

2024:PHHC:170575



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

CWP-4603-2017 (O&M)
Date of decision : 20.12.2024

RAKESH HANDA

...Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sandeep Wadhawan, Advocate
and Mr. Gurjot Singh, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Sr. D.A.G., Punjab.

Mr. Sandeep Khunger, Advocate
Mr. Saksham Khunger, Advocate
and Ms. Somya Goyal, Advocate
for respondent No.2.

HARSH BUNGER, J.

Prayer in the present petition filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of *certiorari* for setting aside the letter/order dated 11.07.2016 (Annexure P-33) passed by respondent No.1, whereby the recommendation of respondent No.2 (Commissioner, Municipal Corporation, Amritsar) to waive off the interest and grant time to the petitioner to deposit the amount of plot in question, has been rejected by re-iterating its earlier decision dated 23.09.2015 (Annexure P-19).

A further prayer has been made for issuance of a writ of *mandamus* for directing the respondents to accept the entire amount of the plot in question from the petitioner after granting time of six months to deposit the same with waiver of interest.

2. Briefly, respondent No.2 (Municipal Corporation) issued an advertisement in the newspapers announcing grand public auction of freehold residential site, measuring 4067 sq. yards (opposite historic Rambagh Gardens at Joshi Colony, Mall Road, Amritsar), hereinafter referred to as 'plot in question'. The auction was scheduled for 26.07.2013 at 11:00 a.m. at Guru Nanak Bhawan, City Centre, Amritsar; wherein the reserved price was fixed at Rs.35,000/- per sq. yard. It is apposite to note here that the afore-said site was offered on "*as is where is*" basis and with a clear indication that the authority will not be responsible for levelling the site or removing the structure, if any thereon. It was also clarified in the terms and conditions of the auction that the development of the property shall be as per the provisions of the Punjab Municipal Corporation Act, 1976 as well as other provisions of Model Building Byelaws, 2010.

2.1 It appears that petitioner-Rakesh Handa formed an association of persons, known as Raman Kumar and others vide deed dated 22.08.2013 (Annexure P-3).

2.2 It transpires that the above-referred association of persons gave the successful bid of about Rs.36,100/- per sq. yard for the afore-said property and deposited the 10% earnest money of about Rs.14,69,00,00/-.

2.3 Petitioner claims that the afore-said association of persons was dissolved in August, 2015 and other parties transferred their shares and capital in favour of the present petitioner.

2.4 As per the terms and conditions of the auction, a further amount equivalent to 15% of the total amount had to be paid within 30 days, commencing from 26.07.2013. It appears that the petitioner submitted a representation dated 22.08.2013 (Annexure P-6), claiming that a portion of about 1585 sq. yards of the plot cannot be put to use for construction or development as the same was controlled and prohibited by Archaeological Survey of India, which was not disclosed at the time of auction and the corporation could give clear possession of only 2482 sq. yards; therefore, the petitioner be permitted to deposit amount as per 2482 sq. yards.

2.5 Petitioner claims that the afore-said representation dated 22.08.2013 (Annexure P-6) was not responded to by the authorities; whereupon, the petitioner submitted subsequent representation(s) dated 30.08.2013, 23.09.2013, 28.01.2014, 10.02.2014 and 15.02.2014 (Annexures P-7, P-9 to P-12, respectively).

2.6 It transpires that vide letter No.934 dated 15/18.03.2014, the petitioner was called upon to show cause as to why 10% bid amount in respect of the plot in question be not forfeited as he had failed to deposit the balance amount within the stipulated period. It is noticed that the said letter has not been annexed with the writ petition.

2.7 Petitioner states that as against the letter of forfeiture, he wrote to the Municipal Corporation Amritsar vide various representation (Annexure P-14 to P-18) that he may be allowed to deposit the remaining amount on the entire portion of the plot and that he should not be made to suffer due to ignorance and non-disclosure of the Archaeological Survey of India, Amritsar branch conditions applicable to the plot area; however since the said representations were not responded to, accordingly petitioner filed

an appeal before respondent No. 1, which came to be disposed of vide order dated 23.09.2015 (Annexure P-19); whereby the order of forfeiture was set aside by observing as under:-

“12. And whereas the appellants were bound under the principles ‘as is where is’ and ‘buyer be aware’, it was not necessarily material to plead that the details of the land were not announced at the time of auction or exhibited in the advertisement given by the Municipal Corporation, Amritsar and on the other hand, as the appellants are now willing to pay the whole amount towards the cost of land, it becomes desirable that a considered view is taken by the State Government taking in view the principle of natural justice when there is slump/recession in the cost of the land.

