2024:PHHC:061795-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 13.03.2024
Pronounced on: 06.05.2024

1) CWP No.7969 of 2018

Devi Ram ....Petitioner

V/s

Haryana State Agricultural Marketing Board and others ....Respondents

2) CWP No.8028 of 2018

Raj Kumar Saini ....Petitioner

V/s

Haryana State Agricultural Marketing Board and others ....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Pardeep Goyal, Advocate, for the petitioner(s).

Mr. Aman Bahri, Advocate, for the respondents.

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VIKRAM AGGARWAL, J.

1. By way of the instant judgment, we propose to decide the two writ petitions afore titled since the issue involved is identical. The facts, however, are being primarily derived from CWP-7969-2018, titled as ***Devi Ram vs. Haryana State Agricultural Market Board and others***.

2. The petitioner is allottee of shop/site in the New Grain and Vegetable Market, Sector-16, Faridabad. Auction was conducted on 26.02.1999, which was approved on 11.12.2007 and consequently, vide letter of allotment dated 01.02.2008, the petitioner was allotted shop/site No.20. The total sale consideration was Rs.15,82,000/-. 25% of the said price amounting to Rs.3,95,500/- was deposited as bid cost. The remaining

75% of the amount, i.e. Rs.11,86,500/- was to be paid either in lump-sum without interest within a period of 30 days from the date of issue of the allotment letter or in 6 half yearly installments along with interest @ 15% per annum. Failure to deposit the amount would entail penal interest @ 4% per annum to be compounded half yearly, which was to be charged in addition to normal interest.

2(ii) As regards petitioner Raj Kumar Saini (in CWP-8028-2018), the auction was conducted on 16.09.2008, which was approved on 09.11.2008 and consequently, Shop/Site No.104 in the New Grain and Vegetable Market, Sector-16, Faridabad was allotted to him vide allotment letter dated 01.01.2009. The total sale consideration was Rs.1,01,10,000/-. 25% of the allotment price amounting to Rs.25,27,500/- was paid as bid cost and the other conditions for payment of the remaining 75% amount were the same.

3. It is an admitted fact that the petitioner in both the petitions eventually paid the entire sale consideration along with compound interest and penal interest.

3(ii) The claim of the petitioners is that the development works in the New Grain and Vegetable Market, Sector-16, Faridabad were not completed when the offer of possession was made and that they were completed subsequently and under the circumstances, no compound interest or penal interest could have been charged. It has been averred that despite representations dated 20.10.2009 and 02.08.2011 (Annexures P-2 and P-4, respectively) having been submitted for completion of development works, no action was taken.

3(iii) Reference in the writ petition has been made to Rule 5 of the Haryana State Agricultural Marketing Board (Sale of Immovable Property)

Rules, 2000 (as amended on 05.03.2002) (hereinafter referred to as "the 2000 Rules"). As per which the possession of the shop/site could be offered to the allottee within a period of 30 days from the date of issue of allotment letter, if minimum basic facilities i.e. roads, water supply, electrification were existing and if the said basic facilities were not existing then possession would be provided after providing the said facilities.

3(iv) Reliance in the writ petition has also been placed upon a judgment of a coordinate Bench in the case of ***Sumer Singh vs. Haryana State Agricultural Marketing Board and others*** **(CWP-3292-2012, decided on 11.02.2014)** (Annexure P-5) and judgment dated 28.08.2002 passed in CWP-248-2002 titled as ***Om Parkash and others vs. Haryana State Agricultural Marketing Board and another***.

3(v) It has further been averred in the writ petition that the judgment in the case of **Sumer Singh (supra)** was complied with by the respondents vide order dated 29.08.2014 (Annexure P-6).

4. The writ petitions have been opposed by way of replies filed on behalf of respondent Nos.1 to 3, by the Secretary-cum-Executive Officer, Market Committee Faridabad. Certain preliminary objections with regard to disputed questions being involved; no representation having been served upon the respondents; the petitioners have approached the Court with unclean hands and after a huge delay and the petitioners having no *locus standi* to maintain the petitions etc. have been raised.

