

204

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

CWP No. 21074 of 2017

Date of Decision:24.03.2023

M/S Bhagat Ram Kanhiya Lal and Another

... Petitioners

Versus

State of Haryana & Others

... Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH.
HON'BLE MR. JUSTICE SANJIV BERRY.**

Present:- Mr. Keshav Partap Singh, Advocate for the petitioners.

Mr. Deepak Balyan, Advocate
for respondent-HSVP.

Ms. Kirti Singh, DAG Haryana.

.....

SANJIV BERRY, J.

Present Writ Petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ of certiorari for quashing of the impugned order dated 14.09.2016 (P-14) passed by Additional Chief Secretary to Govt. of Haryana, Department of Agriculture and Farmers' Welfare.

2. In nutshell, the petitioners are old licensee of the category (ii) and had been transacting business of commission agents in Old Anaj Mandi, Chopta Bazar, Jhajjar. They were issued licence of category (ii) on

01.04.1976 and 08.08.1980 respectively under Section 10 of the Punjab Agricultural Produce Market Act, 1961 and the said licence had been renewed periodically. In the year 2002, respondents de-notified the Mandi (Grain Market) (Annexure P-2) and auction for new Grain Market was fixed for 01.12.2009. The petitioners being old licence holder were entitled for allotment of plots/shops at reserve price prevalent at that time on priority basis as per the Rule 3(1) of “The Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 under the Punjab Agricultural Produce Market Act, 1961”. Aggrieved with the auction notice dated 01.12.2009 petitioners filed CWP No. 18284 of 2009 titled “M/s Bhagat Ram Kanhiya Lal and others” and vide orders dated 30.11.2009 (Annexure P-1) petition was withdrawn, on the statement of counsel representing the respondents stating that there was no proposal with the Market committee to de-notify the old market committee.

3. Petitioners and other commission agents moved representation dated 24.10.2009 (Annexure P-3) for allotment of plots/shops on preferential basis at the reserve price.

4. Petitioners filed another Writ Petition No.20544 of 2009 claiming for allotment of the plots/shops on the reserve price, with a further prayer not to confirm the auction dated 1.12.2009. The said writ petition was disposed of vide orders dated 07.01.2010 (Annexure P-4) on the short reply filed by the respondents that petitioner may apply for the allotment in Form-A of the Rules of Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules 2000, the claim of the petitioners be considered within one month.

5. Petitioners were given a memorandum of offer dated 13.04.2010 (Annexure P-5) for plot No.45 and 46 measuring 6Mx28M each with reserve price @₹50,13,000/-. Petitioners, under protest, deposited ₹12,53,250/- each i.e. 25% of the total amount and sought allotment at the reserve price of ₹27,30,000/- which was prevalent reserve price prior to auction dated 01.12.2009. Both the petitioners wrote letter dated 28.05.2011 (Annexure P-8) and on 02.07.2013 (Annexure P-9) respondent No.2 ordered for refixing the reserve price without taking into account the auction prices. Despite order dated 02.07.2013 no action was taken by the respondents with regard to reserve price. Thereafter, vide Annexure P-10, dated 29.06.2015, petitioners served legal notice to comply with orders dated 02.07.2013 passed by respondents No.2. Feeling aggrieved petitioners filed Writ Petition Nos. 3784 of 2016 and 3813 of 2016 and vide orders dated 26.02.2016 (Annexure P-11) the same were disposed of with direction to the Competent Authority to decide the representation before 30.06.2016. Vide Annexure P-12 dated 01.03.2016, the petitioners submitted their representations. When petitioners were waiting for the outcome of the representations, it was learnt that order dated 02.07.2013 (Annexure P-9) passed by Respondent No.2 had been assailed by respondent No.3 (Market Committee) before respondent No.1 on 16.03.2016 (Annexure P-13) by way of Revision Petition No. 89 of 2016 after a period of 3 years.

6. In the meanwhile the petitioners also deposited the balance 75% amount under protest vide demand draft dated 17.08.2016 (Annexure P-17). Vide order dated 14.09.2016, (Annexure P-14) the respondent No.1 allowed the revision petition filed by respondent No.3 by condoning the

delay of more than 02 years 08 months and ordered re-fixation of price.

