

## A.K. Khurana Vs Haryana Financial Corporation and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** May 13, 1996

**Acts Referred:** Constitution of India, 1950 " Article 226

**Citation:** (1996) 117 PLR 783

**Hon'ble Judges:** T.H.B. Chalapathi, J

**Bench:** Single Bench

**Advocate:** R.K. Jain, for the Appellant; V.K. Jain Raman Sharma and S.S. Dalal, for the Respondent Nos. 1 and 2, for the Respondent

**Final Decision:** Dismissed

### Judgement

T.H.B. Chalapathi, J.

This writ petition is filed for issuing a writ of certiorari to quash the order dated 10.4.1995 vide Annexure P-20

dated 10.4.1995 passed by the Senior Sub-Judge, Hissar and also for issuing a writ of mandamus directing the respondent Nos. 1 and 2 to hand

over possession of the property in dispute to the petitioner forthwith.

2. The facts of the case, as briefly stated are as follows :-

3. M/s Adarsh Oil Mills is a partnership firm consisting of four partners, namely Pardeep Kumar Aggarwal, Nirmal Kumar, Smt. Manju Devi and

Smt. Shakuntla Devi. The said firm availed a loan of Rs. 17,85,000/- from the Haryana Financial Corporation by executing a Mortgage Deed in

favour of the said Corporation. The said amount of loan was disbursed to the firm in three equal instalments. This firm paid certain instalments, but

defaulted in payment of further instalments and became liable to pay about a sum of Rs. 9,84,000/-. Thereafter the Haryana Financial Corporation

(hereinafter, referred to as the "Corporation") made an advertisement in the newspaper dated 6.9.1994 for the sale of some industrial units

including M/s Adarsh Oil Mills by calling tenders. The last date for receiving the tenders was fixed as 22.9.1994. The petitioner offered a sum of

Rs. 5,75,000/- for the purchase of land, building machinery of the firm namely M/s Adarsh Oil Mills. He also enclosed a draft for Rs. 57,500/-

alongwith his application. The 1st respondent namely Haryana Financial Corporation invited the petitioner for further negotiations on 18.12.1994.

The petitioner and 3rd respondent who is a partner of M/s Adarsh Oil Mills were present on that day and the 3rd respondent gave in writing to the

1st respondent that he would bring a better buyer. Thereafter, the petitioner was invited for further negotiations in February, 1995. At that time, the

petitioner gave the highest bid to the tune of Rs. 9,65,000/-. He also deposited Rs. 39,000/- in addition to the amount of Rs. 57,500/- earlier

deposited by him to make a total deposit of 10 per cent of the total bid. He also wrote a letter dated 2.3.1995 to the 1st respondent (Corporation)

and the 1st respondent wrote a letter to the petitioner intimating that the sale has been confirmed in his favour and asked him to deposit the balance

amount of Rs. 9,65,500/-. Meanwhile the 3rd respondent filed a civil suit bearing No. 641 of 1994 on 1.10.1994 against respondents No.1 and 2

in the Civil Court at Hissar seeking a decree for permanent injunction restraining defendants (respondents No. 1 and 2 herein) from confirming the

tender of the petitioner and also for mandatory injunction directing the defendant-Corporation (respondent No. 1 herein) to sell the unit to them on

the same terms and conditions. The petitioner was not made a party to the said suit. The learned Subordinate Judge, Hissar, passed an interim

order of injunction on 10.10.1994. In that interim order, the Court directed the defendants therein (respondents 1 & 2 herein) that in case the

defendants choose to accept the tender of any of the tenderers after negotiation then notice shall be given to the plaintiff (3rd respondent herein)

who would be at liberty to purchase the property in dispute at the same price and at the same terms & conditions. On 6.1.1995 the plaintiff

(respondent No. 3 herein) in his suit filed a Review Application and the Civil Court by its order dated 27.1.1995 ordered that in case the plaintiff in

the suit wanted to purchase the disputed property then defendants (respondents No. 1 and 2 herein) would be at liberty to recover the remaining

amount in the manner as laid down by the Hon"ble Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and

others, .

4. Subsequent to the order of the Civil Court, negotiations with the petitioner took place and the petitioner was found to be the highest bidder.

During the negotiations, the petitioner offered the highest bid of Rs. 9,65,000/- on 16.2.1995. Thereafter the 1st respondent wrote a letter dated

9.3.1995 to the 3rd respondent and the other partners of the said firm intimating that the petitioner made an offer of Rs. 9,65,000/- and if the 3rd

respondent and other partners are willing to purchase the disputed property at above price of Rs. 9,65,000/- they may submit their offer within 10

days from the date of the issue of this communication alongwith 25 per cent of the amount of offer so that the Corporation may be able to put the

unit for re-sale. According to the petitioner, the 3rd respondent and the other partners did not respond to the letter of respondents No. 1 and 5. It

is further the case of the petitioner that the civil suit came up before the Senior Sub Judge, Hissar on 22.3.1995. In that suit, the 2nd respondent

namely Branch Manager of the Corporation filed an application seeking permission to confirm the sale of the disputed property in favour of the

highest bidder. Through the said application it was brought to the notice of the Court that the Corporation had received the highest of Rs.