13. And whereas in the given circumstances of the case for the sake of justice, it becomes approximate that the order dated 18.02.2014 passed by the Commissioner of Municipal Corporation, Amritsar for forfeiting the earnest money of Rs.1,46,90,000/- paid by the appellants towards the purchase of land measuring 4067 sq. yards of residential plot, backside Corporation House, Opposite historic Ram Bagh Gardens at Joshi Colony, Mall Road, Amritsar, out of which about 1885 sq. yards is within the non-construction zone, is set aside with the condition that the appellants make due payments, in accordance with the terms and conditions of the auction, in lumpsum as a one time measure within a period not exceeding three months.

14. Now, therefore, the order dated 18.02.2014 passed by the Commissioner of Municipal Corporation, Amritsar for forfeiting the earnest money of Rs.1,46,90,000/- paid by the appellants towards the purchase of land measuring 4067 sq. yards of residential plot, backside Corporation House, Opposite Historic Ram Bagh Gardens at Joshi Colony, Mall Road, Amritsar is set aside with the condition that the appellants make due payments, in accordance with the terms

and conditions of the auction, in lumpsum as a onetime measure within a period not exceeding three months.”

2.8 According to the petitioner, after passing of above-said order dated 23.09.2015 (Annexure P-19), he submitted various representation (Annexure P-20 to P-26) to the Municipal Corporation seeking mode and manner of payment of money, however when no response was received then the petitioner deposited an amount of Rs.6,01,41,690/- as per clear portion of plot vide Cheque No. 131851 dated 04.12.2015, however, the said cheque was returned.

2.9 It transpires that vide letter dated 21.03.2016, petitioner was asked to deposit the balance payment in six months in three instalments and in response thereto, petitioner wrote vide letter dated 12.05.2016 (Annexure P-31) to pay full amount after deducting the earnest money within a period of six months but the interest thereof may be waived.

2.10 Thereafter, vide impugned letter dated 11.07.2016 (Annexure P-33), respondent No. 1 reiterated its earlier decision dated 23.09.2015.

2.11 It appears that thereafter, a resolution was passed by the Municipal Corporation, Amritsar for re-auctioning of plot in question; whereupon petitioner submitted various representations (Annexures P-34 to P-39) for waiver of interest and penalty; however when no headway was made, the petitioner filed the present writ petition.

3. On 06.03.2017, this Court while issuing notice of motion in this case, issued the following directions:-

“...Let the balance amount of bid be deposited subject to decision regarding interest, which will be subject to outcome of the writ petition within a period of one month from the date of receipt of certified copy of this order.

In the meantime, the respondents are restrained from creating any third party rights... ”

3.1 On 19.04.2017, the following order was passed by this Court:-

“Mr. Sandeep Khunger, learned counsel appearing for respondent No.2 seeks short accommodation to file reply but apprised this Court that in pursuance of the order dated 06.03.2017, the petitioner had deposited the amount and allotment letter dated 12.04.2017 has been issued. The dispute is only with regard to payment of interest.

Adjourned to 29.05.2017.”

4. The respondent-state submitted its short reply, the relevant extract whereof reads as under:-

“6. That thereafter, the petitioner submitted another representation and ultimately, the Corporation sought advice from the Local Government vide Memo dated 18.5.2016 with regard to waiving of interest on the balance amount and for the issuance of a direction to the petitioner to deposit the remaining balance amount. The Local Government vide Memo dated 11.7.2016 directed the Municipal Corporation to proceed as per the earlier decision of the Local Government dated 23.9.2015. Thereafter, the petitioner also submitted representation to the Local Government and ultimately the Local Government vide Memo dated 3.1.2017 directed the Municipal Corporation, Amritsar as under :-

(a) The interest on the delayed payment which was to be deposited by 23.12.2015 be charged @ 12% instead of 18%.

(b) According to the Government orders issued under Endst. No.14/11/2014-5LG/598515/17 dated 23.9.2015 the last date for making payment was fixed as 23.12.2015, therefore, interest at the rate of 9% be charged instead of 18% simple interest from that date to till today.

(c) On the total amount upto 30.11.2016, the bidder Shri Rakesh Handa be asked to deposit the said

amount with 9% simple interest within two months i.e. till 31.01.2017 and if he fails to deposit the total amount along with interest calculated upto 31.1.2017, then according to the resolution, 15% of the amount deposited by him be forfeited and the auction sale be cancelled.

