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

**CWP-21497-2016 (O&M)
Reserved on: 22.08.2023
Date of Decision: 06.09.2023**

M/s BISHAN LAL DAYA KISHAN

......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. Rajnish Gupta, Advocate,
for the petitioner.

Mr. Deepak Bhardwaj, D.A.G., Haryana.

Mr. Zohad Sidhu, Advocate, for
Mr. Amar Vivek, Advocate,
for respondents Nos. 2 & 3.

*****

HARPREET KAUR JEEWAN, J.

1. The present Civil Writ Petition has been filed for quashing the order dated, dated 14.05.2015 (Annexure P-13) passed by the Chief Administrator of the Haryana State Agricultural Marketing Board, (respondent No. 2), whereby revision against the order dated 02.06.2016 (Annexure P-17), passed by the Additional Chief Secretary to the Government of Haryana, Agriculture Department, was dismissed. The petitioner has also sought a relief for issuance of direction to respondents No. 2 and 3 to allot Plot No. 246 or 177, New Anaj Mandi, Charkhi Dadri to the petitioner on reserve price of ₹10,50,000/-.

2. The brief facts of the case are that petitioner is an old licencee of Category II, carrying on business of '*Kachha Arthiya*' in the Anaj Mandi, Charkhi Dadri under licence No. 53-CHD-Board, dated 01.04.1976. A decision was taken by the Market Committee (respondent No. 3) to allot the plots to old licencee of Category II, on preferential basis who were working in the old notified market yard, Charkhi Dadri. On the basis of the application given by the petitioner, he was held successful in the draw of lots which was held on 29.07.2009 and was allotted a Plot No. 177 in the New Grain Market, Charkhi Dadri, on payment of total amount of ₹8,25,000/- (Annexure P-3). The petitioner deposited initial payment of ₹2,25,000/-. Upon revision of the price to ₹10,50,000/-, the petitioner issued a revised memorandum of offer and he again deposited the balance payment of ₹37,500/-, making the total deposit as 25% of the total cost.

2.1 The petitioner was later on declared as ineligible for allotment of the plot on reserve price, on the ground that he failed to mention his turnover during the financial year 2008-09.

2.2 The appeal filed by the petitioner was rejected by respondent No. 2 vide order dated 03.12.2010 (Annexure P-10). However, the revision against the said order was allowed, vide order dated 30.06.2011 (Annexure P-5) by respondent No. 1 and the order of dismissal of the appeal dated 03.12.2010 (Annexure P-10) was set aside, and it was ordered that a plot be allotted to the petitioner on reserve price which is to be calculated as per the Board policy.

2.3 The petitioner was allotted a new Plot No. 246 in NGM, Charkhi Dadri, on a total cost of ₹16,15,000/- and the increased reserve price, i.e. from ₹10,50,000/- to ₹16,15,000/- was resented by the petitioner on the ground of discrimination and the petitioner filed a representation dated 08.08.2014 (Annexure P-9/T). Vide a communication dated 27.08.2014 (Annexure P-11/T), which was between respondent No. 3 and the Administrator Market Committee, a recommendation was made to allot the shop to the petitioner on reserve price by issuing an allotment letter and to offer possession by charging interest and penalty, but it was subject to the approval of the Board. Another inter departmental communication dated 08.09.2014 (Annexure P-12/T) was made *inter se* the office of respondents No. 2 and 3. However, the claim of the petitioner was rejected by passing the impugned order dated 14.05.2015 (Annexure P-13).

2.4 The petitioner by way of filing a revision petition challenged the order dated 14.05.2015 (Annexure P-13). The petitioner filed CWP-26212-2015, titled **M/s Bishan Lal Daya Kishan vs. State of Haryana and others**, whereby a direction was issued on 17.12.2015 (Annexure P-16) to respondent No. 1 to decide the revision of the petitioner and thereafter, the revision petition was dismissed vide the impugned order dated 02.06.2016 (Annexure P-17) and the amount deposited was to be refunded.