Aggrieved by the same the petitioners have filed the present writ petition.

7. The respondents filed the written statement wherein it was submitted that the writ petition has been misconceived. The respondents admitted the factual positions so far as passing of the orders on different dates is concerned, however it was submitted that no legal right of the petitioners have been infringed. It was submitted that in pursuance to the order dated 07.01.2010 passed by this Court in CWP No. 20544 of 2009, the applications were invited from old licencees on 22.02.2010 wherein three firms including the petitioner firms were found eligible for allotment of plots. The passing of order dated 02.07.2013 by the then Chief Administrator was also admitted whereby the direction was given to re-fix the reserve price qua these allottees without considering the auction price, fetched in open auction held on 01.12.2009. It is submitted that against this order a revision petition was filed which is Annexure R-3 and during pendency thereof the market Committee issued the allotment dated 12.08.2016 and gave offer of possession vide letter dated 16.08.2016. The revisional authority passed order dated 14.08.2016 in accordance with law and there is no infirmity therein as the order passed by the appellate authority was in contravention to the Rules framed by the Government. It was further submitted that the Revisional Authority observed in the order that the preferential allotments of the plots on control price is a concession to the old licencees but the same cannot be prejudicial to the financial interests of the Market Committee and as such it observed that the control allotment price is liable to be indexed/updated in case of delay in allotment of plot for

any reason. Hence the prayer for dismissal of the petition.

8. We have heard learned counsel for the parties and have also perused the record.

9. The learned counsel for the petitioner argued that the impugned order Annexure P-14 dated 14.09.2016 passed by respondent No.1 is not sustainable and is liable to be quashed because this order has been passed by respondent No.1, setting aside the well reasoned order dated 02.07.2013 passed by respondent No.2, after the same was challenged more than 02 years and 08 months of its passing without there being any explanation regarding the delay in filing of such revision after such an inordinate delay. He submitted that the revisionist ought to have shown sufficient cause for such delay. In this context he referred to the judgment cited as **2013(4) SCC 52, Amalendu Kumar Bera Vs. State of West Bengal and 1992(2) PLR 704 (P&H) Ram Bhagat vs. Financial Commissioner Haryana**. The learned counsel for the petitioners has further argued, that even otherwise the order dated 14.09.2016 is arbitrary. For the delay of 6 years in implementation, which is solely attributable to the respondent authorities, the petitioners have wrongly been penalised by indexing the price from the year 2010 to 2016 which is contradictory to the settled proposition of law in Full Bench judgment of this Court in **2018(2) PLR 422 (P&H) Rajiv Manchanda vs. Haryana Urban Development Authority**.

10. On the other hand the learned counsel representing the respondents has assailed these arguments by contending that the case put forth by the petitioners is misconceived. He submitted that the order dated 02.07.2013 was passed by the then Chief Administrator in contravention to

the Rules, as such the filing of the revision petition Annexure P-13 dated 16.03.2016 was necessitated and vide order dated 14.09.2016 (Annexure P-14) passed by the Revisional Authority, the order dated 02.07.2013 passed by the then Chief Administrator has rightly been set aside being in contravention of the expressed Rules of the Government. He submitted that the delay in filing of the revision is amply explained as the order dated 02.07.2013 was never communicated to respondent No.3. He further contended that the order dated 14.09.2016 has been passed in accordance with law and there is no infirmity therein, therefore, the petitioners have got no cause of action to seek quashing thereof, hence prayed for dismissal of petition.

11. After considering the rival contentions, the factual matrix as it emerges is that the petitioners being old licencees, doing business of commission agents applied for allotment of plots/shops after the Old Mandi was de-notified. In the meanwhile, the auction for New Grain Market was fixed for 01.12.2009. The petitioners moved representation Annexure P-3 for allotment of the plots/shops on preferential basis at the reserve price. The petitioners had to file CWP No.20544 of 2009 which was disposed of vide order dated 07.01.2010 Annexure P-4, with a liberty to petitioners to apply for the allotment in Form-A of the Rules of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 and it was ordered that the claim of the petitioners be considered within one month. Then vide Annexure P-5 the petitioners were allotted plot No.45 and 46 on 13.04.2010 at the reserve price of ₹50,13,000/- each. The petitioners deposited 25% of the amount under protest claiming that the allotment