7. *That however instead of depositing the amount as per the directions of the Local Government dated 3.1.2017, the petitioner has approached this Hon'ble Court by filing the present writ petition and in pursuance to the order dated 6.3.2017 passed by this Hon'ble Court, the petitioner has deposited the amount of Rs.14,68,18,700/-, however the amount of interest, as has been directed by the Local Government vide Memo dated 3.1.2017 is yet to be paid by the petitioner in addition to the transfer fee for transfer of the plot from the name of the petitioner and others in the name of the petitioner alone.*

8. *That neither the petitioner has challenged the Memo dated 3.1.2017 issued by the Local Government, Punjab nor has placed on record of the present writ petition copy of the said Memo dated 3.1.2017. In view of the Memo dated 3.1.2017 passed by the Local Government, Punjab, the petitioner is required to deposit the amount of interest and also transfer fee in view of notification issued by the competent authority, because the auction was given by the petitioner and others in the name of M/s Raman Kumar and others and in view of deed of dissolution of association of persons, the plot is to be transferred in the name of the petitioner alone."*

5. A perusal of the above extracted stand of respondent-state would manifest that interest payable by the petitioner has been reduced to the extent as indicated in letter dated 03.01.2017, which is placed on record of this case as Annexure R-2/1. Apparently, the petitioner has not paid the interest amount as indicated in letter dated 03.01.2017 nor the said letter has been challenged.

6. The only argument raised by the petitioner is that he is not liable to pay the interest and penalty amount as at the time of auction, the respondents had not disclosed the restrictions of construction etc. by Archaeological Survey of India on a portion of land.

7. The aforesaid submission of petitioner has been opposed by learned State counsel as well as learned counsel for Municipal Corporation, Amritsar by submitting that the petitioner has not made timely payment of auction/bid amount and since the plot in question was auctioned on “as is where is” basis, the petitioner is not entitled to any relief. It is further submitted that the interest amount payable by petitioner has already been reduced vide letter dated 03.01.2017, however no payment has been made by petitioner in terms of said letter dated 03.01.2017. Accordingly, prayer for dismissal of writ petition has been made.

8. Heard

9. In the present case, an Association of persons formed by petitioner was highest/successful bidder in the auction of the plot in question, which was subjected to various terms and condition, however the two relevant conditions of auction as contained in Clauses 3 and 13 are extracted below:

“3) Earnest money of the unsuccessful bidders shall be refunded at the venue. The successful bidder will be required to pay 10% of the bid amount in cash or by an account payee demand draft in favour of the Commissioner, Municipal Corporation, Amritsar payable at Amritsar on the same day at the fall of hammer or within one additional working day as the Presiding Officer, may permit and the eligibility fee will be adjusted against 10% of the bid amount to be deposited by the successful bidder. Another 15% amount is to be deposited within 30 days from the date of auction. In case the successful

bidder does not deposit the 15% (fifteen per cent) amount within 30 (thirty) days to complete 25% amount from the date of auction, then the 10% (ten per cent) amount already deposited by him shall be forfeited and the applicant shall have no claim in this regard. The balance 75% amount can be paid either in (04) Four equated half yearly instalments with interest at the rate of 12% per annum or in lump sum, without interest within one month from the date of issue of allotment letter, rebate of 5% will be allowed on the balance 75% amount in case of allotment letter. In case of payment by instalments, the first instalment will become due immediately after six months from the date of auction along with 12% simple interest and for the delay period a penal interest @ 18% P.A will be charged. The instalment shall be accepted only by mean of account payee bank draft in favour of the Commissioner, Municipal Corporation, Amritsar payable Amritsar. Payment by cheque shall not be accepted. If the instalments are not deposited shall be cancelled and the amount already deposited shall be forfeited.”

xxx xxx xxx xxx

13) The site is offered on “As is where is” basis and authority will not be responsible for levelling the site or removing the structures, if any thereon...”

9.1 Evidently, the aforesaid conditions of auction were accepted and the 10% earnest money of about Rs. 14,69,00,00/- was also deposited. In fact, during the pendency of this case and as per directions of this Court, the petitioner appears to have paid the balance amount of bid and even an allotment letter dated 12.04.2017 (Annexure P-40) stands issued to the petitioner.

9.2 Since the plot in question was offered for sale in auction on “as is where is” basis, and the petitioner accepted the terms and conditions of the auction by making the highest bid and thereafter deposited the earnest

money/bid amount, now the petitioner cannot say that he is not bound by the terms and conditions of the auction notice or that of the allotment letter.

9.3 Here it would be apposite to refer to a judicial pronouncement in case of ***Punjab Urban Planning and Dev. Authority v. Raghu Nath Gupta, 2012(4) RCR (Civil) 305***; wherein Hon'ble Apex Court held as under:-

“12. We notice that the respondents had accepted the commercial plots with the open eyes, subject to the above mentioned conditions. Evidently, the commercial plots were allotted on "as is where is" basis. The allottees would have ascertained the facilities available at the time of auction and after having accepted the commercial plots on "as is where is" basis, they cannot be heard to contend that PUDA had not provided the basic amenities like parking, lights, roads, water, sewerage etc. If the allottees were not interested in taking the commercial plots on "as is where is" basis, they should not have accepted the allotment and after having accepted the allotment on "as is where is" basis, they are estopped from contending that the basic amenities like parking, lights, roads, water, sewerage etc. were not provided by PUDA when the plots were allotted. Over and above, the facts would clearly indicate that there was not much delay on the part of PUDA to provide those facilities as well. As noted, the electrical works and health works were completed by 24.12.2002 and 22.11.2002 respectively and all the facilities like parking, lights, roads, water, sewerage etc. were also provided.

