to be compounded yearly within a period of 6 months and to obtain completion certificate within a period of 6 months from the receipt of the said order. The penal interest was held

not to be payable since construction had already been made and therefore, it was held that it was not proper to charge the extension fees.

9. Aggrieved against the said order, the State had been approached by filing revisions by 39 persons. The Secretary to Government found that since relief of extension fees and penal interest had already been granted, therefore, it was not inclined to reopen the issue of relief of extension fees. It was accordingly held while placing reliance upon the judgment of the Apex Court in **Haryana State Agricultural Marketing Board & another Vs. Raj Pal, (2011) 13 SCC 504** wherein reference had also been made to the earlier judgment in **Sector 6, Bahadurgarh Plot Holder's Association (Regd.) Vs. State of Haryana (1996) 1 SCC 485**, **Municipal Corporation, Chandigarh & others Vs. Shantikunj Investment (P) Ltd. & others, (2006) 4 SCC 109** and **U.T.Chandigarh Administration Vs. Amarjeet Singh & others, (2009) 4 SCC 660** that allottees could not postpone the payment of instalments on the ground that some of the amenities were not available. Accordingly, it was held that allottees were liable to pay simple interest per annum to be calculated on simple interest on the delayed payment instead of depositing compounding interest to be compounded yearly. The Secretary also noticed that there was a report of the ZMEO dated 23.10.2010 that there was no arrangement of water and disposal of sewerage in the Mandi and it had became functional at a very belated stage. Resultantly, directions were issue to recalculate the balance amount as per the schedule prescribed in the allotment letters and the petitioners were given liberty to deposit the same within next 4 months and were to obtain completion certificate on making entire payment along with interest. The same was apparently done in the peculiar facts and circumstances keeping in view

the fact that the facilities were not available till the year 2009-10. In view of the directions issued by this Court, affidavit dated 11.10.2019 was also filed by the Secretary, Marketing Committee wherein it had been admitted that works of water and sewerage supply was completed only on 30.06.2009.

10. Counsel for the State has thus tried to contend that in view of the observations of the Division Bench judgment dated 14.09.2012 in LPA-502-2011 titled *Raksha Rani Vs. Haryana State Agricultural Marketing Board & others*, the allottees were governed by contract and were liable to pay compound interest and there was no condition available that the interest/penalty was to be dependent upon providing facilities/ amenities. Relevant part of the judgment read as under:

> "(1) All cases of allotment prior to amendment of statutory rules on 5.3.2002 shall be governed by the contract. Under the contract, there is no condition or covenant that the liability to pay interest, penalty shall be dependent upon providing facilities/amenities. Such of the allottees who were allotted plots prior to 5.3.2002 are liable to pay interest and penalty in accordance with the terms and conditions of the allotment letter.
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> (2) Such of the allottees who were allotted plots after 5.3.2002 are liable to pay interest and penalty from the date offer of possession was made. The offer of possession is to be made after the basic facilities, like roads, water supply, sewerage, electrification are made available. It would be a question of fact to be decided in each case as to whether the possession has been offered on completion of basic amenities, in contradistinction with such amenities as are in optimum utilization of the plot.
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> (3) The liability to pay extension fee is in terms of the policy framed by the Board/ Market Committee from time to time prior to the framing of Rules on 10.3.2000. The plots allotted on or after the said date would be liable to pay extension fee in terms of the Rules framed."

11. A perusal of the same would also go on to show that the Co-ordinate Bench had directed that it would be a question of fact to be

decided in each case as to whether the possession had been offered on completion of basic amenities in cases where allotment had been made after 05.03.2002. It had also been held in the said judgment that power of judicial review can interfere with the offer of possession given by the Market Committee or the Board if the allottees were able to satisfy that the possession is colourable exercise of power without creating basic amenities. It has already come on record that the water and sewerage supply had only been given in 2009 as per the affidavit given earlier dated 30.06.2009 which would also be clear from Annexure P-5, the letter addressed inter-se the departments.

12. It is thus apparent that the possession had been offered in September, 2001 (Annexure R-2/4) and possession was given wherein basic amenities had not been provided. In such circumstances, the Secretary to the Government has interfered with the order of the Chief Administrator and modified the said order and imposed the condition of simple interest while doing away with the compound interest since there was a fault on the part of the Market Committee also in not developing the area. Therefore, the writ petition filed by the Market Committee challenging the said order may have some basis as the allotment in question are before 2002.

13. It is also to be noticed that the allottees themselves also had already lost their challenge on the merits of the case as on an earlier occasion when the writ petition filed for the benefit of not to charge the interest on the instalments towards the plots allotted to them and for the separate time period for leave of extension fees to be re-scheduled from the date of grant of water and sewerage connections and for refunding the interest element illegally charged plus to pay the interest on the amount

deposited had already been rejected by the Co-ordinate Bench on 21.10.2003, as noticed above. The said order was never subjected to challenge by the said allottees and therefore, the second round of litigation for the same relief would not be permissible in the peculiar facts and circumstances. The Secretary to Government had also granted them the benefit on the basis of the factual finding which had been recorded that the water and sewerage connections were given only in the year 2009 inspite of the fact that they had already lost the litigation. However, as argued by counsel for the State also, in Raksha Rani's case (supra) it had already been held that it is a matter of contract between the parties and nothing can be pointed out from the letter of allotment that the interest was correlated with the amenities to be provided and therefore, for the allottees now to turn around and raise the fresh challenge would not be tenable.

14. Resultantly, we are of the considered opinion that the order passed by the Secretary to the Government dated 02.05.2013 is not liable to be interfered with in the facts and circumstances after 2 ½ years on the ground of delay and laches while on merits also the allottees are bound by losing the battle earlier in 2003 by which order they are bound not having challenged the same.

15. Accordingly, in view of the above discussion, all the writ petitions are hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

22.08.2023 **(HARPREET KAUR JEEWAN)**
sailesh **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : Yes