2024:PHHC:118577

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-14728-2020 (O&M).
Date of Decision: 10.09.2024.

HISAR IMPROVEMENT TRUST, HISAR

... Petitioner

Versus

RAM KISHAN CHAWLA AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vishal Garg, Advocate,
(**Through video conference**)
for the petitioner.

Mr. Vaibhav Jain, Advocate and
Mr. Akshat Dalal, Advocate,
for respondent No.1.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the award dated 21.05.2020 (Annexure P-3) passed by the Permanent Lok Adalat (Public Utility Services), Hisar, whereby the petitioner-Improvement Trust, Hisar has been directed to refund a sum of Rs.1,10,780/- and Rs.5,000/- along with interest accrued thereupon.

2 Briefly summarised, the facts of the present case are that Haryana Government had launched a scheme titled as "Vyapar and Vyavsay Kunj Pariyojna, Phase I, Hisar" and the petitioner-Improvement Trust, Hisar, was made the nodal executing agency for the said scheme. Plot No.82 measuring 60 sq. yards was allotted to the respondent No.1-applicant vide allotment letter dated 01.10.2001 at the cost of Rs.9,00,000/- (Rupees Nine Lakhs only). The petitioner-Improvement Trust, Hisar, initiated the development works at the site and invested huge amounts, however, after completion of some work, an objection was raised by the Archeological Survey of India that the site in question was located within the restricted zone of 100 meters of a historical monument i.e. Ferozeshah Palace and Tehkhana located in Hisar city. Accordingly, the development work being carried out at the site was stopped. A proposal for allotment of alternative site was hence sent to the State Government whereupon an area measuring 17 acres 2 kanals and 8 marlas, originally belonging to the Live Stock Farm under the Animal Husbandry Development, Haryana, was transferred to the petitioner-Improvement Trust, Hisar for the completion of the project. The draw of allotment was conducted again on 15.04.2011 and the respondent No.1-applicant was allotted a plot No.68 against the original plot No.82 and a new allotment letter was issued to him. There was also an escalation in the cost as a result of which the cost of the plot came to be Rs.12,60,000/-

which was to be paid in six half yearly installments. The enhancement charged by the petitioner-Improvement Trust, Hisar, was subject matter of challenge in CWP No.11914 of 2011 which was upheld by a Division Bench of this Court and the writ petition was dismissed vide order dated 15.01.2014. It is averred that the State of Haryana vide its letter dated 18.01.2017, took a decision to give concession/rebate @ 25% in the additional price to be charged from the allottees. Accordingly, as against the total price of Rs.12,60,000/- the respondent No.1-applicant was entitled to a refund of Rs.3,15,000/-, however, when his account was reconciled, it was found that the respondent No.1-applicant was liable to pay Rs.1,10,780/- against the old plot itself. Hence, the differential amount of Rs.2,04,220/-, after adjusting the outstanding dues/arrears to be recovered from the respondent No.1-applicant, were refunded.

3 Aggrieved against the said deductions, an application was filed by the respondent No.1-applicant before the Permanent Lok Adalat (Public Utility Services), Hisar which allowed the application filed by the respondent No.1-applicant and the directed the petitioner-Improvement Trust, Hisar to refund the above said deducted amount. Aggrieved thereof, the present writ petition has been filed by the petitioner-Improvement Trust, Hisar.

4 Learned counsel for the petitioner-Improvement Trust, Hisar, has reiterated his arguments that the deduction of Rs.1,10,780/- was on account of the old outstanding dues and that there has been no deduction in

the concession which was to be extended and it was only on account of adjustment that the payable amount the respondent No.1-applicant was worked out to Rs.2,04,220/- and the same has already been returned. It is contended that the Permanent Lok Adalat (Public Utility Services), Hisar, failed to appreciate the said crucial aspect and also the fact that the escalation/enhancement in the allotment price has already been upheld by the Division Bench of this Court. He submits that the present writ petition deserves to be allowed and the award passed by the Permanent Lok Adalat (Public Utility Services), Hisar is liable to be set aside.

