
(1996) 113 PLR 223

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 9304 of 1994

Roshan Lal Jindal

APPELLANT

Vs

The Notified Area
Committee and Another

RESPONDENT

Date of Decision: Feb. 27, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1996) 113 PLR 223

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

Bench: Single Bench

Advocate: O.P. Goyal and Parmod Goyal, for the Appellant; Ashok Aggarwal and Rajinder Goyal, for the Respondent

Final Decision: Dismissed

Judgement

T.H.B. Chalapathi, J.

As the facts are similarly in both the writ petitions, they are disposed of by this common judgment.

2. The Notified Area Committee, Manimajra put certain sites to sale in public auction held on 30th June, 1990. The petitioner in CWP No. 9304 of 1994 and the petitioners in CWP No. 9305 of 1994 participated in the said auction. The petitioner Roshan Lal Jindal in CWP No. 9304 of 1994 became the highest bidder in respect of Booth site No. 1042, NAC, Mani Majra, while in respect of Atta-Chakki sites bearing No. 1038-1039 the petitioners in CWP No. 9305 of 1994, Roshan Lal Jindal, Moti Lal Jindal and Ashok Kumar Jindal became the highest bidders. The petitioners deposited 25 per cent of the bid money on the conclusion of the said auction. Thereafter the petitioners wanted to surrender the said sites to the Notified Area Committee as the area was not developed and there was a grave-yard and Masjid and some saw mills were also in existence at the site. Accordingly, they wrote to the Notified Area Committee on 17.11.1992 surrendering

the plot which they purchased in the public auction held on 30.6.1990. The surrender was accepted and 10 per cent of the bid amount out of 25 per cent of the amount deposited by them at the time of public auction was refunded to the petitioners. According to the petitioners, only an amount of 10 per cent of 25 per cent of the bid money is liable to forfeited and not 10 per cent of the total bid money. Therefore, the petitioner approached this Court for seeking issuance of a Writ of mandamus directing the respondents to refund the amount deposited by them after deducting 10 per cent out of 25 per cent of the bid money. According to the Notified Area Committee, it is entitled to forfeit 10 percent of the total bid money and not 10, percent of the 25 per cent of the bid as contended by the petitioners.

3. Learned Counsel for the petitioners drew my attention to a resolution passed by the Notified Area Committee on 23rd August 1991 vide Annexure P-3. Clause 18 of the terms and conditions which stood prior to 23rd August, 1991, reads as follows:-

"If at any stage the transferee due to certain compelling circumstances would like to surrender the site, he/she/they shall be allowed to do so with prior permission from the President of the Committee and the surrender would be subject to forfeiture of 10% of the amount of 25% of the cost paid at the fall of hammer. The interest amount recovered upto the date of surrender shall not in any case be refunded."

4. Since the Committee felt that there was some ambiguity in clause 18, it passed a fresh resolution on 23.8.1991, which reads as follows :-

"If at any stage, the transferee due to certain compelling circumstances would like to surrender the site, he/she/they shall be allowed to do so with prior permission from the President of the Committee and surrender would be subject to forfeiture of 10% of the amount of total bid money and there will be no discretion at all. The interest amount recovered upto the date of surrender shall also be forfeited."

5. It is, therefore, to be seen whether the amount to be forfeited is 10 per cent of the total bid amount or 10 per cent of the 25 per cent of the amount paid at the fall of hammer.

6. The public auction was held after issuing the advertisement vide Annexure P-1. Annexure P-1 does not speak of any surrender or forfeiture of any amount on surrender. The respondents placed on record Annexure R-1 which incorporates the terms and conditions of allotment of commercial sites on Free Hold Basis in the Motor Market and Commercial Complex. Clause 14 of Annexure R-1, reads as under :-

"If at any stage the transferee(s) due to certain compelling circumstances, would like to surrender the site, he/she/they shall be allowed to do so with prior permission from the President of The Committee and the surrender would be subject to forfeiture of 10% of the amount, out of 25% of the cost paid at the fall of hammer. The interest amount recovered upto date of Surrender shall not in any case be refunded."

A post-script was appended to Annexure P-1, which reads as follows :-

"Forfeiture of 10% of the amount means 10% of the total bid money."

The Notified Area Committee also placed the proceedings of the meeting of the Committee held on 8th August, 1983. In that meeting the following resolution was passed :-

"It was unanimously resolved that the interpretation of clauses 5 and 14 of the terms and conditions of auction held on 6.10.1982 is quite clear vide which 10% of the total amount of the bid has to be forfeited out of 25% deposited to allow the bidder to surrender the site."

7. Thus, according to the Counsel for the respondents, the amount to be forfeited on surrender is 10% of the total amount of the bid, but not 10% of 25 per cent of the amount deposited on the conclusion of the auction. Even in the year, the Notified Area Committee made it clear that the forfeiture will be 10 per cent of the total bid money.

8. Even assuming from that when the auction took place on 30th June, 1990, the amount of forfeiture was only 10 percent of the 25 per cent of the amount deposited, the said condition was changed by a Resolution of the Committee on 23.8.1991. Even on the basis of the resolution dated 23.8.1991 being prospective in nature, it applies to a case of surrender that is made after the date of resolution. There is no controversy that the advertisement putting the sites in auction does not contain any clause with regard to surrender and with regard to the forfeiture of the amount on surrender. At the time when the surrender took place i.e. on 17.11.1992, the clause which is operative is that the forfeiture of the amount shall be 10% of the total bid money out of 25 per cent of the cost paid. Thus at the time when the petitioners wanted to surrender the plots, the term which governs the surrender is that the surrender would be subject to forfeiture of 10 per cent of the total bid money. It is not the contention of the petitioners that the Notified Area Committee has no power to pass resolution changing the amount to be forfeited on surrender. Therefore, I do not see any illegality in the resolution dated 23.8.1991 and that resolution governs all cases of surrender that took place after 23.8.1991 and when the petitioner surrendered the site on 17.11.1992, the said resolution dated 23.8.1991 has been in force and it also governs the case of the petitioners also. I am, therefore, of the opinion that this respondent is within its limits in forfeiting 10 percent of the total bid money out of the 25 percent of the amount deposited. I do not, therefore, find any ground warranting interference with the order of forfeiture of 10 percent of the actual bid money.

9. The writ petitions are, therefore, devoid of any merit and are, therefore dismissed. There will be no order as to costs.