

प्रेषक

अतिरिक्त मुख्य सचिव, हरियाणा सरकार,  
कृषि विभाग।

सेवा में

मुख्य प्रशासक,  
हरियाणा राज्य कृषि विपणन बोर्ड,  
पंचकूला।

यादी क्रमांक 161 कृषि अनुभाग (1)-2015/12988  
चण्डीगढ़ दिनांक 30-7-15

विषय:-

CWP No. 9048 of 2015- Phoolan Devi and others Vs. State of Haryana  
and others.

उपरोक्त विषय पर माननीय उच्च न्यायालय से प्राप्त आदेश

दिनांक 11.5.2015 जिसकी प्रति आपको भी सम्बोधित है की एक प्रति अनुपालनार्थ  
एवं आवश्यक कार्यवाही हेतु भेजी जाती है।

PSCA-2938  
31/8/15

अधीक्षक,  
कृते: अतिरिक्त मुख्य सचिव, हरियाणा सरकार,  
कृषि विभाग।

CG-11/1181  
3/8

SLA-3722  
5/8/15

1625 ACS (Agri)  
Dated 16/7/15  
DP No.-

1526

REFERRED TO REPORTER

Status Dismissed

3713-USA  
16-07-15-1

498  
14/7/15 W-10

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

- To, ✓
1. The State of Haryana through Financial Commissioner-cum- Secretary, Haryana State Marketing Board, Civil Secretariat, Haryana, Chandigarh.
  2. The Chief Administrator, the Haryana State Marketing Board, Sector 6, Panchkula.
  3. The Executive Officer-cum-Secretary Market Committee, Thanesar, District Kurukshetra.

ACS/A  
कृषि जलपान  
वापसी के माक 16/7  
दिनांक 24-7-15

Subject:- CWP No. 9048 of 2015  
Phoolan Devi and others

DHANPAT SINGH, IAS  
Addl. CS Agri  
15/7/2015

Versus  
The State of Haryana and others

Petitioner(s)

Respondent(s)

USA 16/7/15  
CAS 26/7/15  
AST

Sir,  
In continuation of this Court's order dated \_\_\_\_\_ I am directed to forward herewith a copy of Order dated 11.05.2015 passed by this Hon'ble High Court in the above noted Civil Writ Petition for immediate strict compliance, alongwith copy of  
Given under my hand and the seal of this Court on this 4<sup>th</sup> Day of July 2015.  
BY ORDER OF HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Superintendent (Writ)  
for Assistant Registrar (Writs)

AS





- 2 -  
7

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CIVIL WRIT PETITION NO. 948 OF 2015**

**MEMO OF PARTIES**

1. Phoolan Devi widow of Prem Kumar
2. Renu daughter of Prem Kumar
3. Dimple daughter of Prem Kumar
4. Pankaj Sehgal son of Prem Kumar
5. Kamal Sehgal son of Prem Kumar

All residents of House No.299/8, State Bank Colony, Behind  
Main Post Office, Kurukshetra.


**...Petitioners**

**Versus**

1. The State of Haryana through Financial Commissioner-cum-Secretary, Haryana State Marketing Board, Civil Secretariat, Haryana, Chandigarh,.
2. The Chief Administrator, the Haryana State Marketing Board, Sector-6, Panchkula.
3. The Executive officer-cum-Secretary Market Committee, Thanesar, District Kurukshetra.

**...Respondents**

**Chandigarh  
Dated: 5.5.2015**

  
(Kulwant Singh) (Gaurav Arora)  
Advocates  
Counsel for the Petitioners

8

**Petition** under Articles 226 & 227 of the Constitution of India praying for issuance of a writ in the nature of certiorari for quashing the impugned dated 22.05.2013 (**Annexure P-3**) and order dated 03.07.2014 (**Annexure P-4**) passed by respondent Nos. 1 and 2, as illegal, ultra-vires, void and without jurisdiction.

**AND/OR**

And for issuance of any other writ, order or direction which this Hon'ble High Court may deems just fit and proper in the facts and circumstances of the present case.

**RESPECTFULLY SHOWETH :-**

1. That the petitioners are the permanent resident of State of Haryana and hence being citizen of India are competent to invoke the extra - ordinary writ jurisdiction of this Hon'ble High Court under Article 226/227 of the Constitution of India for grant of necessary relief.
2. That the brief facts of the case are that the State of Haryana acquired land for the development of New Grain



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CWP No.9048 of 2015  
Date of decision: 11.5.2015**

**Phoolan Devi and others**

**.....Petitioners**

**Vs.**

**The State of Haryana and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL  
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Ashish Aggarwal, Sr. Advocate with  
Mr. Gaurav Arora, Advocate for the petitioners.

**Ajay Kumar Mittal,J.**

1. The petitioners seek quashing of orders dated 22.5.2013 and 3.7.2014, Annexures P.3 and P.4 whereby appeal and the revision against the order of resumption of plot allotted to them were dismissed.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The State of Haryana acquired land for the development of New Grain Market, Thanesar and thereafter started developing the same for the construction of New Grain Market. The respondents issued a public notice for auctioning of plots measuring 20'x85' in the New Anaj Mandi, Thanesar with the condition that any person could take part in open auction and he had to deposit ₹ 5000/- as security before taking 1/4<sup>th</sup> amount of the cost of the plot at the spot. The rest of the amount was to be recovered in easy six half yearly instalments of the total amount to be deposited within 30 days of allotment. The

predecessor of the petitioners namely late Shri Prem Kumar son of Shri Thakar Dash had taken part in the auction proceedings. Plot No.5 had been released in favour of Prem Kumar at the highest bid of ₹ 6,00,000/-. He had deposited 1/4<sup>th</sup> of the auction money on the spot i.e. ₹ 1,50,000/- with the respondents. The allotment letter dated 31.5.1990 Annexure P.1 was issued to the predecessor of the petitioners specifying plot number and terms and conditions of allotment. The office of Chief Administrator had approved the bids of the predecessor of the petitioners on 25.6.1991. The predecessor of the petitioners wrote a letter to the respondents with regard to the possession of the plot in question so that the construction could be made thereon. The offer of possession had not been given. Instead of demarcation of the plot or offering possession to the predecessor of the petitioners, the respondents started proceedings regarding resumption of the plot in dispute and passed order dated 18.11.1998, Annexure P.2. According to the petitioners, there was no condition regarding resumption of plot in the allotment letter once it was auctioned and allotted to the party. The petitioners challenged the said order in appeal before the Chief Administrator. Vide order dated 22.5.2013, Annexure P.3, the appeal was dismissed. Still not satisfied, the petitioners filed revision petition before the Financial Commissioner cum Secretary Government of Haryana. Vide order dated 3.7.2014, Annexure P.4, the revision petition was also dismissed. Hence the instant writ petition.

3. Learned counsel for the petitioners contended that no offer/letter of possession had been given to the petitioners till date but proceedings for resumption of the plot in question were initiated. As per allotment letter, the respondents were entitled to charge interest and penal



interest for default which could be from the date of offer of possession. In other words, it was argued that there was no condition of resumption in Annexure P.1 allotment letter and the interest and penalty could be levied after the offer of possession by the respondents. Support was drawn from Division bench judgment of this Court in **Haryana Urban Development authority and another vs. Vinod Mittal and others**, LPA No.933 of 2009, decided on 16.10.2012. Reliance was also placed on judgments of the Apex Court in **Bahadurgarh Plot Holders Association (Regd.) vs. State of Haryana**, (1996) 1 SCC 485, **Municipal Corporation Chandigarh and others vs. M/s Shantikunj Investment Pvt. Limited**, (2006) 4 SCC 109 and **UT Chandigarh Administration and another vs. Amarjeet Singh and others**, (2009) 4 SCC 660 to contend that interest could not be demanded till the offer of possession was given.

4. After hearing learned counsel for the petitioners, we do not find any merit in the writ petition.

5. It is the admitted position that the plot in question i.e. No.5 situated at New Grain market was allotted to the predecessor of the petitioners on 5.4.1990 by open auction for ₹ 6 lacs. As per Condition No.4 of the allotment letter, the allottee was to deposit the balance 75% of the bid cost within thirty days of the allotment letter without interest or in six half yearly instalments with interest at the rate of 12.5% per annum. However, he failed to deposit the balance amount in lump-sum or in instalments. On the failure of the allottee to deposit the instalment, notice dated 14.6.1996 was issued to deposit the instalments alongwith penal interest which was followed by another notice dated 12.9.1996. Thereafter, when no response was received from the allottee, a show cause notice dated 17.4.1997 for

resumption of plot was issued. In reply thereto, the allottee pleaded that there was some family dispute regarding the plot and the amount shall be deposited thereafter. However, another notice for personal hearing was given to him when the allottee did not appear. The allottee after depositing the initial amount of 25% in 1990 never paid any instalments thereafter. Ultimately vide order dated 18.11.1998, Annexure P.2, the site was resumed. The said order was communicated to the allottee vide letter dated 5.4.1999. After the delay of more than 10 years, the legal representatives of the allottee filed appeal against the impugned order of resumption. Even there, they did not appear inspite of various opportunities. Ultimately, vide order dated 22.5.2013, Annexure P.3, the appeal was dismissed. The revision petition filed by the petitioners was dismissed vide order dated 3.7.2014, Annexure P.4. The relevant finding recorded by the revisional authority reads thus:-

“5. On perusal of the case file and after hearing the arguments advanced by both the parties, it comes out that the petitioner has not taken any care to make the payment of 75% balance amount of auction in time and thereupon his plot was resumed vide order dated 18.11.1998 by the Market Committee. I am not convinced with the arguments advanced by the learned counsel for the petitioner. The allottee died in the year 2002 but before his death the plot in question was resumed by the Market Committee and moreover the petitioner himself did not try to agitate the order of resumption during his life time. Therefore, I tend to agree with the arguments of the learned District Attorney that even the present revision petition is time barred and is not accompanied by any application for the condonation of the delay, hence the present revision petition is not maintainable. In view of the above facts and circumstances, I am of the considered view that the order dated 22.5.2013



passed by the Chief Administrator, HSAMB is having no illegality or infirmity. Therefore, the present revision petition is hereby dismissed being devoid of merits. I order accordingly.”

