

(2019) 11 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17869 Of 2018

Mahabir Singh And Others

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 06-11-2019

Acts Referred:

Haryana Agricultural Produce Market Act, 1961 — Section 18
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 11 P&H CK 0064

Hon'ble Judges : Daya Chaudhary, J;Sudhir Mittal, J

Bench : Division Bench

Advocate : Sandeep Thakan

Final Decision : Dismissed

Judgement

Daya Chaudhary, J

Petitioners have approached this Court by way of filing the present petition under Articles 226/227 of the Constitution of India for quashing of impugned order Annexure P-10 and for issuance of direction to the respondents to pay interest on the delayed payment which has been released after one year from the date of its deposit.

Briefly, the facts of the case, as made out in the present petition, are that the petitioners participated in the auction of the shops in Grain Market, Bawani Khera, District Bhiwani, which was held in pursuance of public notice issued by the respondent authorities. Petitioners, being the higher bidder, were allotted shops. They deposited the requisite amount as per terms and condition of the allotment of shops. Subsequently, their allotments were cancelled without giving any opportunity of hearing and without following any procedure. The amount deposited by them was returned after a period of one year but no interest was paid thereupon. Petitioners approached the authorities concerned by making representations and served a legal notice dated 13.09.2017 (Annexure P-7) upon

the respondents but no action was taken thereupon. Subsequently, the reply of the legal notice was given and claim of the petitioners for interest was rejected stating therein that they were not entitled for interest in view of terms and conditions of the auction as well as the conditions mentioned in the pamphlets. The judgment of Hon'ble the Apex Court in case The Haryana State Agricultural Marketing Board and others vs Sadhu Ram, Appeal (Civil) 2549 of 2008 has also been relied upon.

Learned counsel for the petitioners submits that the petitioners deposited the amount after obtaining loan and shops allotted to them were cancelled. He also submits that the petitioners were entitled for compensation on account of cancellation of allotment as well as interest on delayed payment and before taking action of cancellation, no opportunity was granted to them. The petitioners made an oral request as well as written representation/legal notice but the same was not considered and their claim for interest on delayed payment has been rejected without any sufficient reason.

Heard the arguments of learned counsel for the petitioners and we have also perused the documents available on the file including the reply of legal notice as well as impugned order dated 03.04.2018 (Annexure P-10).

The facts of the case regarding allotment of shops, depositing the amount and thereafter its cancellation, are not disputed. Admittedly, the petitioners earlier filed CWP No.29361 of 2017 which was disposed of with a direction to the respondents to take action on the legal notice dated 13.09.2017 and in the event of any amount due found by the respondent authorities be refunded by 30.04.2018. After directions issued by this Court, the legal notice was responded by respondent-Market Committee, Bhiwani. As per case made out in the legal notice, 25% of the bid amount was deposited by the petitioners. The shops were allotted but the same were not approved under Section 18 of the Haryana Agricultural Produce Market Act, 1961 (here-in-after referred to as 'the Act, 1961) by the competent authority i.e the Chief Administrator, Haryana State Agricultural Marketing Board. The amount so deposited by the petitioners was returned to them through cheque dated 19.06.2017. They claimed interest on the returned amount. However, the claim of interest on delayed release of the amount was rejected on the ground that the amount was returned after cancellation of the allotment by the competent authority and petitioners were not held entitled for interest as per terms and conditions of the open auction and the public notice. In pursuance of directions issued by this Court in CWP No.29361 of 2017, a communication was sent by the Chief Administrator, Haryana State Agricultural Marketing Board, Panchkula to the Secretary-cum-E.O., Market Committee, Bhiwani, stating therein that the claim of the petitioners has been considered and the interest on delayed payment was rejected in view of provisions of Section 18 of the Act, 1961 as well as terms and conditions of the auction and the pamphlets published at the time of auction and also in view of judgment dated 08.04.2008 passed in Charanjeet Singh Gujral's case (supra).

Admittedly, the auction took place on 21.06.2016 and the petitioners deposited 25% of the total amount on 22.06.2016, which was a pre-requisite condition. Subsequently, the allotment was cancelled as it was not approved by the competent authority. The amount so deposited by the petitioners was returned to them on 20.06.2017. In view of directions issued by this Court, the claim of the petitioners was considered and rejected on the ground that the allotment was provisional which was subject to approval of the competent authority.

Para no.10 of the judgment passed in Sadhu Ram's case

(supra) is reproduced as under :-

"10. xxx xxx xxx

Under Section 18 of the Act, all the sales of plots whether by open auction or draw of lots, are subject to approval by the CA of the Board. However, he may or may not accord such approval without assigning any reason. In case of offer is rejected, the amount deposited as 1/4th of the total price would be refunded without interest by the M.C." (Emphasis supplied)."

On perusal of said provisions of Section 18 of the Act, 1961, it is clear that the auction was to be made final only after approval by the competent authority i.e the Chief Administrator of the Board and in case of rejection of the auction by the Chief Administrator, no reason was required to be given. Section 18 of the Act, 1961 provides that the amount deposited by the bidder must be refunded without interest by the Market Committee of the Board. Accordingly, in view of provisions of Section 18 of the Act, 1961, it is clear that the Chief Administrator of the Board, being the final and competent authority was to approve the auction bids but not approved.

Same issue was there before Hon'ble the Apex Court in Sadhu Ram's case (supra). In that case also, the auction bid was not approved by the competent authority. The High Court decided the matter in favour of the allottees by directing authority to give an alternative site. Said judgment of the High Court was challenged before Hon'ble the Apex Court.

The judgment of this Court was set aside and the appeal filed by the Haryana State Agricultural Marketing Board and others was allowed. The relevant portion of said judgment is reproduced as under :-

"15. In view of the admitted fact that the money deposited by the respondents with the appellants was refunded to the respondents by account payee cheques which were duly encashed by them and in view of the admitted fact that subsequently, a second auction was held on 20th of December, 2004 in respect of the same plots which were put up for auction on 8th of July, 2004 and in the second auction, some other parties have now acquired interest in the said plots, it was not pen to the High Court to direct the appellants, in the exercise of its writ jurisdiction, to allot alternative plots to the respondents only on the ground that the auction dated 8th of July, 2004 could not be cancelled by the Chief

Administrator of the Board without assigning any reason and also on the ground that the reserve price was not disclosed in the Public Notice issued by the appellants.

16. In this view of the matter, we are, therefore, unable to sustain the decision of the High Court and accordingly, the judgment of the High Court is liable to be set aside."

On perusal of ratio of judgment of Hon'ble the Apex Court in Sadhu Ram's case (supra); the allotment was cancelled on the ground that auction was not approved by the competent authority as well as the reasons mentioned in the impugned order (Annexure P-10), we find no reason to interfere with the impugned order and the petitioners are not entitled for interest as claimed by them in the present petition.

Accordingly, the present petition is hereby dismissed.