5 On the other hand, learned counsel appearing for the respondent No.1-applicant has argued that the facts have not been clearly set out by the petitioner-Improvement Trust, Hisar. It is submitted that the original allotment was made in the year 2001 and fresh allotment was issued in favour of the respondent No.1-applicant on 14.06.2011. He contends that the payments under the erstwhile allotment had been duly made by the respondent No.1-applicant, however, an amount of Rs.l,10,780/- has been adjusted/claimed by the petitioner-Improvement Trust, Hisar as interest against a delayed deposit of the installments with respect to the earlier plot whereas no development work was undertaken. He contends that the Permanent Lok Adalat (Public Utility Services), Hisar specifically noticed that once the petitioner-Improvement Trust, Hisar itself was not in a position to carry out the development work and/or to offer possession of the land, it was not entitled to claim a possession interest,

hence, the award has been passed in favour of the respondent No.1-applicant.

6 No other argument has been raised.

7 I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance.

8 Before proceeding further in the matter, the relevant part of the award passed by the Permanent Lok Adalat (Public Utility Services), Hisar, reads thus:-

> *"11 We have carefully gone through the evidence and documents produced by both the parties. The point to be adjudicated is whether the petitioner is entitled to claim the amount as prayed for. If, so to what extent. If it is proved whether the petitioner is entitled to interest on the claim amount, if so, at what rate?*
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> *12 To prove the case, counsel for the petitioner reiterated the facts as set out in the petition stating that the previously a plot No.82 was allotted to the petitioner in the year 2001 which is provided by the document Ex.P-1 and the admission made in the written statement in para No.1 of reply on merits. Moreover, it is clearly shown in document Ex.P-1 that the first instalment was due on 01.05.2002, it is also clearly mentioned in Ex.P-1 that balance amount of Rs.6,75,000/- (being 75%) was payable in six half yearly instalment @1,12,500/- each in May and November every year. The petitioner made a payment of instalment on 27.05.2002, 27.11.2002, 28.05.2003 and*

27.11.2003. However, the department has charged interest on all these instalments. It was argued that interest charged during this period is illegal and against the law because as per Ex.P-1 which itself says that the instalment was due to be paid in May and November every year then question of charging interest does not arise without giving offer of possession. He further argued that respondent did not give the physical possession and in 2011 an alternate plot No.68 was allotted to him and physical possession thereof was given on 13.07.2016 which is evident from Ex.P-2. During this period interest is charged by the department on instalments even though when the respondent was not in position to give the physical possession or offer of possession. So the petitioner is entitled to get interest on instalments which he has given for previous plot No.68, interest on instalment which he has deposited from the year 2001 to 2011 during which the respondent Trust enjoyed the money deposited in lieu of plot in question. As such, the petitioner is entitled to get interest at the rate of 8% per annum only on the instalment which he has deposited prior to 2011. Now the second question arises that the interest which the department has charged after 2011 it will also ceased if the petitioner get the interest back because the second page of Ex.P-1 clearly says that the instalment will be due in December and June every year. The account statement clearly shows that the petitioner has deposited the instalment in June and December but even though the interest has been charged from him so the petitioner is entitled to refund the interest charged by the department which is amounting to Rs. 1,10,780/- illegally deducted by the Trust besides escalation cost of building material up to Rs.2,00,000/- and Rs.1,00,000/- as *compensation on account of physical, mental agony and harassment.*

13. On the other hand, counsel for the respondent submitted that the interest is legally charged as the payment of installment has been delayed. An amount of Rs. 1,10,780/- has been adjusted as the amount was due towards plot in question. The development work was completed within time and he also argued that this court has no jurisdiction to try the present petition. Moreover, the necessary parties have not been impleaded by the petitioner. It was argued that the alternative plot No.68 in lieu of plot No.82 was allotted to the petitioner by way of mini draw who accepted the same by accepting and signing all the terms and conditions enumerated therein.

14. It is admitted case of both the parties that firstly the plot No.82 was allotted in the year 2001 to petitioner but due to some objection of Archeological Department of India the physical possession was not possible to give the petitioner. An alternative plot No.68 was allotted to the petitioner on 14.06.2011 which was accepted by the petitioner. Further offer of possession was issued to the petitioner vide letter dated 13.07.2016.