6. The facts and circumstances in the present case fully justify the action of the respondents in resuming the plot which was in consonance with clause 20 of the letter of allotment dated 31.5.1990 (Annexure P.1) which is as under:-

“20. Should any transferee fail to observe or comply with any of the terms and conditions mentioned above the plot will be resumed and his deposit shall be forfeited to the M.C.Thanesar which may have the property resold by public auction.”

The contention of learned counsel for the petitioners that the plot should not have been resumed as no offer of possession was made and the respondents could only charge penal interest alongwith penalty does not merit acceptance in the light of grave facts noticed hereinbefore.

7. In all fairness to learned counsel for the petitioners, adverting to the judgments relied upon by him, it may be observed that the issue arising in those cases was relating to levy of interest, compound interest and the penalty for not making the instalments in terms of the conditions of letter of allotment. The primary dispute in the present case concerns the resumption proceedings in the facts and circumstances noticed above. Therefore, none of these pronouncements come to the rescue of the petitioners. Consequently, finding no merit in the petition, the same is hereby dismissed.

**(Ajay Kumar Mittal)**  
**Judge**

**May 11, 2015**  
**'gs'**

**(Rekha Mittal)**  
**Judge**

## Supreme Court of India

### **M/S Labha Ram And Sons & Others, M/S ... vs State Of Punjab And Other on 30 April, 1998**

Author: Thomas

**Bench: M.M. Punchhi, K.T. Thomas, D.P. Wadhwa**

PETITIONER:

M/S LABHA RAM AND SONS & OTHERS, M/S UGGAR SAIN HARI KISHANT

Vs.

RESPONDENT:

STATE OF PUNJAB AND OTHER

DATE OF JUDGMENT: 30/04/1998

BENCH:

M.M. PUNCHHI, K.T. THOMAS, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL Nos. 2506-07 of 1998 [Arising out of SLP (Civil) Nos. 17058-59 of 1997] J U D G M E N T Thomas J.

Leave granted.

Appellants are dealers in food-grains having their business places at two certain localities in Ferozepur District (Punjab). Appellants in one appeal are dealers at Guru Har Sahai and appellants in the other appeals are dealers at Talwandi. According to them, they have been doing business at the old market areas in those localities for over fifty years and the State Government have declared such places as " market area" as per the provisions of Punjab Agricultural Produce Markets Act 1961 ( For short 'the Market Act'). Those areas attained much development with many facilities due to increased governmental activities.

With the enactment of Punjab New Mandi Township (Development and Regulation) Act 1960 (for short ' Mandi Township Act') powers have been conferred on the State



Government to create and declare new Market (Mandi) Townships. As per Section 3 of that Act, the State Government have power to sell, lease or otherwise transfer either by allotment or auction or otherwise, any land or building in the new Mandi Township on such terms and conditions as the Government may deem fit to impose.

In the year 1997 Government decided to create a new Mandi Complex at Guru Har Sahai another at Talwandi. Lands were acquired by Government for that purpose and buildings were constructed for providing the infrastructure to the new market areas. The immediate impact of creation of such new market townships on the appellants was that they had to move their business from the existing market areas to the new township in order to prevent closure of their business. Resultantly all of them became anxious to get accommodation in the respective new market areas but they are told to stand in the queue along with all the new comers and compete with them in the open auction.

On earlier occasions when such new Mandi townships were created the Government had provided some ameliorative reliefs to the existing traders by fixing concessional rates as for them in respect of the plots or buildings in the new Market areas. In 1985 Government issued a circular stating that "grain shops, subzi shops and food stall/booths will be allotted to Artisans (traders) in all the new Mandi area established and developed by the colonization department on 25% above the reserved price", of course subject to certain other terms and conditions. But Government did not continue with such reliefs being afforded to the existing traders for long. This is reflected in another circular issued by the Government that stall/plots would be auctioned in open and any one could compete and the highest bidder would be preferred for allotment.

Government in the present situation also entrusted the work of allotment of stall/plots to the Colonization Department which in turn took a decision to auction such plots/stall in the new Mandi complex without providing any concession for the existing traders despite they being badly affected by the establishment of new complex. Appellants, therefore, filed writ petitions in the High Court of Punjab and Haryana for issuing necessary directions to the respondents. But these writ petitions, were dismissed. Hence these appeals.

Shri RK Jain, learned Senior Counsel argued for the appellants that if the existing traders and the new-comers are placed on equal position between them for securing allotment of stalls/plots in the new Market Area that will in effect amount to treating claimants unequally which would offend Article 14 of the Constitution. He also contended that the consequences which had befallen the appellants on account of creation of the new Mandi included their virtual displacement from the place where

they established themselves over the years and they are compelled to abandon their existing trading places. According to the counsel, if they have to contest along with the new-comers for getting accommodation in the new Mandi, it would only be at the risk of substantial impairment of their right to trade under Article 19(1)(g) of the Constitution. Learned counsel relied on the decision of a three judge bench of this Court in *M/s Prem Chand Trilok Chand vs. State of Haryana* dated 7.8.1991 (CA No. 3122/91) in which claims of similar traders situated in similar circumstances were upheld by this Court. Their Lordships held thus:

"We are of the view that normally once the Government starts regulating the place of sale of agricultural produce/covered by the Act and does not permit any other place to be used for the purpose, there is an inherent obligation for the Government to provide at the new site for all the licensed dealers sufficient accommodation for carrying on their trade and until that is done it would not be possible for the Government to direct closure of the old site."

However, learned counsel for the respondents invited our attention to another decision of a two judge bench in which a different view has been adopted (*Chand Ram Ram Chand vs. State of Punjab - 1996 (9) SCC 338*) learned counsel for the appellants on the other hand informed us that subsequently another two judge bench of this Court (*Majmudar and Kurdukar*) has decided on 13.2.1998 exactly in accordance with the three judge bench decision in *M/s Puran Mal Ram Chander vs. State of Haryana* (CA 827/98). But learned Judges made it clear that the said decision is "based on the peculiar facts of the case and it shall not be treated as a precedent". Hence, it is not proper to treat that decision as laying down any proposition of law.

In *Chand Ram* (supra) the two judge bench has considered the earlier decision of the three judge bench in *Prem Chand Trilok Chand* and made the following observations:

"Putting new sites to auction and allowing everyone to compete would tantamount to the Government providing an opportunity to enable the existing licensees to shift their place of business to the new Mandi, if they so desire.

Therefore, the observations in *Prem Chand's* case to the effect that there was an obligation to provide new sites for all licensed dealers would only mean that an opportunity should be granted to the licensed dealers to acquire sites in the new Mandi."

It is noted that learned judges did not doubt the correctness of the principle that Government has an inherent obligation to provide all the licensed dealers sufficient accommodation for carrying on their trade. But can it be said that such obligation

stands discharged merely by allowing them to compete with outsiders in the open auction. It must be remembered that even without any special provision the existing traders can have such a right to compete with rest of others. We find much force in the contention of the learned counsel for the appellant that merely providing an opportunity to compete with the rest of the public for getting accommodation in the new Market, is not sufficient to discharge the inherent obligation of the Government to provide the existing traders at the new market area. hence, it is difficult to concur with the view adopted in Chand Ram Ram Chand vs. State of Punjab (Supra).

Section 3(1) of the Township Act confers power on the Government to carve out an area and to create a new Mandi with such area to be known by such name as may be specified in the notification. Sub-section (2) reads thus:

"The State Government may sell, lease or otherwise transfer, by auction, allotment or otherwise, any land or building belonging to or vested in the State Government in any new Mandi Township on such terms and conditions as it may, subject to any rules that may made under this Act, deem fit to imposes."

It is by virtue of the said power that the Government authorised Colonization Department to deal with the matter. The words "or otherwise transferred by auction, allotment or otherwise" in Section 3(2) of the Township Act are quite wide enough to enable the Government to take into consideration various factors including equitable considerations for deciding in what manner and on what conditions the lands and plots in the new Mandi should be allotted. But such wide powers are not intended to be used to the detriment of the victims of the newly created Mandis. It is not that the State government must sell the land or the building by auction without any other option. Rule 3 which has been framed under Section 3(2) and Section 25(a) of this Act states that the lands and buildings shall be sold by the State Government by public auction or allotment. In the case of sale by public auction the sale price shall be the reserve price or the price offered by the highest bidder whichever is higher. In the case of sale by allotment the sale price can be determined by the State Government from time to time keeping in view the market price thereof. While allotment of buildings and plots is made, the State Government has a duty to take into on account the handicaps to which existing dealers are subjected on account of creation of the new Mandi. Section 4 of the Mandi Township Act imposes a bar that no one shall erect or occupy any building or use or develop any site without the previous permission in writing of the "administrator". In such a situation the only avenue open to the traders is through the allotments sanctioned by the authorities.

