

129 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-29248-2024 (O/M)

Date of decision : 14.01.2025

Usha Rani and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Aashish Chopra, Senior Advocate, with  
Mr. Vaibhav Sehgal, Mr. Gagandeep, Advocates  
for the petitioners.  
Mr. Navneet Singh, Senior DAG Punjab.

-. -

-. -

HARSH BUNGER, J. (ORAL)

1. Petitioners (Usha Rani and others) have filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 11.09.2024 (Annexure P-29), passed by the Commissioner, Municipal Corporation, Ludhiana, whereby the representation dated 02.05.2024 (Annexure P-24), submitted by the petitioners, has been rejected.

1.1 A further prayer has been made for issuance of a writ in the nature of mandamus for directing respondents No. 1 and 2 to proceed as per letters dated 15.03.1990 (Annexure P-1 and Annexure P-2) and to execute the agreement/conveyance deed after receiving balance payment from the petitioners in accordance with terms and condition of auction.

2. Briefly, Municipal Corporation, Ludhiana (respondent No. 2) conducted an auction on 14.02.1990, wherein the predecessor in interest of the petitioners, namely, Shri Rajinder Gupta, was the highest bidder for Plots No. 10 and 11, New Prem Nagar, Behind Rose Garden, Ludhiana.

2.1 It appears that the said auction was approved by the Municipal Corporation, Ludhiana on 07.03.1990 and letters dated 15.03.1990 (Annexure P-1 and Annexure P-2) were issued to Shri Rajinder Gupta, indicating that his bid for Plot No. 10 (at the rate of Rs. 1350 per sq. yard) and Plot No. 11 (at the rate of Rs. 1600 per sq. yard) has been accepted.

2.2 It is stated that Shri Rajinder Gupta deposited an amount of Rs. 80,000/- on 14.02.1990 as against Plot No. 11 and Rs. 67,500/- on 14.02.1990 as against Plot No. 10.

2.3 It transpires that thereafter, the allotment letters dated 15.03.1990 (Annexure P-1 and Annexure P-2) were issued to Shri Rajinder Gupta, indicating that an agreement on stamp paper of Rs. 3/- be executed and further 25% of the total sale consideration be deposited in the treasury of the Municipal Corporation, Ludhiana, within one month from the date of approval.

2.4 It is stated that upon receipt of letters (Annexure P-1 and Annexure P-2), Shri Rajinder Gupta approached the office of Municipal Corporation, Ludhiana on various occasions to execute the agreement, however, it is alleged that every time, Shri Rajinder Gupta was turned back by saying that since the plots in question are under unauthorized occupation, therefore, further formalities will be carried out only after the

unauthorized encroachments are removed therefrom. It is further stated that Shri Rajinder Gupta deposited an amount of Rs. 50,500/-, vide receipt dated 28.04.1995 and Rs. 30,000/-, vide receipt dated 29.11.1995 (Annexure P-3 and Annexure P-4, respectively).

2.5 According to the petitioners, since the encroachments over the plots were not removed, accordingly, Shri Rajinder Gupta submitted representation dated 13.02.2001 (Annexure P-5) to Municipal Corporation, Ludhiana, for execution of agreement and for delivery of possession. It is further stated that Shri Rajinder Gupta submitted various other representations dated 11.03.2011, 29.04.2014, 22.08.2014, 28.10.2015, 28.10.2015, 01.12.2015, 01.12.2015, 02.08.2017 and 05.01.2018.

2.6 In para 13 of the instant civil writ petition, the petitioners state that though there was no agreement to sell in favour of Shri Rajinder Gupta, however, under mistaken advice, Shri Rajinder Gupta filed a civil suit dated 18.03.2015 (Annexure P-13) of possession by way of specific performance, which came to be dismissed in default on 14.11.2019 (Annexure P-14).

2.7 It is stated that petitioner No. 2 (Sanjay Gupta) submitted a representation dated 02.05.2024 (Annexure P-24) seeking possession of the plots in question and for making balance payment thereof.