2.5 In the written statement filed by respondent No. 3, it was submitted that a remedy of review is available to the petitioner, which has not been availed. The petitioner has not deposited the basic sale consideration equivalent to 25% of the amount despite a beneficial order dated 30.06.2011 (Annexure P-5) and in terms of the provisions of the Haryana State Agricultural Marketing Board (Sale and Transfer of

Immovable Property) Rules 2000 (for short 'the Rules of 2000'). As such, the right of the petitioner stood forfeited. It was further submitted that though the petitioner had deposited 25% of the allotment price in terms of the draw of lots held on 29.07.2009, whereby a Plot No. 177 was earmarked for the petitioner firm, however, it was yet to be approved by the Chief Administrator as per Section 18 of the HAPM Act, before allotment letter could be finally issued to the successful bidders. Thereafter, as per condition No. 7 of the terms and conditions of auction (Annexure R-3) and in view of Rule 3 of the Rules of 2000, the petitioner was declared ineligible for allotment of plot on control price and an order of refund of the amount which was deposited by the petitioner was made. The appeal against the said order was rejected and a sum of ₹2,62,500/- was returned to the petitioner by way of a cheque dated 31.11.2010 through registered AD. However, the cheque amount has not been withdrawn by the petitioner firm.

3. It was further alleged that as per the order dated 30.06.2011 (Annexure P-5), which was passed in the revision petition whereby the petitioner had challenged the order dated 03.12.2010 (Annexure P-10), allotment of the plot was to be made to the petitioner firm as per the reserve price which was to be calculated as per the policy of the Board. It was specifically pleaded that the petitioner firm was asked to deposit a sum of ₹4,03,759/-, i.e. 25% of the recalculated allotment price in terms of Annexure P-5. The petitioner never deposited the said amount which he was called upon to deposit as balance amount as per the calculation made as per the order dated 30.06.2011 (Annexure P-5). Due to non-deposit of

the balance amount to complete deposit of 25% of the earnest money, the right of allotment of the petitioner was forfeited. Hence, the claim of the petitioner has been rightly rejected.

4. Learned counsel for the petitioner has submitted that initially the total price of the plot was ₹10,50,000/- and later on it was revised to ₹16,15,000/- and the petitioner deposited a sum of ₹2,62,500/- as 25% of the allotment price. There was no default on the part of the petitioner as he had made the payment of 25% of the offer of the total price. The petitioner remained under *bona fide* impression that he had deposited 25% of the total price and moreover, he was not intimated that he is required to deposit any further amount after the acceptance of the revision petition filed by him, vide order dated 30.06.2011 (Annexure P-5). Moreover, the respondents have not issued any communication to the petitioner for deposit of an additional amount and there was no default on the part of the petitioner. It was further submitted that the petitioner was working in the Grain Market since 1976. As such, he is entitled to allotment of the plot/shop on reserve price. The revised reserve price could not have been legally fixed. It was further submitted that the petitioner is ready to deposit the entire total price of the shop, as per the scheduled given in the allotment letter, as such, the impugned orders are liable to be set aside.

5. On the other hand, learned counsel appearing for respondents No. 2 and 3 has submitted that the petitioner has not paid 25% of the price of the plot, which was fixed in pursuance to the order dated 30.06.2011 (Annexure P-5). Hence, the petition is liable to be dismissed.

6. We have considered the aforesaid submissions.

7. Admittedly, the petitioner was an old licencee and he applied for allotment of the plot on preferential basis on control price, on account of the notification of the old vegetable market. As per Annexure P-3 "memorandum of offer", the petitioner gave an offer/bid for purchase of the property at a price of ₹8,25,000/- and deposited a sum of ₹2,25,000/- as 1/4th of the total price. Subsequently, he has also given an offer to purchase the plot at a revised rate of ₹10,50,000/-, vide Annexure P-4. Before his offer could have been accepted, he was declared ineligible and allotment letter was not issued to him. As per order dated 30.06.2011 (Annexure P-5), it was observed that the allotment of the plots on reserve price to the old licencee of Category II is made under the rehabilitation policy. However, various conditions have been prescribed under the policy to check unscrupulous elements who may otherwise take undue benefit by getting the allotments. Taking a liberal view and observing that the petitioner was an old licencee of Category II, it was observed that his appeal should not have been dismissed on mere technicalities. It was ordered that a plot be allotted to the petitioner firm <u>on reserve price to be calculated as per the Board policy</u>.