Learned counsel for the respondent had fairly conceded that there is no difficulty to find space to accommodate the erstwhile dealer sin the new market area. But the

contention advanced is that the purpose of public auction was to earn revenue and there was no bar on the existing traders to compete with the new comers and that sufficient number of plots/shops were available to satisfy all such traders if they choose to bid in the open auction. It was also submitted that there was no bar on those traders to continue their business at old places, although for sale and purchase of agricultural produce they may have to move their business at the market yards of the new Mandis.

The above line of argument of the State seems to us rather specious. Land is acquired under the provisions of the Land Acquisition Act for establishing new Mandi township. Land so acquired is developed, plots are carved out and shops and flats are built thereon. Plots as such may be disposed of or shops and other construction thereon can be made for use of the trading. Hence the land for establishment of new Mandi is not to generate revenue for the State. It may be a laudable object for the State to earn revenues in the process but that could not be the sole or even the main purpose of acquiring land. New Mandis are established because of increase in business transactions and congestion in the old Mandis and for other such objects.

It is easy to contend that the existing traders can still operate from their old places but then for the conduct of their business for sale of agricultural produce they have to come to new Mandi. It would mean that they have to come to the new Mandis for conduct of their routine business but for rudimentary business they could continue to do the same at old places. The fact remains that any trader would like to conduct his business of sale and purchase of agricultural produce at the platform close to his shop.

We do not suggest that government should give preference to the erstwhile dealers by providing free allotment of buildings or plots not to fix a rate which is below the reserved price. It is open to the Government to fix up any rate above the reserved price for such licensed dealers, of course such fixation should not be at unreasonable rates.

We are, therefore, of the view that the decision of the three judge bench in *Prem Chand Trilok Chand* requires no re- thinking. Hence, we direct the respondents to provide preference to the appellants in the matter of allotment of building or plot in the light of the observations made above.

Appeals are thus allowed and the impugned judgments are set aside.



**PUNJAB AND HARYANA HIGH COURT**

(D.B.)

Before :- Jawahar Lal Gupta and K.S. Garewal, JJ.

CWP No. 15674 of 2000. D/d. 16.11.2000.

M/s. Shadi Ram Jai Bhagwa - Petitioners

Versus

State of Haryana - Respondent

For the Petitioners :- Mr. R.K. Jain, Advocate.

**A. Constitution of India, Articles 14 and 19(1)(g) - Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000, Rule 3(1)(iv) - Allotment of sites/booths to old licensees - Vires of the Rule - Whether the Rule so far provides that a licence shall not be eligible for allotment unless he has paid "market fee of at least Rs. 5000/- annually for the last two years" is ultra vires ? - Held that "Every provision carries with it a presumption of constitutionality. The burden of proving that the provision is ultra vires is on the person who alleges it." If nothing has been pointed out to show that the provision an unreasonable restriction or is otherwise arbitrary and unfair it cannot be declared ultra vires - Conditions of payment of Rs. 5000/- per annum for a period of two years held not unreasonable.**

[Paras 17 and 18]

**B. Constitution of India, Articles 14 and 19(1)(g) - Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000, Rule 3(1)(iv) - Allotment of sites/booths to old licensees - Auction - Allotment by auction - Where the number of contenders is much higher than the facilities to be allotted, the concerned authority has to adopt some procedure to exclude the excess and to choose the genuine and deserving ones - Method of allotment by auction after laying down some minimum eligible conditions is the fair method - It exclude all discrimination, gives an equal opportunity to all, enables a person to acquire the property by offering more than the other and gives more revenue to the State.**

[Paras 12 to 15 and 19]

**C. Allotment of plots - Application for allotment with initial deposit - Mere payment of initial amount along with the application does not confer any right to allotment - One can claim only refund of such amount.**

[Para 20]

**JUDGMENT**

**Jawahar Lal Gupta, J.** - On March 10, 2000, the State notified 'The Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000'. It was *inter alia* provided that the site shall be sold by auction. On October 30, 2000, the Haryana State Agricultural Marketing Board issued a notice regarding auction of plots at various places in the State. It was stated that the Board shall "sell sites for shops/booths by way of open auction in the ...Grains and Vegetable Markets..." Pundri was one of the places. The sites had to be auctioned on November 20, 2000.

2. The petitioners who claim to be engaged in the business of sale of vegetables "at Pundri for the last 25-30 years" have filed this petition with the prayer that the respondents be directed to allot plots/booths to them on reserve price. They also pray that the provisions of Rule 3(1)(iv) which provides that a licensee shall not be eligible for allotment unless he has paid "market fee of at least Rs. 5000/- annually for the last two years" be declared *ultra vires*. The petitioners also pray that the notice for auction of plots be quashed.

3. The petitioners aver that they are engaged in the sale of vegetables. The Market Committee is charging 2% market fee and 2% cess. The old Sabzi Mandi exists in a narrow lane. The Committee is not providing any facility. On February 28, 1991, the Market Committee had offered to give plots on the reserve price to the old licence holders and asked them to deposit a sum of Rs. 5000/- towards earnest money. The petitioners had made the deposit. Thereafter, on July 2, 1995, the then Chief Minister of Haryana had inaugurated the Vegetable Market at Pundri. At that time, only boundary wall and some platforms had been constructed. Thereafter, on November 29, 1999, the present Chief Minister declared that the Haryana Government had "decided to allot plots in areas like mandis and automobile markets to all those who have a licence..." A copy of the report published in the daily Tribune has been produced as an annexure with the petition.



4. The petitioners allege that according to Rule 3, the old licensees of the market which is to be denotified are entitled to be allotted plots in the new market only if such licensees have paid a market fee of at least Rs. 5000/- annually for the last two years. They are licensees as contemplated under Rule 3(1)(ii). They are licensed dealers who "in consideration of commission offer.... services to sell agricultural produce". The Vegetable Market at Pundri being very small, the total market fee collected in the market is upto Rs. 5000/- annually. Since the petitioners "do not fulfil - Condition No. (iv), they are not eligible to be allotted plots on reserve price in the new Vegetable Market". The petitioners allege that the condition violates Article 19(1)(g) of the Constitution of India as it imposes "an unreasonable restriction on the fundamental right of the petitioner of trade or business."

5. The petitioners also allege that the respondents are estopped from imposing the impugned condition as they had deposited Rs. 5000/- in the year 1991. The action of the respondents in proceeding to auction the plots is, thus, illegal.

6. We have heard Mr. R.K. Jain, counsel for the petitioners. He has contended that Rule 3(1)(iv) is unconstitutional and that the action of the respondents in proceeding to auction the plots is arbitrary and unfair.

7. The two questions that arise for consideration are :-

- (i) Is Rule 3(1)(iv) unconstitutional ?
- (ii) Is the action of the respondents in proceeding to sell the plots by auction illegal ?

Reg. (i) :

8. Mr. Jain contends that the rule imposes an unreasonable restriction. It is, thus, unconstitutional and should be struck down. Is it so ?

9. Before proceeding to consider this contention, it would be useful to notice the relevant part of the provision. It reads as under :-

3(1). "All immovable properties in the markets developed by the Board or Market Committees shall be disposed of by way of allotment/transfer/open auction in accordance with the provisions of these rules. The shop plots will be allotted to the old licensees of category (ii) of old market which is to be denotified, resulting in displacement of such licensed dealers of category (ii) on free hold basis, for conducting the business of sale and purchase of agricultural produce in the new markets, on the following terms and conditions, namely,

(i) in the markets where some auctions have already been held, the allotment shall be made on the basis of the average price of the last auction.

(ii) in the markets where no auction has so far been held, the allotment price shall be fixed at thirty five percent above the reserve price. The reserve price shall be worked out as per the formula approved by the Board vide its resolution dated the first June, 1987 or any other formula to be approved by the Board from time to time.

(iii) only those category (ii) licensees shall be eligible for allotment of plots who had valid licence of two years on the date of first auction, in the case of mandis where some auctions have already been held. In the case of already developed mandis where no auctions have so far been held the licensee should have valid licence of category (ii) for at least five years as on 1st January, 2000. In the case of mandis to be developed in future, the licensee should have at least two years license of category (ii) on the date of issuance of notification under Section 4 of the Land Acquisition Act, 1894 (Act of 1894), or the date of transfer of land to the Market Committee, if the land is obtained otherwise, as the case may be.

(iv) such licensees must have paid market fee of at least Rs. 5000/- annually for the last two years.

Provided that in the case of a category (ii) licensee who does not pay market fee himself, his annual turnover during the last two years should be at least rupees two lakh fifty thousand."

A perusal of the above provision shows that the properties can be disposed of by allotment, transfer or open auction. There is a provision for the allotment to the licensed dealers of the old market. In case of old licensees "of category (ii) of old market which is to be denotified", a provision for allotment has been made. The criterion for determination of price as also the condition of eligibility has been laid down. The solitary challenge raised by the petitioners is to the provision in clause (iv) which requires that the licensee "must have paid market fee of at least Rs. 5000/- annually for the last two years."

10. It is undoubtedly true that a person who is carrying on business at a place has a kind of social and personal attachment to the area. It is also true that de-notification of a particular market yard means that the dealer has to shift. This inevitably implies the setting-up of a new working place. It involves substantial expense. No trader shall like to spend if he can avoid. However, it has to be remembered that with the increase in the number of men and motors, the existing markets are not manageable. There is over-crowding. Congestion. Traffic Jams. Paucity of space for vegetables and fruits. This, it becomes imperative for the concerned authority to shift the market yard.



1. For this purpose, the State and its instrumentalities acquire the land and provide facilities. Everything costs. The provision of water, sewerage, electricity, roads, platforms for sale etc., cost substantially in terms of money. The Board or the Market Committees have to recover what they spend. They also spend on staff and salaries. In this situation, the persons who avail of the facilities have to pay. They cannot complain.