13. On facts, we find that this is not a case where PUDA was callous or indifferent or had caused an inordinate delay in providing the basic facilities to allottees. In our view, the High Court has not properly comprehended the scope of the judgment of this Court in Shantikunj Investment (supra) and the terms and conditions of the auction. This Court, in that case, has specifically held as follows :

"26.....It is the common experience that for full development of an area it takes years. It is not possible in every case that the whole area is developed first and allotment is served on a platter. Allotment of the plot was made on an as is where is basis and the Administration promised that the basic amenities will be provided in due course of time. It cannot be made a condition precedent.

28. It is true that once allotment of the land has been made in favour of the allottee, he can take possession of the property and use the same in accordance with the Rules. That does not mean that all the facilities should be provided first for so called enjoyment of the property as this was not the condition of auction. The party knew the location & condition prevailing thereon. The interpretation given by the Division Bench of the High Court of Punjab & Haryana and contended before us cannot be accepted as a settled proposition of law.....

(emphasis supplied)"

*We may also refer to another judgment of this Court in **UT Chandigarh Administration and Anr. v. Amarjeet Singh and Ors., 2009(2) RCR (Civil) 401 : 2009(2) R.A.J. 494 : (2009)4 SCC 660**, in which, after having referred to the judgment of this Court in Shantikunj Investment case, this Court held as follows :*

"19.In a public auction of sites, the position is completely different. A person interested can inspect the sites offered and choose the site which he wants to acquire and participate in the auction only in regard to such site. Before bidding in the auction, he knows or is in a position to ascertain, the condition and situation of the site. He knows about the existence or lack of amenities. The auction is on 'as is where is basis'. With such knowledge, he participates in the auction and offers a particular bid. There is no compulsion that he should offer a particular price.

20. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site. If all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/premium or the stipulated interest on the delayed payment, or the ground rent, on the ground that the site suffers from certain disadvantages or on the ground that amenities are not provided."

14. We are of the view that the judgment in Amarjeet Singh (supra) is a complete answer to the various contentions raised by the respondents. We may reiterate that after having accepted the offer of the commercial plots in a public auction with a super imposed condition i.e. on "as is where is" basis and after having accepted the - terms and conditions of the allotment letter, including installment facility for payment, respondents cannot say that they are not bound by the terms and conditions of the auction notice, as well as that of the allotment letter. On facts also, we have found that there was no inordinate delay on the part of PUDA in providing those facilities.

15. We are of the view that the High Court was not justified in holding that the respondents are not liable to pay the interest, penal interest and penalty for the period commencing from 1.6.2001 to 31.12.2002 for the belated payment of installments..."

10. Upon consideration of the facts/circumstances of this case and also the terms and conditions of auction, especially the observations made

by Hon'ble Supreme Court in case of *Punjab Urban Planning and Dev. Authority (supra)*; the plea of the petitioner that he is not liable to pay the interest and penalty amount on the ground that at the time of auction, the respondents had not disclosed the restrictions of construction etc. by Archaeological Survey of India on a portion of land; cannot be accepted and the same is rejected.

11. However, it is also noticed that the respondents vide its letter dated 03.01.2017(Annexure R-2/1), has issued following directions:-

(a) *The interest on the delayed payment which was to be deposited by 23.12.2015 be charged @ 12% instead of 18%.*

(b) *According to the Government orders issued under Endst. No.14/11/2014-5LG/598515/17 dated 23.9.2015 the last date for making payment was fixed as 23.12.2015, therefore, interest at the rate of 9% be charged instead of 18% simple interest from that date to till today.*

(c) *On the total amount upto 30.11.2016, the bidder Shri Rakesh Handa be asked to deposit the said amount with 9% simple interest within two months i.e. till 31.01.2017 and if he fails to deposit the total amount along with interest calculated upto 31.1.2017, then according to the resolution, 15% of the amount deposited by him be forfeited and the auction sale be cancelled.*

12. Since the petitioner has already paid the bid amount, it would be appropriate to direct the petitioner to make the payment of interest amount in terms of aforesaid letter dated 03.01.2017 (Annexure R-2/1) within a period of three months from today, failing which the respondents may proceed against the petitioner as per the terms and conditions of

auction/allotment letter dated 12.04.2017 (Annexure P-40), in accordance with law.

13. The present writ petition is accordingly, disposed of in afore-stated terms.

14. All pending applications (if any) shall also stand closed.

December 20, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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