

(2011) 02 SC CK 0004

In the Supreme Court Of India

Case No : Civil Appeal No. 1550 of 2011 (Arising out of SLP (C) No. 12792 of 2009) , Civil Appeal No. 1551 of 2011 (Arising out of SLP (C) No. 12793 of 2009) , Civil Appeal No. 1553 of 2011 (Arising out of SLP (C) No. 12799 of 2009) , Civil Appeal No. 1552 of 2011

Haryana State Agricultural Marketing Board and Another	APPELLANT
Vs	
Raj Pal	RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 1997
— Rule 12(3), 12(3A), 4, 4(5), 5

Citation : AIR 2011 SC 1394 : (2011) 3 CPJ 20 : (2011) 3 RCR(Civil) 514 :
(2011) 4 SCALE 209(1) : (2011) 13 SCC 504

Hon'ble Judges : R. V. Raveendran, J;A.K. Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—Leave granted.

2. The first Appellant is the Haryana State Agricultural Marketing Board ('Board' for short) and second Appellant is the Nigdhu Market Committee ('Market Committee' for short). The Market Committee established a New Grain Market at Karnal-Pehowa Road, Nighdu, District Karnal. It gave public notice of a scheme for the open auction of plots, booths and commercial places in the market, to be held on 13.1.1999. The said auction was governed by the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 1997 (for short 'the Rules').

3. Rule 4 of the Rules requires the auction purchaser/allottee to complete construction of a shop within two years from the date of the allotment order. Rule 5 provides that the terms and conditions governing sale will be determined by the Board from time to time. The following provisions of the Terms & Conditions of Sale (by auction), framed by the Board are relevant:

3. One-fourth amount of the successful bid shall be required to be deposited on the spot. Failure to do so shall lead to forfeiture of the earnest money.

12. Allottees shall deposit the remaining three fourths amount either in a lump-sum without interest within 30 days of allotment or in six equal half yearly installments alongwith interest at 15% per annum.

13. The sale/allotment shall remain further subject to the term and conditions as enumerated in the letter of allotment.

The auction Notice also reiterated Conditions (3) and (12) extracted above.

4. The Respondent in each of these appeals was the highest bidder in respect of the plot for which he gave the bid. In pursuance of it, each Respondent (auction purchaser) was issued a letter of allotment on 30th January, 1999, specifying the particulars of the plot purchased by him, the auction sale price, 25% amount paid as earnest money and the particulars of the installments of principal and interest, if the auction purchaser wanted to pay the 75% amount in six half yearly installments as also the dates on which the installments had to be paid. We extract below the relevant clauses of the letter of allotment which was issued to the Respondent (Rajpal) in the first matter:

2. The following particulars site is hereby allotted to you on the terms and conditions announced at the spot and mentioned hereunder:

Kind Of Plot

Number of Plot

Area of Plot

Price of Plot

Name of Purchaser

Shops

108

12'x 27.5'

2,55,000/-

Sh. Raj Pal

3. The area and number shown above are given in the respective plan and are subject to variation of the time of actual possession.

4. The sum of Rs. 63,750/- paid by you as earnest money has been adjusted in your plot account. You are, requested to remit a sum of Rs. 1,91,250/- on account of 75% balance sale price either within 30 days of receipt of this allotment letter without interest or in six half yearly installments together with interest Arising out of 15% p.a. accruing from the date of issue of this letter as

mentioned hereunder.

Number of Installments

Due date of Installments

Amount of Installments

Interest @ 15% p.a.

Total Remarks

1.

1.1.2000

31875

14343.75

46218.75

2.

1.7.2000

31875

11953.10

43828.10

3.

1.1.2001

31875

9562.50

41437.50

4.

1.7.2001

31875

7171.00

39046.90

5.

1.1.2002

31875

4781.25

36656.25

6.

1.7.2002

31875

2390.65

34265.65

5. In case of failure to deposit the installment(s) by 10th of every month due, compound interest Arising out of 10; p.a. alongwith penal interest Arising out of 4% p.a. with installments shall be charged.

x x x 12. The transferee shall complete the building within two years from the date of issue of allotment order....

x x x 15. The Market Committee Nigdu shall not be responsible for leveling of uneven sites.