12. Equally, it needs to be remembered that we face a crisis of numbers in this country. The number of persons wanting facilities including shops is more than the number of available sites. Resultantly, the concerned authority has to adopt some procedure. It has to devise methods to screen the contenders so that the facilities are made available to those who deserve. Necessarily, the conditions of eligibility have to be laid down. Some process of selection has to be introduced.

13. What is the position in the present case? The rule provides that the plots shall be disposed of by allotment, transfer or open auction. In case of the old licensees, a provision for allotment has been made. It has been *inter alia* provided that where "some auctions have already been held", the allottee shall have to pay "the average price of the last auction". In cases where no auction has been held, the formula for working out the allotment price has been laid down. It has been further provided that the licensee should have paid market fee of at least Rs. 5000/- per annum for the last two years.

14. On an examination of the rule, it is clear that everyone is eligible to participate in the auction. In fact, the method of auction excludes all discrimination. It gives an equal opportunity to all contenders. It enables a person to acquire the property by offering more than the other. The method is apparently fair. It also serves a public cause in as much as it fills the public coffers.

15. There may be some who are genuine businessmen but are not in a position to participate in the open auction. For these men of limited means, a provision for allotment has been made. The method for determination of price has been laid down. Alongwith, the conditions of eligibility have been imposed. One of the conditions is that the dealer should have paid a market fee of at least Rs. 5000/- per annum for a period of two years. The obvious purpose is to enable the genuine dealers to get allotment and to exclude the others.

16. Mr. Jain contends that the provision imposes an unreasonable restriction on the freedom of trade. Is it so?

17. The market fee is levied @ 2%. In other words, a transaction of Rs. 100/- results in payment of Rs. 2/- as market fee. A dealer should have made transactions of a total of two and a half lacs in a year so as to be able to pay Rs. 5000/- by way of market fee. In other words, the monthly sale should be of Rs. 20833/-. In a country where onions sell at Rs. 50/- or more per kg. the provision in the rule cannot be said to be unreasonable or unfair.

18. Learned counsel has produced nothing on record to show that the provision is arbitrary or unfair. It has to be remembered that every provision carries with it a presumption of constitutionality. The burden of proving that the provision is *ultra vires* is on the person who alleges it. It is a heavy burden. In the present case, nothing has been pointed out to show that the provision places an unreasonable restriction or that it is otherwise arbitrary and unfair. Resultantly, we find no ground to uphold the contention.

The first question is, accordingly, answered against the petitioners. It is held that the provision contained in Rule 3(1)(iv) is legal and valid. *Reg : (ii)*

19. It was contended that the respondents cannot sell the plots by open auction.

The contention is misconceived. The petitioners do not fulfil the conditions of eligibility for allotment. They have the option to participate in the auction. The notice issued by the respondents affords them an opportunity. They have the right to exercise their choice. As already observed, transfer of property by open auction is one of the fairest methods. We find no infirmity in the notice for auction issued by the respondents.

20. Mr. Jain submitted that the petitioners had paid Rs. 5000/- for the allotment of plots to the Market Committee. It may be so. However, this confers no right. The petitioners have not placed anything on record to show that they were promised allotment. They have made no prayer for the refund of that money. If they want, they can seek the refund. So far as this petition is concerned, the only grounds urged are that the rule is invalid and that the method of auction is not proper. We find no merit in either of the contentions.

The second question is, accordingly, answered against the petitioners.

Resultantly, we dismiss the petition *is limine*.

Petition dismissed.

**In the High Court of Punjab and Haryana, at Chandigarh.**

**1. Civil Writ Petition No. 12018 of 2008  
Date of Decision: 26.11.2009**

Bir Singh Nain  
...Petitioner

Versus

Haryana State Agricultural Marketing Board, Haryana, Panchkula and  
Others  
...Respondents

**2. Civil Writ Petition No. 12013 of 2008**

Bhajan Lal Nain  
...Petitioner

Versus

Haryana State Agricultural Marketing Board, Haryana, Panchkula and  
Others  
...Respondents

**3. Civil Writ Petition No. 12014 of 2008**

Jagdish Lal and Another  
...Petitioners

Versus

Haryana State Agricultural Marketing Board, Haryana, Panchkula and  
Others  
...Respondents

**4. Civil Writ Petition No. 12015 of 2008**

Jasbir Singh  
...Petitioner

Versus

Haryana State Agricultural Marketing Board, Haryana, Panchkula and  
Others  
...Respondents

**5. Civil Writ Petition No. 12016 of 2008**

Krishan Lal

...Petitioner

Versus

Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others

...Respondents

**6. Civil Writ Petition No. 12017 of 2008**

Arjun Dass

...Petitioner

Versus

Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others

...Respondents

**7. Civil Writ Petition No. 12019 of 2008**

Kusum Devi

...Petitioner

Versus

Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others

...Respondents

**8. Civil Writ Petition No. 12020 of 2008**

Gir Raj Parshad

...Petitioner

Versus

Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others

...Respondents

**9. Civil Writ Petition No. 12021 of 2008**

Arjun Dass Narula

...Petitioner

Versus

Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others

...Respondents

**10. Civil Writ Petition No. 12022 of 2008**

Raj Pal

...Petitioner

Versus

Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others

...Respondents

**11. Civil Writ Petition No. 12023 of 2008**

Parshotam Lal

...Petitioner

Versus

Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others

...Respondents

**12. Civil Writ Petition No. 12050 of 2008**

Narinder Singh and Others

...Petitioners

Versus

Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others

...Respondents

**AND**



**13. Civil Writ Petition No. 17374 of 2009**

Shiv Charan Lal Sharma

...Petitioner

Versus

Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others

...Respondents

**CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA.**

Present: Mr. Deepak Sibal, Advocate  
for the petitioner.

Mr. D.K. Jhangra, Advocate  
for the respondents.

**Kanwaljit Singh Ahluwalia, J. (Oral)**

Counsel for the parties are in agreement that following Civil Writ Petitions can be decided by this common judgment:-

- i) Civil Writ Petition No. 12018 of 2008 titled as "Bir Singh Nain v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others";
- ii) Civil Writ Petition No. 12013 of 2008 titled as "Bhajan Lal Nain v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others";
- iii) Civil Writ Petition No. 12014 of 2008 titled as "Jagdish Lal and Another v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others";
- iv) Civil Writ Petition No. 12015 of 2008 titled as "Jasbir

- Singh v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others”;
- v) Civil Writ Petition No. 12016 of 2008 titled as “Krishan Lal v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others”;
- vi) Civil Writ Petition No. 12017 of 2008 titled as “Arjun Dass v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others”;
- vii) Civil Writ Petition No. 12019 of 2008 titled as “Kusum Devi v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others”;
- viii) Civil Writ Petition No. 12020 of 2008 titled as “Gir Raj Parshad v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others”;
- ix) Civil Writ Petition No. 12021 of 2008 titled as “Arjun Dass Narula v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others”;
- x) Civil Writ Petition No. 12022 of 2008 titled as “Raj Pal v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others”;
- xi) Civil Writ Petition No. 12023 of 2008 titled as “Parshotam Lal v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others”;
- xii) Civil Writ Petition No. 12050 of 2008 titled as “Narinder Singh and Others v. Haryana State Agricultural Marketing Board, Haryana, Panchkula

and Others”; And

- xiii) Civil Writ Petition No. 17374 of 2009 titled as “Shiv Charan Lal Sharma v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others”;

Counsel state that facts in all writ petitions are identical except in Civil Writ Petition No. 17374 of 2009 titled as “Shiv Charan Lal Sharma v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others” where there is a little variation of facts. Before the controversy raised in these writ petitions is appreciated, it is necessary to recapitulate the facts.

Government of Haryana, through its Nodal Agency Haryana State Agricultural Marketing Board, Haryana (hereinafter referred to as “the Board”) decided to develop New Grain and Vegetable Market at Faridabad. The petitioners participated in the auction and being successful bidders were allotted various sites in the market. 25% of the auction amount was deposited at the spot. Allotment letters were issued. Later a dispute arose, that, the Board had not provided basic amenities which included electricity connections, internal roads, platforms, boundary wall, sewerage and drinking water. In some cases, it was stated that common toilets were also not provided. Due to non provision of these basic amenities, the allottees withheld the payment of instalments. Withholding of the instalments led the Board to fasten the allottees with penal interest. Since the instalments were not paid on the ground that basic amenities were not provided, the allottees in their own wisdom decided not to construct the building on the plots allotted. Building was to be constructed as per the building plan circulated by the

Board and same was to be approved also. Non-construction raised another issue regarding the extension of time for constructing the building. Extension of the time also invited payment of non-construction fee or extension fee.

In ***U.T. Chandigarh Administration v. Amarjeet Singh and Others 2009(1) Recent Civil Reports 401***, it stands concluded that once person participated in the auction, as the site is auctioned on as is where is basis, therefore, successful bidder cannot later refuse to make the payment of instalment on the ground that basic amenities were not provided. This question was also determined by the Hon'ble Apex Court in ***Municipal Corporation, Chandigarh and Others v. M/s Shantikunj Investment Pvt. Ltd. etc. Judgment Today 2006(3) 1***. A Single Bench of this Court in ***M/s Amar Singh Pritam Singh v. State of Haryana and Others (Civil Writ Petition No. 2029 of 2001 decided on 1.5.2009)*** where the Board was relying upon case of ***Amarjeet Singh's case (supra)***, held that the petitioner having defaulted in payment of due instalments, as per agreed schedule, is liable to pay penal and compound interest, as per the agreed terms & conditions of the allotment and no direction of refund thereof can be issued.