should have been made at the reserve price of ₹27,30,000/- as was prevalent prior to auction dated 01.12.2009. On the representations of the petitioners, the then Chief Administrator passed order dated 02.07.2013. As the respondents failed to take any action on this order, the petitioners got served legal notice Annexure P-10 dated 29.06.2015 asking the respondents to comply with the orders Annexure P-9 dated 02.07.2013. Thereafter, the petitioners had to prefer Writ Petitions No. 3784 of 2016 and 3813 of 2016 wherein vide order Annexure P-11 dated 26.02.2016 the respondents were asked to decide the representation of the petitioners before 30.06.2016. In the meanwhile, on 16.03.2016, a revision petition (Annexure P-13) was filed by respondent No.3 before the respondent No.1, in which respondent No.1 has set aside the order Annexure P-9, by passing the impugned order Annexure P-14 dated 14.09.2016 which has been assailed in the present petition.

12. It is worth mentioning here that vide the order dated 02.07.2013 Annexure P-9 the respondent No.2 had directed the office to refix the reserve price without considering the price fetched in open auction held on 01.12.2009 after observing from the representation dated 24.10.2009 as well as CWP No. 18284 of 2009. It was evident that the allottees (present petitioners) had already made their claim much before the auction held on 01.12.2009 and on the basis of the same the respondent No.2 had ordered vide Annexure P-9 dated 02.07.2013 that the reserve price be charged from these allottees i.e. the petitioners should not be affected by the open auction held on 01.12.2009.

13. Since, the respondents did not take any action, on the aforesaid

orders, the petitioners had to serve legal notice and also to file CWP No. 3813 of 2016 and 2784 of 2016 for implementation of the order dated 02.07.2013 and the Writ Petitions were disposed of with the direction to the competent authority to take decision by 30.06.2016 and also directed the possession of the plots to be handed over to the petitioners. Thereafter, the respondent No.3 filed the revision petition on 16.03.2016 before respondent No.1 challenging the order Annexure P-9, on which the impugned order dated 14.09.2016 Annexure P-14 has been passed.

14. Considering the facts and circumstances of the case, it is observed that the impugned order dated 14.09.2016 Annexure P-14 has been passed by respondent No.1 in the revision petition preferred by respondent No.2 challenging the order dated 02.07.2013 Annexure P-9. It is evident that the said order dated 02.07.2013 Annexure P-9 was challenged by filing the revision petition on 16.03.2016 i.e. after a gap of more than 02 years and 08 months and interestingly in the grounds of revision no explanation has been given justifying the unexplained delay in filing of the revision petition. The only mention in this regard in the revision petition is given in para No.3 wherein it is mentioned that the implementation of the order dated 02.07.2013 was under consideration of the Board and before it was finalized the Chief Administrator directed the Market Committee vide order dated 16.02.2016 to prefer the revision petition. It is on this basis only that the delay is claimed to be *bona fide*. Even no application for condonation of delay under Section 5 of the Limitation Act has been filed along with the revision petition. The plea taken by the respondents that the order dated 02.07.2013 was not communicated to the petitioners is also without any

basis as the said order Annexure P-9 was passed by the authorities in the presence of both the parties as is evident from the opening line of the order which reads as “I have heard both parties”. Further the said order also specifically mentioned about the order to be communicated. The period of limitation started from the passing of the order dated 02.07.2013 and no justifiable explanation has either been rendered or given by the revision petitioner which led to delay of 02 years and 08 months in filing of the revision petition. Even the respondent No.1 while passing impugned order Annexure P-14 has simply observed that *“the Market Committee has explained the delay by producing the letter dated 16.02.2016 and 25.03.2016 whereby respondent No.3 directed the Market Committee to file the revision petition”*. The respondent No.1 further observed in Annexure P-14 that *“it was also explained that the impugned order dated 02.07.2013 was never communicated to the Market Committee before those letters”*. This aspect qua communication of order as mentioned in the impugned order is factually wrong in the light of the fact that the order dated 02.07.2013 was passed after hearing the parties which itself proves that the parties were aware of the order. The word “be communicated” in the order does not mean to communicate to the parties but to the concerned authorities for implementation of the order and this aspect has been wrongly interpreted in the order. Once the order dated 02.07.2013 was passed in the presence of the parties, the limitation started running, then the challenge to the such order was required to be made within the prescribed period of limitation and the delay in filing of the revision, as is there in the present case, should not have been condoned in a mechanical manner without there being any substance

cause.