5. In pursuance of the said letters of allotment, most of the allottees/auction-purchasers paid only the installments of the auction price and did not pay the interest. Some of the allottees also committed default in paying the installment of even the auction price. Some allottees however took possession and constructed the shops and commenced their business. Some allottees took possession and constructed merely sheds. Some allottees did not take possession at all contending that the Market Committee did not offer them possession. In this background, the Market Committee sent Demand Notices to all the allottees on 9th July, 2007 calling upon them to pay the balance sale price and interest on the installments at 15% per annum, as also the penal interest. At that stage, the allottees/auction purchasers approached the Punjab & Haryana High Court by filing writ petitions for quashing the demand notices dated 9.7.2007 claiming interest and penal interest, and sought a direction to the Appellants to accept only the actual sale price without any interest. They contended that the Market Committee had not provided the basic amenities and facilities in the market; that the Market Committee, in fact, did not offer possession of the plots because the infrastructural facilities and even basic amenities were not ready when the plots were auctioned; and that when the Market Committee was not in a position to offer the possession for lack of amenities and facilities, it could not obviously charge interest on the plot value, let alone penal interest. They also contended that when the basic amenities and infrastructure were not available, they could not take possession or construct the buildings. In its counter to the writ petition, the Market Committee admitted that the roads, drainage and certain other works relating to the market were not ready at the time of auction, and were completed only on 15.4.1999. It was also admitted that the work relating to water supply was started in February, 2001 and sewerage disposal work was started in January, 2002 and they were in

progress till 2007.

6. The High Court allowed the writ petitions by a common order dated 15.10.2008. It referred to some of its earlier decisions where directions were issued not to charge interest or penal interest until the water, sewerage disposal and other facilities were provided. It, therefore, disposed of the petitions with the following directions:

(i) The writ Petitioners were permitted to deposit the installments within a period of one month.

(ii) The Market Committee was directed not to charge any interest or penal interest on the original price of plots/booth.

(iii) The Market Committee was directed to provide the remaining basic facilities in Nighdu Grain Market within a period of six months.

7. The said order is challenged in these appeals by special leave. The Appellants contend that the Market Committee had not undertaken to provide any specific facilities as on the date of auction sale; that the basic infrastructural facilities were available in the market and works relating to other facilities were in progress; that the public notice regarding auction and the allotment letters made it clear that interest was chargeable from the date of allotment; that it was clear from the letters of allotment, that on receipt of the same, the allottees were entitled to approach the Market Committee for possession; that in the absence of any provision that the Market Committee will not be entitled to charge interest until the basic facilities were provided, the terms of allotment providing for payment of interest and penal interest were enforceable; and that the issue of payment of interest/penal interest/cannot be linked to providing of all facilities in the market. Reliance was placed by the Appellants on the following observations in U.T. Chandigarh Administration and Another Vs. Amarjeet Singh and Others,

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.

8. On the other hand, the Respondents contended that the State Government and the Board realized the futility and the arbitrariness in demanding interest before providing the basic amenities and consequently amended the Rules in 2002 providing for payment of interest only from the date of offer of possession.

The said amended Rule 4(5) and Rule 5 are extracted below:

Rule 4(5): The balance seventy five percent of the price of plot may either be deposited without interest within thirty days from the date of issue of allotment letter or in six half yearly installments, with may be specified by the Board from time to time. The first such installment shall fall due after six months from the date of allotment letter. However, interest on installments shall accrue from the date of offer of possession.

Rule 5: The possession of the plot shall be offered to the allottee by the Executive Officer cum Secretary, Market Committee within thirty days from the date of issuance of allotment letter if minimum basic facilities i.e. Roads, Water Supply, Sewerage and electrification are existing and if the said basic facilities are not existing, then after providing the said basic facilities.

