

(2013) 11 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 18875 of 2011 (O and M)

Baldev Krishan Gupta and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0081

Hon'ble Judges : Mehinder Singh Sullar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Judgement

Mehinder Singh Sullar, J.—The contour of the relevant facts and material, which are essential to decide the instant civil writ petition, is that,

the Punjab Mandi Board (respondent No. 2) (for brevity ""the respondent Board"") issued a public advertisement (Annexure P1) offering the

commercial sites (shops & booths) in proposed new Fruits and Vegetables Market, Ludhiana, containing all modern facilities mentioned therein. It

was notified that the sites for shops & booths would be auctioned on 22.1.2008 at new Grain Market, Salem Tabri, Ludhiana. The petitioners

intended to purchase the sites, accordingly they deposited the requisite earnest money of Rs. 20,000/- each, participated in the open auction and

were declared successful in respect of their sites of shops and booths. On further deposit of 25% of the sale consideration, the allotment letters

dated 13.2.2008 (Annexures P2/A to D) were issued in their favour. The possession of the sites was to be delivered within a week after issuance

of the allotment letters. The petitioner-allottees were required to complete the construction within a period of two years from the date of issuance

of indicated allotment letters in accordance with the building plans specified by

the Estate Officer of respondent-Board. The payment of remaining 75% of sale consideration was to be made in six monthly installments. They were also liable to pay interest at the rate of 15% on the remaining sale consideration. The first installment fell due in the month of August, 2008. The case set up by the petitioner-allottees, in brief in so far as relevant, was that the Sabji Mandi was not developed as promised. There was no electricity, water supply and raising of construction of shops on the site was not possible. Since there were huge pits and the level of the area was much below the road, so, the actual physical possession could not be handed over to any of the allottees/auction purchasers. Even neither any statutory notification u/s 7 nor any licenses were issued u/s. 10 of The Punjab Agricultural Produce Markets Act, 1961 (hereinafter to be referred as ""the Act""). The petitioner-allottees repeatedly projected their grievances to the concerned authorities, but in vain. They were compelled to file Civil Writ Petition No. 2256 of 2009, which came to be disposed of by this Court, by virtue of order dated 12.2.2009 (Annexure P3), which, in substance, is as under:-

The petitioners are aggrieved at the inaction of the respondents in not issuing a Notification u/s 7 of the Punjab Agricultural Produce Market Act, 1961 for the New Fruit and Vegetable Market at Ludhiana. Their further grievance is that no basic infrastructure, required for construction of the shops in the New Fruit and Vegetable Market, like roads, sewerage, water and electricity supply etc., has been provided so far. Contrary to it, the respondents are asking the petitioners to deposit the installments for the shop sites allotted to them along with interest etc.

Having heard Learned Counsel for the Petitioners at some length and keeping in view the nature of relief sought by them, I deem it appropriate to direct respondents No. 2 & 3 to treat this writ petition as a representation on behalf of the petitioners and dispose of the same by passing a reasoned order within a period of three months from the date of receipt of a certified copy of this order. The respondents shall specifically deal with the issues, as to why the basic amenities are not being provided in the New Fruit and Vegetable Market and what is the legal impediment behind issuance of a Notification u/s 7 of the Act.

The respondents would also consider the petitioner's claim regarding

rescheduling of the payment of future installments, if so permissible under the rules.

2. In compliance thereof, the representation of the petitioner allottees was decided, by means of order dated 27.7.2009 (Annexure P4) and the

Secretary, Punjab Mandi Board, inter-alia, made the following recommendations:--

Therefore, in the interest of justice and fairness it is ordered as under:--

(i) Since there is no power with the Secretary, Mandi Board under the Punjab Agricultural Marketing Board (Sale and Transfer of plots) Rules,

1999 as amended in 2008 to defer the installments or give any other such concession, Estate Officer, Mandi Board will make a request to the

State Government within ten days on the following points:--

a) Permission to exempt the petitioners from payment of installments and interest till the notification for the new mandi is issued by the State

Government. The first six-monthly installment should be deferred and should become payable within one month of the issue of notification.

Subsequent installments should also be rescheduled accordingly, interest should also be payable according to the revised schedule.

b) Permission to pay or adjust (as per option of the petitioners) interest on installments which have already been paid by the petitioners at the rate

of 7% per annum (this being the prevalent interest rate given by the bank on FDs) from the date of payment of installment till the date of

notification.

(c) Permission to re-schedule the period given to the petitioners for construction from the date of issue of notification.

(ii) Estate Officer will also request the Government to expedite the issue of the notification for the new mandi at the earliest.

Keeping in view the above, in the interest of justice, the Estate Officer is restrained from issuing recovery notices to the petitioners in connection

with the unpaid due installments and from starting the process of resumption of plots for non-payment of due installments till a decision is taken by

the government on the reference to be made by the Estate Officer.