2.8 It appears that thereafter, the petitioner preferred a civil writ petition (CWP-12310-2024) before this Court, which came to be disposed of, vide order dated 23.05.2024 (Annexure P-25), whereby a direction was issued to Municipal Corporation, Ludhiana to decide the

representation dated 02.05.2024 (Annexure P-24), submitted by petitioner No. 2 (Sanjay Gupta).

2.9 It transpires that in compliance of the aforesaid order dated 23.05.2024 (Annexure P-25), passed by this Court in CWP-12310-2024, the Commissioner, Municipal Corporation, Ludhiana, passed an order dated 11.09.2024 (Annexure P-29), whereby the claim of the petitioner for handing over the possession of Plots No. 10 and 11 and further permitting them to execute agreement in furtherance of allotment letter dated 15.03.1990 was rejected, by observing as under :-

*“3. The Superintendent (Sale) in his detailed report dated 02.09.2024 has reported that :-*

*(i) The Municipal Corporation has passed resolution no. 1794 dated 06.11.1989 to auction the land available with Municipal Corporation for residential use including the land situated in Town Planning Scheme of Prem Nagar behind Rose Garden ;*

*(ii) The auction notice was published in three leading daily newspapers i.e. Punjab Kesri (Hindi), Daily Ajit (Punjabi) and The Tribune (English) and apart from public proclamation was also made. The “Terms and Conditions” of auction were duly finalized and these primarily mandated that (a) participant shall deposit Rs. 10,000/- as earnest money deposit (b) on fall of hammer, the highest bidder would be liable to deposit 25% of the bid amount and another 25% amount in one month and remaining amount in two six monthly installments with interest (iii) Before taking the possession of purchased plot, the auction purchaser would be required to execute agreement containing all the terms and conditions of auction within 7 days of acceptance of his bid failing which the bid shall be rejected and the amount of sale consideration forfeited ;*

(iii) *The auction was held on 14.02.1990 and approval to 15 different auctioned plots which also included plots no. 10 and 11, New Prem Nagar, behind Rose Garden was accorded approval on 07.03.1990. Sh. Rajinder Gupta S/O Sh. Hari Chand deposited the 25% of his bid amount on 15.03.1990. Sh. Rajinder Gupta was intimated of acceptance of his bids for plots no. 10 and 11 vide letters no. 239-240, both dated 15.03.1990 and was called upon to execute agreement within 7 days before taking the possession of the plots as per "Terms and conditions of auction" and deposit another 25% of bid amount in next one month ;*

(iv) *As per record, neither the auction purchaser executed the "agreement" in respect of plots no. 10 and 11 nor deposited another 25% of the total bid amount within next 30 days i.e. before 15.04.1990. Thus, the auction purchaser willfully violated the "Terms and Conditions" of auction and thus has no legal claim over the said plot no. 10 and 11 respectively. Further, no xxxxxxxxx (line missing in order) violated the terms of the auction i.e. failed to execute the agreement and also to deposit the balance sale consideration amount in 13 months (25% within 30 days of the date of acceptance of bid and balance 50% bid amount in next one year with interest) from 15.03.1990 has ever called upon the auction purchaser to deposit the balance amount of sale consideration therefore, the part amount of Rs. 80,500/- towards part sale amount of plot no. 10 was deposited of his own by the auction purchaser and this deposit cannot in any manner condone the consequences of willful default already committed by the auction purchaser resulting in to the cancelation of the bids and for feature of the part sale consideration of amount deposit by the defaulter auction purchaser. Still further, as per record, no representation dated 13.02.2001, as referred in the written*