Mr. Deepak Sibal, Advocate, appearing for the petitioners, has made valiant effort to persuade this Court to formulate contrary opinion and has brought certain issues into notice of this Court. He has relied upon Annexure P1 and has referred to para 3 of the allotment letter to say that it was specifically stated in the allotment letter that the area and the dimension shown above as given in the respective plan are subject to variation at the time of actual possession. Counsel for the petitioner

laid much stress on the word “actual possession” in para 3 of the allotment letter and submitted that the delivery of possession cannot be construed from issuance of letter of allotment. Counsel appearing for the respondent-Board referred to paras 12 and 13 of the allotment letter in which it was specifically stated that the building is to be constructed within two years from the date of issuance of allotment letter. Therefore, it was stated that in the terms & conditions of the allotment letter, time of construction is to commence from issuance of letter of allotment. Even otherwise, allotment letter specifically states that petitioner has been allotted plot No. 40. Its dimension has been also given as 20' x 50'. In this context, word “actual possession” is to be considered in a broader sense. It is at the spot when the measurement is to be taken. A fraction of square yard less or more will not make the allotment bad. Therefore, in para 3 “actual possession” was used more as a caution. Once, the plot number has been assigned which has been specifically carved out, it cannot be said that by allotment of plot offer of possession has not been made to the petitioner. Allotment letter specifically mentioned the plot number. Therefore, possession has been offered and thereafter petitioner has to approach the authorities for delivery of physical possession and demarcation. No separate letter of offer or possession is to be issued by the authorities. Petitioner has not approached the authorities by way of any communication that actual possession and demarcation of the specific plot number be given to him. Counsel has referred to Annexure P5, a communication dated 20.6.2008, and has stated that the Board had intimated the allottee of the shop to make the construction within four months as per the standard drawings/designs



approved by the Board. It was urged that till building plan was approved, the penal interest could not be charged. According to counsel, communication (Annexure P5) further says that the demarcation of the plot shall be given at the spot. Demarcation of the plot and possession are entirely different. Once the possession is offered for a specific plot vide allotment letter, on an application or on request made by the petitioner, official of the department ought to give and demarcate the plot, so that allottee may not construct a building on a plot belonging to another. Therefore, it cannot be said that the possession was not offered. Counsel has further relied upon Annexure P6 and stated that the Board had stated that the buildings are upto mark, therefore, allottee should deposit the extension fee of Rs.1,52,100/-. Counsel further states that since basic amenities were not there, therefore, charging of extension fee is not justifiable as the construction could not be raised. Counsel has further relied upon Rule 5 of Haryana Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (hereinafter referred to as "2000 Rules") to say that rule provided that interest shall only be levied from the date of issue of allotment letter after minimum basic amenities like roads, water supply, sewerage and electrification are existing. Counsel further states that since these amenities are not there, therefore, interest could not be charged.

The above said contentions in view of judgment rendered by Single Judge of this Court in ***M/s Amar Singh Pritam Singh's case*** (*supra*) cannot be entertained, as the matter stand concluded. In ***M/s Amar Singh Pritam Singh's case*** (*supra*) reliance was placed on ***M/s Shantikunj Investment's case*** and ***Amarjeet Singh's case*** (*supra*).

Due to pendency of number of similar petitions, a request was made to the Chief Administrator of the Board to remain present in the Court so that some kind of consensus may emerge and dispute could be amicably resolved. This Court intend to appreciate the initiate taken by the Chief Administrator who is present in this Court, as with mutual discussions with the counsel, he has resolved one of the issue, whether interest is to be charged at six monthly rest or at annual rest. The Chief Administrator has instructed the counsel to say that the interest will be charged at the annual rest as charging of interest at six monthly basis was not correct. Therefore, to this extent, petitioners are entitled to refund. It has been clarified that for the first three years, department had, as per rules, charged interest at six monthly rests. Thereafter, interest is to be levied at annual basis.

In view of the statement, this Court is of the view that the necessary refund shall flow to the petitioners.

Another significant concession granted by the Chief Administrator, is, that since the petitioners were in litigation for long, therefore, if the amounts have not been paid, the same can be deposited in instalments by the allottees.

Mr. Deepak Sibal has stated that there is no need of any such concession as all the allottees have already paid the amount due to the Board except the petitioner in Civil Writ Petition No. 17374 of 2009 titled as "Shiv Charan Lal Sharma v. Haryana State Agricultural Marketing Board, Haryana, Panchkula and Others". Accordingly, it is stated that allottee of plot in Civil Writ Petition No. 17374 of 2009 has to pay more than Rs.2,00,000/- towards interest. Taking into consideration the grant

of concession by the Chief Administrator, it is directed that allottee in Civil Writ Petition No. 17374 of 2009 may pay the interest in four monthly equated instalments. For making the payment in instalments henceforth, no penal interest will be charged.

The stand of the Board that basic amenities were provided at the time of allotment is disputed by the allottees. Under the writ petition, this Court will not adjudicate this issue. Since the matter has already been decided by a Single Judge of this Court relying upon judgment in ***M/s Shantikunj Investment's case (supra)***, petitioners have rightly paid the penal interest. Therefore, petitioners are not entitled to any refund for making payment of extension fee and penal interest.

**(Kanwaljit Singh Ahluwalia)**  
**Judge**

**November 28, 2009**

“DK”

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (C) NO. 2563 OF 2013  
IN  
CIVIL APPEAL NO. 1550 OF 2011

HARYANA STATE AGRICULTURAL  
MARKETING BOARD & ANR.

.....

PETITIONERS

VERSUS

RAJ PAL & ANR.

.....

RESPONDENTS

O R D E R

There is an inordinate delay of 930 days in filing the review petition which we are not inclined to condone.

That apart, having carefully gone through the grounds urged in the review petition, we are fully satisfied that no case for review of the order dated 10<sup>th</sup> February, 2011 is made out. The review petition is, accordingly, dismissed on the ground of delay as also on merits.

.....J  
[A.K. PATNAIK]

.....J  
[CHADNRAMAULI KR. PRASAD]

NEW DELHI  
DECEMBER 03, 2013.

O R D E R

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 instalments 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 30<sup>th</sup> 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 instalments of principal and interest, if the auction purchaser wanted to pay the 75% amount in six half yearly instalments as also the dates on which the instalments 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	Number of Plot	Area of Plot	Price of Plot	Name of Purchaser
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4

Plot				
Shops	108	12'x27.5'	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 instalments together with interest @ 15% p.a. accruing from the date of issue of this letter as mentioned hereunder.

Number of Instalments	Due date of Instalments	Amount of Instalments	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 instalment(s) by 10<sup>th</sup> of every month due, compound interest @ 10% p.a. alongwith penal interest @ 4% p.a. with instalments shall be charged.

xxx xxx xxx

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

...

xxx xxx xxx

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 instalments of the auction price and did not pay the



interest. Some of the allottees also committed default in paying the instalment 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 9<sup>th</sup> July, 2007 calling upon them to pay the balance sale price and interest on the instalments 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 instalments 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 *UT Chandigarh Administration vs. Amarjeet Singh and others* 2009 (4) SCC 660:

"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 instalments, with may be specified by the Board from time to time. The first such instalment shall fall due after six months from the date of allotment letter. However, interest on instalments 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 vs. Shantikunj Investment (P) Ltd.* 2006 (4) SCC 109, 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 instalment 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 instalment 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 is 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 vs. Amarjeet Singh and others  
(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 vs. State of Haryana (1996) 1 SCC 485, 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 instalments 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 instalments merely on the ground that some of the amenities were not ready. If they were not entitled for postponement of the instalments, it follows that they will be liable to pay the normal interest on the delayed instalments 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.

.....J.  
[ R.V. RAVEENDRAN ]

NEW DELHI  
FEBRUARY 10, 2011

.....J.  
[ A.K. PATNAIK ]



**THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.**

**State of Haryana through its Chief Secretary, Civil  
Secretariat, Haryana, Chandigarh.**

**Haryana State Agricultural Marketing Board through its  
Administrator, Mandi Bhawan, Sec-6, Panchkula, Haryana.**

**The Executive Officer cum Secretary, Market Committee,  
Jind, Tehsil and District Karnal.**

**Subject : Civil Writ Petitions**

- WP NO. 2943 of 2008 Sham Lal vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 3121 of 2008 Shamsher Singh vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 3062 of 2008 Raj Giri vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 3061 of 2008 Raghuvir Singh vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 3060 of 2008 Krishan Kumar vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 2944 of 2008 Mam Chand vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 3751 of 2008 Subhash Chand vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 3750 of 2008 Isham Singh vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 3749 of 2008 Om Parkash vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 3748 of 2008 Sisan Kumar vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 3747 of 2008 Anil Kumar vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 9419 of 2008 Vinod Kumar vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 9410 of 2008 M/s R.B. Trading Co. vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 9409 of 2008 Subhash Chand vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 3771 of 2008 Suresh Sharma vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 3754 of 2008 Shiv Charan Dass vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 3753 of 2008 Roshan Lal vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 3752 of 2008 Gurdial Singh vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 10023 of 2008 Dinesh Kumar vs. State of Haryana etc.
- WP NO. 10211 of 2008 Mam Chand vs. State of Haryana etc.
- WP NO. 10153 of 2008 Raj Kumar vs. State of Haryana etc.
- WP NO. 9422 of 2008 Faquir Chand vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 9421 of 2008 Des Raj vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 9420 of 2008 Daya Singh vs. Haryana State Agri. Mkt. Board and anr.
- WP NO. 9993 of 2008 Ram Nath vs. State of Haryana etc.
- WP NO. 9441 of 2008 Rishi Prakash vs. State of Haryana etc.
- WP NO. 9995 of 2008 Ashok Kumar vs. State of Haryana etc.
- WP NO. 9996 of 2008 Ashok Kumar vs. State of Haryana etc.