15. In *Amlendu Kumar Bera vs. State of West Bengal 2013(4) SCC 52*, it has been held by Hon'ble Apex Court that merely because the respondent is the State, delay in filing of appeal or revision cannot and shall not be mechanically considered and in the absence of "substance cause" the delay shall not be condoned.

16. Further in case *Ram Bhagat Vs. Financial Commissioner Haryana 1992(2) PLR 704*, this Court had dismissed the Writ Petition challenging the order of the Financial Commissioner whereby the revision petition was dismissed on the ground of limitation as it had been filed after about 01 year and 06 months and it was *inter alia* held therein that the parties seeking condonation has to explain the cause of delay and even though there is no limitation prescribed for filing the revision petition before the Financial Commissioner but still the same has to be filed within a reasonable time (90 days).

17. The proposition as laid down in the aforementioned judgments apply with full force to the facts and circumstances of the present case as in the present case the revision petition had been preferred against the order dated 02.07.2013, passed in presence of the parties by the competent authority, after a gap of 02 years and 08 months. It is also settled proposition of law that the delay of each day has to be specifically explained while seeking the condonation of delay. Interestingly, no cogent explanation for such inordinate delay has been rendered except for placing the copy of the order passed by some authority wishing the revision petitioner to prefer the revision petition before respondent No.1. This by no means can be

considered as “sufficient cause” to condone the unexplained inordinate delay in filing of the revision petition and as such it transpires that the respondent No.1 had condoned the delay in filing of the revision petition in a mechanical manner without being any sufficient cause to condone the delay. Besides, as stated above, no application under Section 5 of the Limitation Act seeking condonation of delay in filing of the revision had ever been filed. The impugned order therefore, is held liable to be set aside on the ground of limitation.

18. The learned counsel for the petitioner has further contended that it was due to the causal and arbitrary approach of the respondent authority that there had been delay of 06 years in the allotment being made to the petitioners and they had wrongly and arbitrarily been penalized by the impugned order whereby the respondent No.1 had ordered the indexing of price from the year 2010 to 2016, for no fault of the petitioners. In this context he has referred to the case ***Rajiv Manchanda vs. Haryana Urban Development Authority 2018 (2) PLR 422 (Full Bench)***. The learned counsels representing the respondents could not controvert the proposition of law laid down in this judgments. It is laid down by Hon’ble Full Bench of this Court in ***Rajiv Manchanda’s case (Supra)*** that when there is no fault of the allottee and the respondents are entirely at fault, in such a situation the allottee would be entitled to benefit of price that was prevalent when he made the application. It has been laid down therein that “*in such circumstances it follows that the oustee would be entitled to the benefit of price that was prevalent when he made the application and pursuant to that application, the respondents deliberately did not allot the plot, although*

they could have.” This proposition applies to the facts of the present case as well as even in the impugned order the respondent No.1 has specifically recorded that the Board and Market Committee have delayed the allotment by a period of 06 years, therefore, the present petitioners cannot be penalized for the delay caused by the respondents parties in making the allotment. It is also worth-mentioning that by passing the impugned orders, the respondent No.1 has categorically held that the Chief Administrator i.e. respondent No.2 was competent to order refixation of the reserve price, as has been done by him while passing the order dated 02.07.2013, therefore, it can't be said that the order dated 02.07.2013 was passed by respondent No.2, exceeding its authority in any manner.

19. Resultantly, in the light of the above discussion, finding merits in the petition the same is hereby allowed and impugned order dated 14.09.2016 Annexure P-14 passed by respondent No.1 is hereby set aside and the respondents are directed to effect the allotment to the petitioners in terms of the order dated 02.07.2013 Annexure P-9 passed by respondent No.2.

20. The petition stands disposed of accordingly.

21. CM application(s), if any, shall also stands disposed of.

(AUGUSTINE GEORGE MASIH)
JUDGE

(SANJIV BERRY)
JUDGE

24.03.2023

Gyan

i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No