*submissions dated 27.08.2024 was ever received in this office and on the face of it is a fabricated document. Even in this, the auction purchaser has admitted that now there is no encroachment at site. Actually, the bidder knew that he did not comply with terms and conditions of auction and his bid stood cancelled long back in the year 1991 but as the rate of land in the area has increased significantly, therefore, to get unwanted benefits, the auction purchaser started correspondence with Municipal Corporation in the year 2014 when application dated 22.08.2014, which was otherwise received in the office on 14.10.2014 was received and in which a request was made for delivery of the possession of plots no. 10 and 11. Thereafter, Sh. Rajinder Gupta filed Civil suit for possession in the Learned Civil Court at Ludhiana against the Municipal Corporation. In this Civil Suit the plaintiff was granted 11 opportunities to lead the evidence but the plaintiff miserably failed and thus Ld. civil court closed the plaintiff evidence by order. Since, the plaintiff was in the knowledge that he has not executed the agreement as mandated in the "Terms and Condition" of auction, therefore, the civil suit was possession by specific performance was not maintainable and as such was liable to be dismissed. Therefore, the plaintiff deliberately did not put in appearance on the date fixed and in this background the Ld. civil court was please to dismiss the suit filed by the Sh. Rajinder Gupta under order 9 Rule 8 of the CPC. During the pendency of the civil suit the plaintiff/Rajinder Gupta submitted representation in the year 2018 to the Municipal Corporation as well as to the office of the Hon'ble Chief Minister of Punjab for delivery of possession of the plots no. 10 and 11, behind Rose Garden xxxxxxxx (line missing in the order) has willfully violated the terms and condition of the auction, therefore, has absolutely no right over the plots no. 10 and 11 ibid. All the representations*

*given in the year 2018-19 were given to the Town Planning Wing of the Municipal Corporation, when the original case record rested with the sale branch. It is also explicit from the record that the notices dated 28.11.2018 and 19.12.2018 were issued by the Assistant Town Planner Zone-D Municipal Corporation, Ludhiana under section 246 of the PMC Act, 1976 for removal encroachment made on the Municipal land. This notice was issued in the discharge of the obligatory duty conferred on the Assistant Town Planner to ensure that the directions passed by the Hon'ble High Court on 04.10.2008 in CWP No. 4886 of 2003 are complied with. The representation submitted by Sh. Rajinder Gupta for delivery of possession of plots no. 10 and 11 Prem Nagar, Ludhiana were duly discussed and deliberated upon in the meeting of "Technical Advisory Committee" of the Municipal Corporation on 30.11.2023 in which it was recommended that as per the Terms and Conditions of the auction, if the auction purchaser fails to deposit the bid amount in the prescribed period, fails to execute the agreement or violate any other prescribed condition, the auction was liable to be rejected and the part amount deposited by auction purchaser forfeited. Finally the sale branch in its report dated 02.09.2024 has recommended for rejection of the claim of the petitioners.*

*I have perused the office report and also gone through the record of this case. It is undisputed that Sh. Rajinder Gupta was intimated vide letter dated 15.03.90 that his bid for plots no. 10 and 11 stands accepted, therefore, he may deposit another 25% of the bid amount of each of the plot within 30 days, execute agreement in which all the Terms and Condition of auction shall be enumerated within 7 days and thereafter the possession of the plots would be handed over to the auction purchaser. The auction purchaser failed to comply with the Terms and Conditions of the auction,*