3. Thereafter, the Government of Punjab issued notification dated 20.10.2009 (Annexure P9) u/s 7 of the Act. Subsequently, it was suddenly

withdrawn by the State Government, by way of notification dated 6.11.2009 (Annexure P10). Then, the State Govt. again issued another statutory

notification dated 1.1.2010 (Annexure P11) published in the gazette of 12.3.2010 and declared & established the pointed new grain market. In

pursuance thereof, the respondent-Board issued the impugned letter dated 6.7.2011 (Annexure P5) and rescheduled the installments as under:--

4. At the same time, the allottees were also directed to complete the construction within a period of two years from the date of notification dated

1.1.2010 (Annexure P11).

5. Sequelly, the respondent-Board issued another impugned letter dated 2.4.2012 (Annexure P12) requiring the allottees to complete the

constructions of plots within the stipulated time, failing which, the action was proposed to be taken against them as per Rule 8 of the Punjab State

Agricultural Market Board (Sale and Transfer of plots) Rules, 1999 as amended in 2008 (hereinafter to be referred as ""the relevant rules"").

6. Aggrieved thereby, the petitioner-allottees have preferred the present writ petition to challenge the impugned letters (Annexures P5 and P12), to

direct the respondents to issue revised schedule of payment and to fix the period of raising constructions commencing from July/August, 2011,

invoking the provisions of Articles 226/227 of the Constitution of India.

7. The contesting respondent Nos. 2 and 3, in their reply, have refuted the claim of petitioner-allottees and pleaded that they cannot absolve

themselves from liability as per the agreed promise, terms and conditions of the contract on the plea of non-availability of basic amenities. They are

liable to pay all the due installments. The issuance of notification dated 20.10.2009 (Annexure P9), re-issuance of notification dated 1.1.2010

(Annexure P11) and impugned letters (Annexures P5 & P12) were acknowledged by them. The re-schedule of the installments and fixation of

period of completion of construction were stated to be in accordance with the provisions of the Act and relevant rules. However, vaguely denying

the remaining allegations, the contesting respondents have prayed for dismissal of the main writ petition.

8. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts

over the entire matter, in our considered opinion, the instant writ petition

deserves to be partly accepted for the reasons mentioned hereinbelow.

9. What cannot possibly be disputed here is that the declaration/establishment of market yards and their management are governed by the

provisions of the Act and relevant rules made thereunder. Section 7(2) of the Act postulates that the State Government may, by notification,

declare any enclosure, building or locality in any notified market area to be a principal market yard and other enclosures, buildings or localities to

be one or more sub-market yards for the area. Likewise, sections 9 & 10 regulate the provisions of issuance of licenses for carrying on business in

the notified area.

10. A conjoint and meaningful reading of these provisions would reveal that neither any market can be established without issuance of notification

u/s. 7(2) nor any person can carry on business in the area unless a statutory licence is issued to him. In the present case, it is not a matter of dispute

that the respondent-Board had issued the advertisement (Annexure P1) for allotment of the commercial sites (shops and booths) and the auction

was to be held on 22.1.2008, whereas the notification u/s. 7 of the Act was issued by the Government on 20.10.2009 (Annexure P9) at the first

instance, which was withdrawn on 6.11.2009, vide notification (Annexure P10). Again, the statutory notification dated 1.1.2010 (Annexure P11)

u/s. 7 was published in the Government Gazette of 12.3.2010. Meaning thereby, the advertisement (Annexure P1) and allotment letters containing

terms and conditions of payment etc. were issued, much prior to the declaration of new vegetable market, without any legal authority or sanction of

law.

11. Not only that, in pursuance of the order (Annexure P3) of this Court & recommendations (Annexure P4) of the Secretary, the respondents

have rescheduled the payment, fixed the period of completion of construction and issued the impugned letter (Annexure P5). The perusal of the

record would reveal that the Board has illegally rescheduled and even demanded the 1st installment (1.2.2010), 2nd installment (1.8.2010) and

3rd installment (1.2.2011) along with interest, much prior to the issuance of impugned letter dated 6.7.2011 (Annexure P5). Similarly, the fixation

of period of two years to complete the constructions from the date of notification dated 1.1.2010 is also speculative and arbitrary. Again, the

respondent-Board has extended the threat to the allottees and proposed to take action against them as per Rule 8 of the relevant rules in case the construction is not completed within the stipulated period. Thus, in our view, the respondent-Board was neither competent to reschedule the payment of installments nor to arbitrarily fix the period of completion of constructions from the date of notification dated 1.1.2010, which was published on 12.3.2010 in the indicated manner. Therefore, the impugned actions of the respondent-Board are arbitrary, smack colourable exercise of power & are not legally tenable and the impugned letters (Annexures P5 and P 12) deserve to be quashed in the obtaining circumstances of the case. At the most, the respondent-Board is entitled to reschedule and recover the amount of remaining installments, after issuance of impugned letter dated 6.7.2011 (Annexure P5). At the same time, the petitioner-allottees are also eligible to complete the construction in question within a period of two years from the date of issuance of impugned letter dated 2.4.2012 (Annexure P12) and not prior thereto as contrary claimed by the respondent-Board. In the light of aforesaid reasons, the instant writ petition is partly accepted. The impugned letters (Annexures P5 and P12) are hereby quashed. The respondents are directed to reschedule the payment of installments of balance amount & interest etc. as per the Act and relevant Rules and to fix the period of completion of construction to the extent and in the manner depicted here-in-above and not otherwise.