4(ii) On merits, the factum of allotment of shops/sites etc. has been admitted. It has, however, been denied that no development work has taken place in the New Grain and Vegetable Market, Sector-16, Faridabad. It has been averred that the interest penal or otherwise has been charged as per the terms of the allotment letter. Reference has been made to Rules 4(5) and

4(6) of the 2000 Rules, wherein the provision of interest and compound penal interest has been made. It has been averred that the case of the petitioner(s) is not covered by the case of **Om Parkash (supra)** and **Sumer Singh (Supra)** since in those cases, the basic amenities were not provided till 2012, whereas allotments in those cases were made in the year 2008.

5. We have heard learned counsel for the parties.

5(ii) Learned counsel for the petitioner(s) submitted that the case of the petitioner(s) is covered by the judgment of the coordinate Bench in **Sumer Singh (supra)** and **Om Parkash (supra)** and there is absolutely no distinction between the case of the petitioner(s) and the cases under reference. It was submitted by learned counsel for the petitioner(s) that under the circumstances, the petitioner(s) also deserves to be granted the same relief.

6. On the other hand, learned counsel representing the respondents submitted that the cases of the petitioner(s) are hit by delay and laches since the same were filed in the year 2018, whereas the allotments were made in the year 2008/2009.

6(ii) Learned counsel submitted that the entire payment was made by the petitioner(s) without any protest and, therefore, they cannot be now permitted to turn around and contest the payment of the said amount.

6(iii) Learned counsel further submitted that all development works had been carried out well in time and, therefore, the petitioner(s) cannot contend that they were not liable to pay the interest and compound penal interest.

7. We have considered the submissions made by learned counsel for the parties.

7(ii) The allotment of shops/sites to the petitioner(s) is not disputed.

The payment of the entire sale consideration is also admitted. It is worthwhile to notice that the dispute pertains to allotment of shops/sites in the New Grain and Vegetable Market, Sector-16, Faridabad. It was in this very market that the shops/sites had been allotted to the petitioner(s) in the case of **Sumer Singh (supra)**. In that case also, the auction was held on 06.08.2008 and the allotment letter was issued on 01.01.2009. The contention of the respondents that the development works had not been carried out in the case of **Sumer Singh (supra)**, but had been carried out in the present case is, therefore, devoid of merit and is outrightly rejected. There is nothing on record to show that the development works were carried out in the same very vegetable market in different areas at different times. There were clear cut findings in **Sumer Singh's case (supra)** with regard to the development works and interpretation of Rules 4(5) and 5 of the 2000 Rules. Reference was also made to Rule 5 of the 2002 Rules and thereafter, it was categorically held that the petitioner was not liable to pay any penal or compound interest. The coordinate Bench concluded as under:-

> "[8]. The provisions contained in 2000 Rules including the amended one which came into force w.e.f. 05th March, 2002, have been considered by the Hon'ble Supreme Court in ***Haryana State Agricultural Marketing Board & Anr. Vs. Raj Pal, AIR 2011 SC, 1394*** laying down as follows:-
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> > *"11. In view of the principles laid down in Bahadurgarh Plot Holders' Association (supra) Shantikunj (supra) and Amarjeet Singh (supra), it is clear that the allottees cannot postpone the payment of instalments merely on the ground that some of the amenities were not ready. If they were not entitled for postponement of the instalments, it follows that they will be liable to pay the normal interest on the delayed instalments up to*

date of payment. However, having regard to the fact that the Rules did not contemplate compound interest and penal interest and the Market Committee was yet to complete certain infrastructural work like water, sewerage disposal, as held in Shantikunj (supra), the Market Committee will not be entitled to claim any compound interest or penal interest".

[9]. In ***Raj Pal's case [supra],*** the resolution passed by the respondent-Board granting concession and to levy normal interest even in respect of the allotments made after the amended Rules came into force w.e.f. 05th March, 2002, was also taken notice as is evident from Para 13 of the report which reads as follows:-

"13. As it is stated that in case of Mahem Grain Market, the Board has given some concession even in regard to the normal interest with effect from the date (5.3.2002) when the amended rules came into force, it is open to the respondent-allottees to give a representation to the Board or pursue their pending representation in that behalf for similar relief. The decision in these appeals will not come in the way of the Board considering such representation and granting appropriate relief. Having regard to the fact that we have permitted the Market Committee to issue revised demands, we request the Board to dispose of the representation of the respondents expeditiously so that the decision thereon can be taken note of by the Market Committee for finalizing the demand".