*therefore, has no legal right over the purchased plots. Though Sh. Rajinder Gupta in the year 1995 deposited another sum of Rs. 80,500/- only towards part payment of plot no. 10 but as per record no demand notice was ever sent to the auction purchaser because the total purchase amount was required to be deposited on or before 15.03.1991 and the failure on the part of auction purchaser rendered his bid redundant. After a long period of more than 25 years of the date of auction, the auction purchaser suddenly woke up and started demanding the possession of plots no. 10 and 11. In this regard, I am in agreement with report of the Superintendent (Sale) that since during the previous long period of approximately 25 years, the land prices in the vicinity has considerably increased, therefore, to get undue benefit, the auction purchaser has started attempts to somehow get ownership rights over the said plots. The auction purchaser also availed the legal remedy in this regard by filing a civil suit for grant of decree by way of specific performance of letter of allotment of plots no. 10 and 11 dated 15.03.1990. However, the auction purchaser could not succeed as there was no merit in his claim. It is also referable here that the Govt. in exercise of the powers conferred under section 172 of the Punjab Municipal Corporation Act, 1976 has duly enacted "The Punjab Management and Transfer of Municipal Property Act, 2020. As per this Act, a detail procedure has been provided for sale/lease etc. of the Municipal properties and it is incumbent upon Municipal Corporation to strictly follow the provision of this Act and the rules made thereunder. Considering the totality of facts, there is no merit in the representation dated 02.05.2025 submitted by the Sh. Sanjay Gupta S/o Late Sh. Rajinder Gupta. Resultantly, the claim for handing of the possession of plots no. 10 and 11, behind Rose Garden, New Prem Nagar, Ludhiana and allowing the*

*petitioners to execute agreement as directed in the letter of allotment dated 15.03.1990 is rejected. The Additional Commissioner (P) may fix the responsibility of the officials, who despite due notice that encroachment has been made over plots no. 10 and 11, New Prem Nagar, but failed to take further legal action of removal of encroachment. Simultaneously, steps may also be taken to recover the damages for unauthorized use of the Municipal land from the unauthorized occupant.”*

3. In the aforementioned circumstances, the petitioners have filed the instant civil writ petition before this Court for the relief (s), as noticed hereinabove.

4. Heard.

5. It is not disputed before this Court that as per terms and conditions of auction, a participant was liable to deposit Rs. 10,000/- as earnest money and upon fall of hammer, the highest bidder was liable to deposit 25% of bid amount and another 25% amount was required to be paid within one month and remaining amount was to be paid within two six monthly installments with interest. It was also the term and condition of auction that before taking possession of the purchased plot, the auction purchaser was required to execute agreement containing all the terms and conditions of auction within 7 days of acceptance of his bid, failing which the bid was liable to be rejected and the amount of sale consideration be forfeited.

6. Evidently, in view of the terms and conditions of auction, the predecessor in interest of the petitioners, namely, Shri Rajinder Gupta, who was the highest bidder for Plots No. 10 and 11 in the auction held on 14.02.1990 (approved on 07.03.1990) was required to deposit 25% of

the bid amount on 15.04.1990. Concededly, Shri Rajinder Gupta was called upon to execute agreement within 7 days and to deposit another 25% of the bid amount within one month, however, neither the agreement was executed nor 25% of the bid amount was paid, as envisaged under the terms and conditions of auction.

7. It is well settled that the terms and conditions of auction are sacrosanct and once the successful participant in auction makes a successful bid by accepting the terms and conditions of auction, he is bound to comply with those terms and conditions and any non-compliance of terms and conditions would render the auction redundant. In somewhat similar circumstances, a Division Bench of this Court in ***Sharndeeep Brar Versus State of Haryana and others*** (CWP-5954-2024, decided on 14.03.2024), while dismissing the writ petition, has observed as under :-

*“5. We may have sympathy on the family front but that cannot be a sufficient or good reason to entertain this petition. The petitioner cannot be allowed to deposit the remaining amount. The conditions of auction are sacrosanct to all the bidders and a person who chooses for a bid is expected to keep his promise failing which the auction offer stands cancelled. ....”*

8. Considering the totality of circumstances, especially the fact that Shri Rajinder Gupta (predecessor in interest of petitioners), who was in full knowledge about such conditions of auction, had failed to comply with mandatory terms and conditions of auction, then this Court would not change the conditions of auction. In my considered view, the Commissioner, Municipal Corporation, Ludhiana, has rightly rejected the

claim of the petitioners. Resultantly, the instant civil writ petition fails and the same is accordingly dismissed.

9. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)  
JUDGE

14.01.2025  
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No