9,65,000/- and the Corporation decided to confirm the same in favour of the highest bidder and that in view of the order passed by the Court

earlier, an offer was made to respondent No. 3 on 9.3.1995 to buy the property within 10 days at the price of Rs. 9,65,000/- and since there was

no response, the 1st respondent sought permission to confirm sale in favour of the petitioner. This application was posted for hearing on 10.4.1995

on which date the Counsel for the 3rd respondent stated that respondent No. 3 and other partners are ready to purchase the property in dispute

for Rs. 9,65,000/- on the same terms and conditions contained in the letter of the Corporation. Thereupon Counsel for respondents No. 1 and 2

made a statement in the Court on 10.4.1995 that they accept the offer of the plaintiff. Thereupon the learned Subordinate Judge passed an order

dated 10.4.1995 which is impugned in this writ petition.

6. The petitioner is challenging the action of respondents No. 1 and 2 in agreeing to accept the offer of the plaintiff namely the 3rd. respondent to

purchase the unit at the price offered by the petitioner i.e. at Rs. 9,65,000/- after having confirmed the bid in favour of the petitioner by the letter of

the Corporation dated 22.3.1995. Thus the petitioner is seeking two reliefs (i) to quash the order passed by Senior Sub Judge on 10.4.1995, and

(ii) also to issue a writ of mandamus directing respondents No. 1 and 2 to deliver the possession of the property to him as his bid to purchase

Adarsh Oil Mills was accepted by the Corporation on 22.3.1995.

7. There is no dispute that the 3rd respondent and the other partners of Adarsh Oil Mills took a loan from the Corporation and they defaulted in

payment of certain instalments and a sum of about Rs. 9,84,000/- became due. To recover the said amount, the Corporation issued an

advertisement inviting tenders for sale of Adarsh Oil Mills. The petitioner is one of the tenders. Thereafter the Corporation invited all the tenderers

for negotiations. The 3rd respondent, who is the Managing Partner of the said Oil Mills also participated in the negotiations. Before the negotiations

were finalised, a Civil Suit was filed by the 3rd respondent in the court of Senior Sub Judge, Hissar seeking an injunction against respondents No.

1 and 2 from confirming the tender invited by the Corporation in respect of the plaintiffs unit. The Civil Court directed respondent Nos. 1 and 2 to

allow the 3rd respondent (plaintiff in that suit) to purchase Adarsh Oil Mills at the highest bid in view of the decision of the Supreme Court in

Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, . During the negotiations that took place during March, 1994, the

petitioner made a highest bid for Rs. 9,65,000/-. According to the petitioner, the bid offered by him was communicated to the 3rd respondent and

the other partners of M/s Adarsh Oil Mills on 9.3.1995. The Despatch Register maintained by the Corporation clearly shows that the said letter

was sent to the 3rd respondent and other partners of Adarsh Oil Mills namely Shri Pardeep Kumar, Smt. Shakunda Devi, Smt. Manju and Shri

Nirmal Kumar only on 13.3.1995, and when the suit came up before the Subordinate Judge on 22.3.1993, defendants 1 and 2 namely Haryana

Financial Corporation and its Branch Manager filed an application to allow them to confirm the auction in favour of the petitioner bringing to the

notice of the Court that the offer made by the petitioner was communicated to the 3rd respondent and the other partners of Adarsh Oil Mills and

they did not receive any response from them. But it is to be noted that a 15 days" notice period was to be given to the 3rd respondent and the

other partners of Adarsh Oil Mills. It is clear from the despatch register of the Corporation that the letter intimating the offer of the petitioner was

actually sent to them on 13.3.1995 giving them only 10 days" time for exercising their option to purchase the said Oil Mills. Therefore, respondents

No. 1 and 2 could not confirm the sale of the unit in favour of the petitioner on 22.3.1995 vide Annexure P5. Further there is an order of the Civil

Court restraining respondents No. 1 and 2 from confirming the offer without intimating the highest bid to the 3rd respondent and other partners of

Adarsh Oil Mills. The Corporation filed an application in the Subordinate Court seeking permission to confirm the sale of the unit in favour of the

highest bidder on 22.3.1995 on which date sale was confirmed. Thus by filing the application seeking permission to confirm the sale of the unit on

22.3.1995, the respondents No. 1 and 2 confirmed the sale simultaneously on the same day without waiting for the order of the Civil Court. On

10.4.1995 the Corporation agreed to sell the property at Rs. 9,65,000/- to the plaintiff (respondent No. 3 herein). Therefore, in view of these

circumstances and when the Civil Court was seized of the matter and when the respondents No. 1 and 2 were restrained from confirming any sale

without giving an option to the 3rd respondent and his other partners the confirmation of sale in favour of the petitioner on 22.3.1995 is clearly an

illegal act on the part of respondents No. 1 and 2. No right will flow from an illegal order of confirmation and therefore, I am of the opinion that the

letter of confirmation dated 22.3.1995 vide Annexure P-7 cannot create any right in the petitioner either to seek quashing of the order of the

Senior Sub-Judge Hissar, Annexure P-20 dated 10.4.1995 or to seek recovering the possession of the property on the basis of the letter of the

Corporation dated 22.3.1995.

8. On the facts of this case, I am of the opinion that the petitioner is not entitled to claim any relief in this writ petition. However, it will be open to

him to recover the amount which he deposited with the Corporation with interest. It is unjust to allow the Corporation to keep the money

deposited by the petitioner when respondents No. 1 and 2 are not in a position to confirm the sale in favour of the petitioner. I am, therefore, of the

opinion that the petitioner is entitled for refund of the amount with interest @ 12% P.A. from the date of the deposit till the refund is made to him.

9. The writ petition is accordingly dismissed with a direction to respondents No. 1 and 2 to refund the amount deposited by the petitioner with

interest @ 12% P.A. from the date of deposit within two months from today. There will be no order as to costs.