15. Rebutting the pleadings regarding non impleading of Haryana Govt. as party it was argued that the amount was deposited with the respondent Trust, allotment letter was issued by the respondent Trust and condition No.24 of the allotment letter provides that Trust shall have full right, power and authority at all times to do through its officers or servants all acts and things which may be necessary or expedient for the *purpose of enforcing compliance with all or any of the terms. As such there was no roll of Haryana Govt, and the scheme is already transferred to the Trust and Trust is also an autonomous body which is controlled by the authorized chairman.*

16 It was further argued by counsel for the petitioner that interest charged during the period 01.05.2002 to 14.06.2011 is illegal and should be refunded back to petitioner because during this period the respondent was not in a position to give the possession of plot No.82. The account statement Ex.P-1 clearly shows that the instalment is due in May and November every year and the petitioner has paid the instalment in May and November but even though the interest is charged on the ground that the instalment are not paid on or before 10th of month, but no notice was ever issued to the petitioner on delay, simply instalments were taken. It was further pleaded that the petitioner is also entitled to get simple interest @ 8% per annum on the amount deposited in the year 2002-2004 upto new date of allotment of alternate plot as the Trust has enjoyed the money deposited by the petitioner. Moreover, equity also says that when department is charging interest on delay then they are also liable to pay interest if they were not in position to give possession. The respondent is also failed to explain why they are charging interest when the petitioner is depositing instalment in December & June which is shown in second page of Ex.P-1. So the petitioner is also entitled to get back the interest amount which he has paid on the account of delayed instalment. There is also unexplained delay of giving offer of possession after five years if we consider the date of allotment to be 14.06.2011 then also the offer of possession was given on

13.07.2016. It was pointed out that the argument of respondent does not relied that there was no assurance of giving possession in two years even though a huge amount was invested by the petitioner and the respondent cannot take benefit of this averment that no specific period was mentioned for development of the site. It was the duty of the respondent to develop the site within reasonable time as they themselves admitted the fact that previously the plot was allotted in 2001 and alternatively in 2011.

17 We have heard both the counsel for the parties at length and have gone through the pleadings, documents available on record and evidences adduced by the parties. The petition of the petitioner is partly accepted. As such, an award is passed in favour of the petitioner against the respondent directing the respondent to refund the amount of Rs.1,10,780/- and to pay Rs.5,000/- on account of physical, mental agony, harassment and litigation expenses within two months from the date of award failing which the petitioner shall be entitled to claim interest @8% p.a. from the date of filing of the petition till its realization. No order as to costs. A copy of this award be supplied to the parties free of cost. File be consigned to the record room after due compliance."

9 It is apparent from a perusal of the above that the adjustment of Rs.1,10,780/- which is being claimed by the petitioner-Improvement Trust, Hisar, is in relation to the interest charged during the period from 01.05.2002 to 14.06.2011 i.e. before allotment of alternative site was made to the petitioner. It is undisputed that the petitioner-Improvement Trust,

Hisar, could not deliver possession of the plot No.82 despite the allotment having been made in the year 2001, due to the objection raised by the Archeological Survey of India, about the site being located within the restricted zones of 100 meters of historical monument i.e. Ferozeshah Palace and Tehkhana located in Hisar city. Despite a lapse of a period of about ten years, the fate of the allottees was left hanging. It would be improper and unjustified on the part of the petitioner-Improvement Trust, Hisar, to demand interest on the delayed payment even though it was itself not in a position to carry out any development work and/or to offer the possession.

10 I find that the Permanent Lok Adalat (Public Utility Services), Hisar, has taken into consideration all the aspects and thereafter allowed the application preferred by the respondent No.1-applicant. The jurisdiction exercised by the Permanent Lok Adalat (Public Utility Services), Hisar, is in conformity with the principles specified in Section 22-D of the Legal Services Authorities Act, 1987.

11 I find that there is no illegality or impropriety or perversity or mis-appreciation of the evidence led before the Permanent Lok Adalat (Public Utility Services), Hisar and noticing that the discretion exercised is guided by the principles enshrined under Section 22-D of the Legal Services Authorities Act, 1987.

12 The present writ petition is accordingly dismissed. The award dated 21.05.2020 (Annexure P-3) passed by the Permanent Lok Adalat (Public Utility Services), Hisar, is affirmed.

September 10, 2024 **(VINOD S. BHARDWAJ**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No