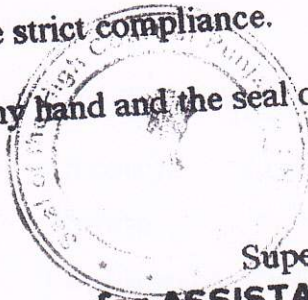


- CWP NO. 9425 of 2008 Devender Kumar vs. Haryana State Agrl. Mkt. Board and anr.
  - CWP NO. 9435 of 2008 Raj Kumar versus Haryana State Agrl. Mkt. Board and anr.
  - CWP NO. 9445 of 2008 Gaje Singh Versus State of Haryana
  - CWP NO. 9956 of 2008 Suresh Kumar vs. Haryana State Agrl. Mkt. Board and anr.
  - CWP NO. 9955 of 2008 Raghbir Singh versus Haryana State Agrl. Mkt. Board and anr.
  - CWP NO. 9985 of 2008 Raj Pal versus State of Haryana etc.
  - CWP NO. 9991 of 2008 Rajinder Kumar versus State of Haryana etc.
  - CWP NO. 9992 of 2008 Siya Ram versus State of Haryana etc.
- Respondents

In continuation of this Court's orders dt.28.2.2008, 29.2.2008, 13.3.2008, 7.5.2008 issued to you in the above noted 37 cases, I am directed to forward herewith a copy each of orders dated 15.10.2008, passed by this court in the above noted case for immediate strict compliance.

Given under my hand and the seal of the Court this 20<sup>th</sup> of November ,

2008.



Superintendent (Writs)  
**for ASSISTANT REGISTRAR(WRITS)**

28/11/08

IN THE HIGH COURT FOR THE STATES OF PUNJAB &  
HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION NO. 2943 OF 2008.

Sham Lal son of Sh. Manohar Lal, resident of  
village- Koer, Tehsil and District- Karnal.

.....Petitioner.

versus

1. Haryana State Agricultural Marketing Board  
through its Chief Administrator, Mandi  
Bhawan, Sector-6, Panchkula, District-  
Panchkula, Haryana.
2. The Executive Officer cum Secretary, Market  
Committee, Nighdu, Tehsil and District-  
Karnal.

.....Respondents.

Civil Writ Petition under Article 226/227 of  
the Constitution of India for issuance of  
writ of Certiorari for quashing the demand  
notice dated 1.5.2007 ( Annexure-P-10 ) vide  
which the petitioner have demanded payment  
the interest, and penal interest ;

AND



20/5/2008  
14th May 2008  
High Court  
Chandigarh



original price of the plot/booth, fixed at  
the time of auction of the plot/booth;

AND

For issuance of writ of Mandamus to provide  
facilities to the petitioner at the New  
Grain Market, Nighdu;

AND/OR

Any other writ, order and/or direction which  
this Hon'ble Court may deem fit in the facts  
and circumstances of the present case.

RESPECTFULLY SHOWETH :-

1. That the petitioner belongs to District-Karnal, which falls in Haryana and is also citizen of India, thus, competent to invoke the extra-ordinary writ jurisdiction of this Hon'ble Court under Article 226/227 of the Constitution of India.
2. That the dispute in brief in the present case is whether the respondents are justified in retaining the entire amount of the auction money without providing any facilities to the petitioner. Further they are demanding interest and penalties despite the fact that they have been enjoying the money deposited by the petitioner for the last 8 years even while causing losses to the petitioner.
3. That at this stage a bare perusal of the



CWP No.2943 of 2008

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

\* \* \* \* \*

CWP No.2943 of 2008

Date of decision : October 15, 2008

\* \* \* \* \*

Sham Lal

.....Petitioner

Versus

Haryana State Agricultural Marketing Board  
and others

.....Respondents

\* \* \* \* \*

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA  
HON'BLE MR. JUSTICE JORA SINGH**

\* \* \* \* \*

Present: Mr. Yogesh Goyal, Advocates  
for the petitioner.

Mr. Durgesh Aggarwal, Advocate for the respondents.

\* \* \* \* \*

**JORA SINGH, J.**

This judgement shall dispose of CWP Nos. 2943, 2944, 3060, 3061, 3062, 3121, 3747, 3748, 3749, 3750, 3751, 3752, 3753, 3754, 3771, 9409, 9410, 9419, 9420, 9421, 9422, 9425, 9435, 9441, 9445, 9455, 9956, 9975, 9977, 9985, 9991, 9992, 9993, 9995, 10023, 10153, 10211 of 2008 pertaining to Market Committee, Nighdu, Tehsil and District Karnal. In all the writ petitions common question involved is that whether respondents vide demand notice

grant them interest and penal interest on the original price of the



lots/booths. Secondly, the respondents are to provide facilities to the petitioners at the New Grain Market at Nighdu.

Facts are culled out from CWP No.2943 of 2008 titled as, Sham Lal Vs. Haryana State Agricultural Marketing Board and another'.

Writ petitioners requested for the issuance of writ of certiorari for quashing the demand notices vide which the respondents demanded payment of interest and penal interest with a prayer that the respondents be directed not to charge any interest or penal interest on the original price of the plots/booths fixed at the time of auction of the plots/booths and respondents be also directed to provide facilities to the writ petitioners at the New Grain Market, Nighdu. There was an advertisement in January 1999 (Annexure P-1) and vide this advertisement, the respondents came out with a scheme for setting up of a New Grain market. Sites of the shops/booths etc. was to be auctioned in the open auction. Reserve price for the various sites was fixed. Respondents were to provide basic facilities. Reserve price included all the development charges. Auction was on 13.1.1999. Writ petitioners had taken part in the auction proceedings. Different sites were allotted to the writ petitioners. Allotment letter (Annexure P-3) was issued. At the time of auction, there were no facilities at the grain market site. To construct shops/booths and for their proper functioning, certain basic facilities like roads, sewerage water supply etc. are needed. Auction purchaser had to deposit 25% of the amount at the time of auction. Remaining 75% was to be deposited in either of the two modes.



Firstly, the entire 75% price could be paid within a period of 30 days. Secondly, the auction purchaser could choose to deposit the 75% of the remaining amount in six half yearly installments with interest @ 15% along with installment price. Apart from this, there was a provision of 4% penal interest, in case installments not deposited in time. Writ petitioners deposited 25% of the auction amount at the time of auction. Remaining 75% was deposited by 2002. As per Sub-Rule 5 of Rule 4 and Rule 5 of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Amended Rules, 2002, interest on installments can be charged from the offer of possession of the plot and under Rule 5, offer of possession can only be given if the minimum basic facilities like roads, water supply, sewerage connection are existing at the site and if the basic facilities are not existing then, only after providing the said facilities, offer of possession could be given. Respondents have not offered possession to the petitioners, therefore, the respondents cannot recover interest/penal interest. Market committee was responsible for development of the market and for handing over the possession to the writ petitioners. Writ petitioners were to raise construction within a period of two years after handing over of the possession by the respondents failing which writ petitioners were liable for payment of penalty. Without basic facilities, writ petitioners were not in a position to raise construction. Auction was in the year 1999 and by 2002 entire payment was deposited by the writ petitioners.

Respondents have filed joint written statement and

and the writ petition inter alia on the grounds that new Grain



Market, Nighdu is small and seasonal market. Basic facilities required for smooth functioning of the business have already been provided in the market. At the time of auction, there was no condition that all the facilities like roads, water supply, drainage, sewerage etc. should be a condition precedent for the allotment of different sites. Auction was in the year 1999. Terms and conditions of the contract were known to the writ petitioners. Datewise basic facilities provided by the market Committee, Nighdu are as under:

Sr. No.	Works	Started on	Completed on	Expenditure incurred (In Rs. )
1	Roads	18.5.1995	15.4.1999	16367620.43/-
2	Cover Sheds	-do-	-do-	-do-
3	Public Toilets	-do-	-do-	-do-
4	Plat form	-do-	-do-	-do-
5	Drainage	-do-	-do-	-do-
6	Boundary Wall	11/08/94	31.5.1995	2300064.63/-
	Water Supply	2/2001	-----	17,89,000/- (incurred up to 8/2007)
7				14,33,000/- (incurred up to 8/2007)
	Sewerage	1/2002	-----	
8				341852/-
	Tower Lights	6/97 and	6/97	
9		4/2000	& 4/2000	+1002910/-

It has further been stated in the written statement that allotment letters issued to the writ petitioners itself are an offer of possession. After allotment, writ petitioners have raised construction at the site and the business is being carried out by the writ



CWP No.2943 of 2002  
petitioners. That writ petitioners failed to deposit the installments in a regular manner. Most of the facilities have already been provided while others are in the various stages of development.

Learned counsel for the writ petitioners argued that the Market Committee, Nighdu as per advertisement (Annexure P-1) had auctioned different sites on 13.1.1999. Writ petitioners have deposited entire payment by 2002. Basic facilities were not provided. Without providing basic facilities, notices were issued to the writ petitioners to charge interest and penal interest. Without providing basic facilities, respondents cannot charge interest or penal interest. In support of his contentions, counsel for the writ petitioners cited CWP No.9120 of 2002 titled, '**Gian Singh and others v. State of Haryana and others**'

Learned counsel for the respondents argued that different sites as per advertisements were auctioned on 13.1.1999. Twenty five per cent was to be deposited at the time of auction. Remaining 75% was to be deposited either within a period of 30 days or with interest in six half yearly installments. Writ petitioners have deposited the auction amount and to carry out business, all the basic facilities have already been provided in the market. Demand notices were issued when payment was not deposited as per allotment letters and construction was not raised. Basic facilities were not the condition precedent for the allotment of plots/booths.