They also contended that in regard to the New Grain and Vegetable Market, Mahem, during the pendency of these matters, the Board considered the representations of the allottees for relief regarding interest and had made an order dated 17.4.2009 directing that the Market Committee not to charge interest, penalty or time extension fees in respect of plots with effect from 5.3.2002, when the amended Rules came into effect even in regard to the plots which were sold before the amendment; and that similar relief should be extended to them.

9. In Municipal Corporation Chandigarh and Others Etc. Vs. Shantikunj Investment Pvt. Ltd. Etc., , this Court held:

38... We make it clear that though it was not a condition precedent but there is obligation on the part of the Administration to provide necessary facilities for full enjoyment of the same by the allottees. We therefore, remit the matter to the High Court for a very limited purpose to see that in cases where facilities like kutcha road, drainage, drinking water, sewerage, street lighting have not been provided, then in that case, the High Court may grant the allottees some proportionate relief. Therefore, we direct that all these cases be remitted to the High Court and the High Court may consider that in case where kutcha road, drainage, sewerage, drinking water facilities have been provided, no relief shall be granted but in case any of the facilities had not been provided, then the High Court may examine the same and consider grant of proportionate relief in the matter of payment of penalty under Rule 12(3) and interest for delay in payment of equated installment or ground rent or part thereof under Rule 12(3-A) only. We repeat again that in case the above facilities had not been granted then in that case consider grant of proportionate relief and if the facilities have been provided then it will not be open on the part of the allottees to deny payment of interest and penalty. So far as payment of installment is concerned, this is a part of the contract and therefore, the allottees are under obligation to pay the same. However, so far as the question of payment of penalty and penal interest in concerned, that shall depend on the facts of each case to be examined by the

High Court. The High Court shall examine each individual case and consider grant of proportionate relief.

Referring to the said decision, this Court in *UT Chandigarh Administration v. Amarjeet Singh and Ors.* (supra) observed as follows:

46. As noticed above, in *Shantakunj*, the auction was of the year 1989. The lessee had approached the High court in its writ jurisdiction in the year 1999 seeking amenities. Even in 2006 when this Court heard the matter, it was alleged that the amenities had not been provided. It is in those peculiar facts that this Court obviously thought it fit to give some reliefs with reference to penal interest wherever amenities had not been provided at all even after 17 years. In fact, this Court made it clear while remanding to the High Court that wherever facilities/amenities had been provided before the date of the judgment (28.2.2006), the lessees will not be entitled to any reliefs and where the facilities/amenities had not been granted even in 2006, the High Court may consider giving some relief by proportionate reduction in the penal interest. This direction was apparently on the assumption that in case of penalty, the court can grant relief in writ jurisdiction.

In *Sector 6, Bahadurgarh Plot Holders' Association (Regd.) and Others Vs. State of Haryana and Another*, this Court held that where the Rules required delivery of possession within a reasonable time after payment of 29% of the price, interest cannot be demanded till the offer of possession is made. But where the advertisement stated that modern amenities "will be provided", interest cannot be denied merely because all amenities had not become fully functional and interest will be payable from the date of the offer of possession of the plot, though not fully developed.

10. The aforesaid decisions, when read with reference to the provisions of the rules applicable make it clear that the allottees were liable to pay the installments and simple interest thereon in terms of the letters of allotment. However, having regard to the admitted position emerging from the counter affidavit filed by the Appellants before the High Court, the basic amenities of water and sewerage disposal were not available when the allotment letters were issued and the said works were commenced only in 2001 and 2002 and were in progress even in the year 2007. It is in these circumstances, apparently, some of the allottees did not commence construction or did not commence their business. Be that as it may.

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 installments merely on the ground that some of the amenities were not ready. If they were not entitled for postponement of the installments, it follows that they will be liable to pay the normal interest on the delayed installments 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.

12. We, therefore, allow these appeals in part and permit the Market Committee to issue revised Demand Notices claiming only simple interest at the rate 15% per annum. The respective Respondent shall pay the interest within three months from the date of receipt of the demand notice from the Market Committee. If the amount of interest is not paid, the Market Committee will be entitled to take such action as may be permissible in terms of the rules in accordance with law.

12. 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.