[10]. Learned counsel for the petitioner, in addition, has also referred to an order dated 12th March, 2008 passed by the then Chief Administrator of the respondent-Board in a bunch of appeals which had arisen out of the allotments made by the respondents in Faridabad. The operative part of the said order says that:-

"In view of the facts and circumstances of these cases and for the reasons mentioned above, the appeals filed by the appellants are accepted to the extent that the orders

> *passed by the E.O.-cum-Secretary, Market Committee, Faridabad are modified to the effect that the respondent Committee shall not charge interest and penal interest in respect of the plots of the appellants w.e.f. the issuance of Govt. notification dated 5.3.2002 till the date of providing the facilities of water supply and sewerage in the New Grain and Vegetable Market, Faridabad.*
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> *Accordingly, the respondent Committee shall make the calculations of the outstanding dues in respect of the plots of the appellants afresh within a period of one month from the receipt of this order and intimate same to the appellants. The appellants shall make the payments accordingly within a period of one month from the date of intimation about the outstanding dues in respect of their plots failing which the Committee shall be at liberty to take necessary action regarding resumption of plots as per terms and conditions of the allotment letters. The present appeals are disposed of accordingly".*

[11]. In the light of the above reproduced Rules, coupled with the cited decision of the Hon'ble Supreme Court and the instance[s] of the appellate order[s], it is contended on behalf of the petitioner and rightly so that no penal or compound interest could be levied on the petitioner even if there was delay in payment of installments. As regard to simple interest, it is urged that in view of the general resolution passed by the Board as noticed by the Hon'ble Supreme Court in Raj Pal's case [supra], coupled with the concession granted to other similarly placed allottees by the Chief Administrator, the petitioner is held entitled to seek parity and consequential concession in the matter of interest.

[12]. True it is that the respondents have come up with a specific plea that the minimum facilities were actually provided to the petitioner or other allottees to enable them to run the business in the New Vegetable Market. The affidavit filed by the Estate Officer of the Market Committee candidly acknowledges the fact that sewerage and water supply were provided in the year 2012 only. If that is so, it appears difficult to accept outrightly that all the basic amenities,

essential to run the day-to-day business activities, were in place in the year 2009 when possession was offered to the petitioner. It is equally true that the petitioner is liable to pay simple interest only on the post-poned payments for the allotted site. However, he can not be held liable to pay penal or compound interest. Similarly, if there is a general resolution passed by the Board granting some concession in the interest component to all its allottees and the petitioner is also one of them, i.e., if his case is not distinguishable from others, he may also be entitled to the benefits under the said resolution.

[13]. For the reasons aforementioned, we allow this writ petition in part and hold that the petitioner, in the given facts and circumstances of the case, is not liable to pay penal or compound interest. Similarly, if any general concession has been extended by the Board to the similarly situated allottees, the petitioner would also be entitled to seek parity. Let the matter be accordingly reconsidered and the petitioner's liability to pay interest component be re-determined accordingly within three months. Needless to say that if on reconsideration, the petitioner is entitled to any refund, the same shall be made to him within one month thereafter."

7(iii) This judgment was complied with/implemented by the respondents and an order dated 29.08.2014 was passed, holding that only simple interest @ 15% per annum would be charged upon the balance installments and the other interest was waived off.

7(iv) Another such allottee **Dulari Devi** also knocked the doors of this Court by way of CWP-25509-2015, which was decided by a coordinate Bench on 16.02.2017 in terms of the judgment in the case of **Sumer Singh (supra)** and it was ordered that the refund, if any, to which the petitioner was entitled to would be made within a period of three months.

8. In our considered opinion, the present writ petitions are squarely covered by the judgment in **Sumer Singh's** case and **Dulari Devi's** case (supra). No doubt, the petitioners are late in approaching this Court. However, this alone is not a sufficient ground to non-suit the petitioner(s) once there is a categoric decision by the coordinate Bench of this Court in which the issue has been settled. Even otherwise, **Dulari Devi's** case (supra) was decided on 16.02.2017 and the instant writ petitions were filed in the year 2018.

9. For the reasons aforementioned, the writ petitions are allowed. It is held that the petitioner(s) would not be liable to pay compound interest and penal interest. The matter be accordingly reconsidered and the interest component be re-determined accordingly within a period of three months from today.

10. Needless to say, if on reconsideration of the issue, the petitioner(s) are entitled to any refund, the same be made to them within a period of one month thereafter.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 13.03.2024
Pronounced on: 06.05.2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No