Admittedly, Market Committee, Nighdu as per advertisement in January 1999 (Annexure P-1) was to set up a Grain  
tion was on 13.1.1999. Writ petitioners were



allotted different plots/booths. As per auction, 25% of the total auction amount was deposited at the time of auction. Remaining 75% was deposited either within a period of 30 days or in six half yearly installments with interest at the rate of 15% along with the installment price. If installment price was not paid in time, then the writ petitioners are to pay penal interest at the rate of 4%. The relevant sub Rule 4 (5) and Rule 5 are reproduced as under:

**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 fifteen percent interest or at such rate of interest as 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 issue of allotment letter. If minimum basic facilities i.e Roads, Water Supply, Sewerage and electrification are existing and if the said basic*

*facilities are then after providing the*



said basic facilities."

As per the above Rules and the advertisement, basic facilities are to be provided first and then offer of possession. Interest on installments accrues from the date of offer of possession and possession can only be delivered if minimum basic facilities are existing. As per the respondents, most of the basic facilities have already been provided in the market while others are in the various stages of development. That means ~~all~~ the basic facilities were not provided to the writ petitioners as per Annexure R-1 and R-2 and R-3 Roads, Cover sheds, Public Toilets, Plat Form, Water Cooler, Drainage started on 18.5.1995 and completed on 15.4.1999 and Boundary Wall started on 11.8.1994 and completed on 31.5.1995.

As per Annexure R-2, Providing W/S GM, Nighdu started on 2/2001 and Providing Sew/Se GM, Nighdu started on 1/2002. Annexures R-1, R-2, and R-3 clearly shows that basic facilities were not provided to the writ petitioners while the entire payment was deposited by 2002. No document from the side of respondents that payment not deposited as per terms and conditions of auction.

In CWP No. 9120 of 2002, auction was on 27.6.1993, 12.1.1994 and 30.7.1998. Installments were being deposited regularly. Most of the basic amenities were not provided to the writ petitioners. The stand of the Market committee was to the effect that all amenities have been provided and a sum of Rs.5,76,300 stands deposited with the Department of Public Health, Government of Haryana for providing the sewerage facility and it was held that the writ petitioners who have not deposited full prices of the



shops/booths were to deposit the balance price in six monthly equal installments. First installment was to be deposited by 30.9.2003. Respondents were directed to provide basic facilities within a period of six months and till the basic amenities were made available, the respondents were directed not to charge interest on the balance price payable by the writ petitioners.

In **Om Parkash and others vs. Haryana State Agricultural Marketing Board and another**, 2003 (3) PLR 772, Hon'ble High Court has held as under:

*Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 Rule 5 (4)-Marketing Board established a new market and auctioned the plots on installments – Board not providing facilities of roads, water, sewerage connections, etc. which the Board was duty bound – until and unless such facilities are provided to the allottees, the Board is not entitled to charge interest on the installments.*

Hon'ble High Court held that respondents are to provide water supply and sewerage facilities in the New Grain Market, Barwala within a period of one year. Respondents were directed not to charge interest and penal interest till the water and sewerage facilities are provided. Writ petitioners were directed to raise construction within a period of two years from the date of providing of the water and sewerage facilities. In the meanwhile, writ petitioners were directed to continue to pay installments of the price already



No 2943 of 2008  
fixed without interest. Interest was to be payable after facilities of water supply and sewerage are provided.

In view of the all discussed above, all the writ petitions are disposed of with the following directions:

If the writ petitioners have not deposited any installment then the same is to be deposited within a period of one month.

The respondents are directed not to charge interest and penal interest as per different demand notices issued to the writ petitioners.

The respondents are directed not to charge any interest/penal interest on the original price of the plots/booths fixed at the time of auction of the plots/booths.

The respondents are directed to provide the remaining basic facilities to the writ petitioners at the new Grain Market, Nighdu within a period of six months.

Sd/- Jora Singh  
Judge

Sd/- Rajive Bhalla  
Judge

True Copy

27/12/08  
Examiner

October 15, 2008

ritu

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20/10/08



IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.78 OF 2015  
(Arising out of S.L.P. (C) No.9859 of 2013)

State of Haryana and Others

Appellant(s)

Versus

M/s. Padam Chand subhash Chand  
and Another

Respondent(s)

WITH

CIVIL APPEAL NO.79 OF 2015  
(Arising out of S.L.P. (C) No.9860 of 2013)  
CIVIL APPEAL NO.80 OF 2015  
(Arising out of S.L.P. (C) No.9861 of 2013)  
CIVIL APPEAL NO.81 OF 2015  
(Arising out of S.L.P. (C) No.9862 of 2013)  
CIVIL APPEAL NO.82 OF 2015  
(Arising out of S.L.P. (C) No.9863 of 2013)  
CIVIL APPEAL NO.83 OF 2015  
(Arising out of S.L.P. (C) No.13005 of 2014)

O R D E R

Leave granted.

The singular grievance that has emerged in these appeals by special leave is whether the High Court is justified in placing reliance on the decision rendered in *Haryana State Agricultural Marketing Board and Another vs. Raj Pal*, (2011) 13 SCC 504, for the purpose of coming to hold

as follows:

"In the present case, even from the report of the Local Commissioner, it is apparent that the basic amenities such as water supply,

roads and sewerage are available. the allottees have started work in the New Anaj Mandi, which is apparent from the fact that Market Committee has realized substantial amount of market fee from the conduct of the transactions of sale and purchase in new Market yard vis-a-vis the transaction of sale and purchase conducting in old Market yard. The basic amenities have been provided. May be there is scope of improvement of quality of amenities provided, but that will not absolve the allottees/lessees not to pay the interest on the amount of instalments.

On a perusal of the said authority, it is manifest that the two-Judge Bench has noted the contention in paragraph 9, which is as follows:

"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."

Thereafter, this Court has referred to the decisions



in *UT Chandigarh Admn. vs. Amarjeet Singh*, (2009) 4 SCC 660 and *Municipal Corporation, Chandigarh vs. Shantikunj Investment (P) Ltd.*, (2006) 4 SCC 109 and the rule, that is, Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 1997 (for short, 'the 1997 Rules') and opined as follows:

"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 instalments 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.

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

On proper appreciation of the aforesaid paragraphs, it is clear as crystal that in the absence of provisions in the 1997 Rules, no penal interest could be levied. Mr. Hooda has drawn our attention to the fact that Raj Pal's case was decided on the basis of the 1997 Rules, but, thereafter, the Rules have been amended in 2000, which is called Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (for short, 'the 2000 Rules'). Rule 4(6) of the said Rules reads as follows:

"4(6) In case of failure of the allottee to deposit the installment in time penal interest at the rate of four percent per annum to be compounded half yearly shall be charged in addition to the normal interest. In case of default of two successive installments, the plot and the building, if constructed, shall be resumed by the Market Committee after giving an opportunity of being heard to the concerned allottee. /,

Placing reliance on the same, it is submitted by Mr. Hooda that penal interest is leviable.

At this juncture, Mr. Pardeep Dahiya, learned counsel for the respondent, would contend that when the basic facilities were not provided, question of levying of penal interest does not arise. He has commended us to Rule 5 of the 2000 Rules, which reads as follows:

"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 issue 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."

Ordinarily, we would have adverted to the said contention, but on a scrutiny of the order passed by the High Court, we think that it would be inappropriate to address the same, for the High Court on the basis of material on record has come to hold as follows:

"In Raj Pal's case (supra) the Hon'ble Supreme Court has noticed that the Rules did not contemplate charging of compound interest and penal interest. Therefore, the present writ petitions are disposed of with a direction to the respondents to issue revised demand notices claiming simple interest at the rate of 15% per annum. The petitioners shall pay the due amount within three months from the date of receipt of the demand notice. 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."

The said reasoning of the High Court is based on the facts. The respondents have not preferred any appeal and, therefore, it is binding on them. As we find from the impugned order, the High Court has opined that the levy of penal interest is impermissible as there is no provision in the Rules. As we have stated herein-above, the amended Rules enshrine the provision for levy of penal interest.



In view of the aforesaid, we allow the appeals, set aside the order passed by the High Court to the extent it has stated that penal interest ~~cannot~~ be levied. However, it has come to our notice that the resumption had taken place in respect of some of the allottees and, therefore, they shall pay penal interest from the date they were visited with the order of passing of resumption till the date they were put back in possession. Be it stated, this Court on 9<sup>th</sup> May, 2014, had passed the following order:

"Heard Mr. Narender Hooda, learned senior counsel for the State of Haryana. It is urged by him that there is a provision for imposition of penal interest on the delayed instalment as per rules.

The learned counsel for the respondents submitted that he has already paid the principal amount and the penal interest apart from the extension fee.

Mr. Hooda seriously disputed about the payment of penal interest and extension fee. The said aspect shall be adverted to at the time of final hearing of the special leave petition on 4<sup>th</sup> August, 2014. However, the petitioners shall hand over the possession of the allotted land to the respondents.

Be it clarified, handing over of possession by the petitioners shall be without prejudice to the contentions raised in this petition."