8. The aforesaid order dated 30.06.2011 (Annexure P-5) was subject to the condition that the reserve price will be calculated as per the policy of the Board. In the previous offers, Annexures P-3 and P-5, given by the petitioner, he has given an undertaking to pay the balance along with interest and to complete the purchase in accordance with the conditions in case his offer is accepted by the Chief Administrator, Haryana State Agricultural Marketing Board, Panchkula. In terms of the order dated

30.06.2011 (Annexure P-5), the allotment of the plot to the petitioner was subject to fixation of reserve price as per the policy of the Board. The allotment was not ordered to be made on the reserve price which was already fixed and offered by the petitioner in the 'memorandum of offer', (Annexure P-4), dated 24.09.2009. As such, the reserve price was to be determined in terms of the policy of the Board after passing of the order Annexure P-5. Admittedly, as on 30.06.2011 when the order Annexure P-5 was passed, the petitioner had only deposited a sum of ₹2,62,000/-.

9. As per the communication dated 15.07.2013 (Annexure P-7/T), the petitioner requested the Secretary, Market Committee (respondent No. 3) that a sum of ₹2,62,500/- which is lying with the Committee along with interest be adjusted towards the allotment price of ₹4,03,594/-. However, through the said communication, the petitioner neither offered nor paid the remaining amount to complete 25% of the total price in order to make a substantial offer which could have been accepted by the respondent.

10. As per Rule 3 of the Rules of 2000, the bid of an allottee can only be considered for acceptance, if he/she makes the payment of 25% of the bid costs on the spot. The said Rule is reproduced as under:-

> "(3) *After scrutiny of the application received under sub-rule (1) of this rule by the allotment Committee, the eligible applicant shall be issued a letter of intent requiring him to pay twenty-five per cent of the allotment price within one month in the form of a demand draft in favour of the Market Committee concerned.*"

11. The petitioner has again given “memorandum of offer” dated 04.12.2013 (Annexure P-8), whereby the purchase money is recorded as ₹16,14,375/-; deposited money is recorded as ₹2,62,500/-; and balance dues are recorded as ₹13,51,875/-. Though he has agreed in the said offer to pay the balance along with interest but the petitioner has failed to justify that the payment already made by him, i.e. ₹2,62,500/- was equal to 25% of the purchase money ₹16,14,375/- as 25% of the purchase money ₹16,14,375/- comes out to be ₹4,03,593/-. As such, the petitioner had even failed to pay 25%, either at the time of giving the memorandum of offer, dated 04.12.2013 (Annexure P-8) or thereafter.

12. In view of the aforesaid circumstances, the dismissal of the appeal, vide impugned order dated 14.05.2015 (Annexure P-13), on the ground that the petitioner did not deposit 25% of the total costs of the plot within time, is in resonance with the facts on record. Despite the fact that Plot No. 246 was earmarked to the petitioner by draw of lots conducted on 27.02.2013, in terms of the decision, dated 30.06.2011 (Annexure P-5), the petitioner has failed to deposit the balance amount to make a deposit of 25%. Though a part of payment was already deposited by the petitioner but he was required to pay 25% of the remaining amount which was recalculated as allotment price in terms of the order dated 30.06.2011 (Annexure P-5).

13. Since the petitioner did not give a valid offer by paying 25% of the total cost which was calculated in terms of the order dated 30.06.2011 (Annexure P-5), as such the offer could not have been accepted by way of issuing an allotment letter. The part-payment made by the

petitioner was not a valid offer, being short of 25% of the total price.

14. In view of the aforesaid reason, the impugned order of dismissal of the claim of the petitioner by respondent No. 2, vide order dated 14.05.2015 (Annexure P-13) and vide order dated 02.06.2016 (Annexure P-17), passed by the Additional Chief Secretary to the Government of Haryana, Agriculture Department, do not suffer from any infirmity and illegality. The amount deposited be refunded as ordered by the revisional authority, if not already refunded within two months.

15. Consequently, there are no reasons to interfere in the impugned orders and resultantly, the present petition is dismissed.

16. Pending miscellaneous applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

06.09.2023
Nitin

Whether Speaking	Yes
Whether Reportable	No