We must note that Mr. Hooda has submitted that the possession was not taken over. Be that as it may, without entering into the said debate, we would direct that penal interest shall be leviable till the order of resumption and,



thereafter, from 9<sup>th</sup> May, 2014.

Be it stated, we have only clarified the position as regards the penal interest. It has nothing to do with the levy of simple interest, for that is covered by the decision of the High Court. The exoneration of penal interest is waived regard being had to the special features of the case. The simple interest that has been demanded be paid within six months from today and for the said six months no interest shall be levied, as we are extending the time.

Learned counsel for the respondents submitted that this Court should dislodge the finding of the High Court in exercise of power under Order 41 Rule 33 of the Code of Civil Procedure, but we are not inclined to accept such a prayer.

The appeals are, accordingly, disposed of. There shall be no order as to costs.

.....J.  
(Dipak Misra)

.....J.  
(Prafulla C. Pant)

New Delhi;  
January 07, 2015.



This judgement ranked 1 in the hitlist.

M/s. Shadi Ram Jai Bhagwan v. State of Haryana, (P&H)(DB) : **Law Finder Doc Id # 14896**

**2001(1) R.C.R.(Civil) 763 : 2001(2) PLR 469 : 2001(1) PLR 262 : 2001 AIHC 2527**

**PUNJAB AND HARYANA HIGH COURT**

(D.B.)

Before :- Jawahar Lal Gupta and K.S. Garewal, JJ.

CWP No. 15674 of 2000. D/d. 16.11.2000.

M/s. Shadi Ram Jai Bhagwa - Petitioners

Versus

State of Haryana - Respondent

For the Petitioners :- Mr. R.K. Jain, Advocate.

A. Constitution of India, Articles 14 and 19(1)(g) - Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000, Rule 3(1)(iv) - Allotment of sites/booths to old licensees - Vires of the Rule - Whether the Rule so far provides that a licence shall not be eligible for allotment unless he has paid market fee of at least Rs. 5000/- annually for the last two years" is ultra vires ? - Held that "Every provision carries with it a presumption of constitutionality. The burden of proving that the provision is ultra vires is on the person who alleges it." If nothing has been pointed out to show that the provision an unreasonable restriction or is otherwise arbitrary and unfair it cannot be declared ultra vires - Conditions of payment of Rs. 5000/- per annum for a period of two years held not unreasonable.

[Paras 17 and 18]

B. Constitution of India, Articles 14 and 19(1)(g) - Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000, Rule 3(1)(iv) - Allotment of sites/booths to old licensees - Auction - Allotment by auction - Where the number of contenders is much higher than the facilities to be allotted, the concerned authority has to adopt some procedure to exclude the excess and to choose the genuine and deserving ones - Method of allotment by auction after laying down some minimum eligible conditions is the fair method - It exclude all discrimination, gives an equal opportunity to all, enables a person to acquire the property by offering more than the other and gives more revenue to the State.

[Paras 12 to 15 and 19]

C. Allotment of plots - Application for allotment with initial deposit - Mere payment of initial amount along with the application does not confer any right to allotment - One can claim only refund of such amount.

[Para 20]

**JUDGMENT**

**Jawahar Lal Gupta, J.** - On March 10, 2000, the State notified 'The Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000'. It was *inter alia* provided that the site shall be sold by auction. On October 30, 2000, the Haryana State Agricultural Marketing Board issued a notice regarding auction of plots at various places in the State. It was stated that the Board shall "sell sites for shops/booths by way of open auction in the ...Grains and Vegetable Markets..." Pundri was one of the places. The sites had to be auctioned on November 20, 2000.



The petitioners who claim to be engaged in the business of sale of vegetables "at Pundri for the last 25-30 years" have filed this petition with the prayer that the respondents be directed to allot plots/booths to them on reserve price. They also pray that the provisions of Rule 3(1)(iv) which provides that a licensee shall not be eligible for allotment unless he has paid "market fee of at least Rs. 5000/- annually for the last two years" be declared *ultra vires*. The petitioners also pray that the notice for auction of plots be quashed.

3. The petitioners aver that they are engaged in the sale of vegetables. The Market Committee is charging 2% market fee and 2% cess. The old Sabzi Mandi exists in a narrow lane. The Committee is not providing any facility. On February 28, 1991, the Market Committee had offered to give plots on the reserve price to the old licence holders and asked them to deposit a sum of Rs. 5000/- towards earnest money. The petitioners had made the deposit. Thereafter, on July 2, 1995, the then Chief Minister of Haryana had inaugurated the Vegetable Market at Pundri. At that time, only boundary wall and some platforms had been constructed. Thereafter, on November 29, 1999, the present Chief Minister declared that the Haryana Government had "decided to allot plots in areas like mandis and automobile markets to all those who have a licence..." A copy of the report published in the daily Tribune has been produced as an annexure with the petition.

4. The petitioners allege that according to Rule 3, the old licensees of the market which is to be denotified are entitled to be allotted plots in the new market only if such licensees have paid a market fee of at least Rs. 5000/- annually for the last two years. They are licensees as contemplated under Rule 3(1)(ii). They are licensed dealers who "in consideration of commission offer.... services to sell agricultural produce". The Vegetable Market at Pundri being very small, the total market fee collected in the market is upto Rs. 5000/- annually. Since the petitioners "do not fulfil - Condition No. (iv), they are not eligible to be allotted plots on reserve price in the new Vegetable Market". The petitioners allege that the condition violates Article 19(1)(g) of the Constitution of India as it imposes "an unreasonable restriction on the fundamental right of the petitioner of trade or business."

5. The petitioners also allege that the respondents are estopped from imposing the aforesaid condition as they had deposited Rs. 5000/- in the year 1991. The action of the respondents in proceeding to auction the plots is, thus, illegal.

6. We have heard Mr. R.K. Jain, counsel for the petitioners. He has contended that Rule 3(1)(iv) is unconstitutional and that the action of the respondents in proceeding to auction the plots is arbitrary and unfair.

7. The two questions that arise for consideration are :-

(i) Is Rule 3(1)(iv) unconstitutional ?

(ii) Is the action of the respondents in proceeding to sell the plots by auction illegal ?

Reg (i) :

8. Mr. Jain contends that the rule imposes an unreasonable restriction. It is, thus, unconstitutional and should be struck down. Is it so ?

9. Before proceeding to consider this contention, it would be useful to notice the relevant part of the provision. It reads as under :-

3(1). "All immovable properties in the markets developed by the Board or Market Committees shall be disposed of by way of allotment/transfer/open auction in accordance with the provisions of these rules. The shop plots will be allotted to the old licensees of category (ii) of old market which is to be denotified, resulting in displacement of such licensed dealers of category (ii) on free hold basis, for conducting the business of sale and purchase of agricultural produce in the new markets, on the following terms and conditions, namely,

(i) in the markets where some auctions have already been held, the allotment shall be made on the basis of the average price of the last auction.

(ii) in the markets where no auction has so far been held, the allotment price shall be fixed at thirty five percent above the reserve price. The reserve price shall be worked out as per the formula approved by the Board vide its resolution dated the first June, 1987 or any other formula to be approved by the Board from time to time.

(iii) only those category (ii) licensees shall be eligible for allotment of plots who had



valid licence of two years on the date of first auction, in the case of mandis where some auctions have already been held. In the case of already developed mandis where no auctions have so far been held the licensee should have valid licence of category (ii) for at least five years as on 1st January, 2000. In the case of mandis to be developed in future, the licensee should have at least two years license of category (ii) on the date of issuance of notification under Section 4 of the Land Acquisition Act, 1894 (Act of 1894), or the date of transfer of land to the Market Committee, if the land is obtained otherwise, as the case may be.

(iv) such licensees must have paid market fee of at least Rs. 5000/- annually for the last two years.

Provided that in the case of a category (ii) licensee who does not pay market fee himself, his annual turnover during the last two years should be at least rupees two lakh fifty thousand."

A perusal of the above provision shows that the properties can be disposed of by allotment, transfer or open auction. There is a provision for the allotment to the licensed dealers of the old market. In case of old licensees "of category (ii) of old market which is to be denotified", a provision for allotment has been made. The criterion for determination of price as also the condition of eligibility has been laid down. The solitary challenge raised by the petitioners is to the provision in clause (iv) which requires that the licensee "must have paid market fee of at least Rs. 5000/- annually for the last two years."

10. It is undoubtedly true that a person who is carrying on business at a place has a kind of social and personal attachment to the area. It is also true that de-notification of a particular market yard means that the dealer has to shift. This inevitably implies the setting-up of a new working place. It involves substantial expense. No trader shall like to spend if he can avoid. However, it has to be remembered that with the increase in the number of men and motors, the existing markets are not manageable. There is overcrowding. Congestion. Traffic Jams. Paucity of space for vegetables and vehicles. This, it becomes imperative for the concerned authority to shift the market yard.

11. For this purpose, the State and its instrumentalities acquire the land and provide facilities. Everything costs. The provision of water, sewerage, electricity, roads, platforms for sale etc., cost substantially in terms of money. The Board or the Market Committees have to recover what they spend. They also spend on staff and salaries. In this situation, the persons who avail of the facilities have to pay. They cannot complain.

12. Equally, it needs to be remembered that we face a crisis of numbers in this country. The number of persons wanting facilities including shops is more than the number of available sites. Resultantly, the concerned authority has to adopt some procedure. It has to devise methods to screen the contenders so that the facilities are made available to those who deserve. Necessarily, the conditions of eligibility have to be laid down. Some process of selection has to be introduced.

13. What is the position in the present case? The rule provides that the plots shall be disposed of by allotment, transfer or open auction. In case of the old licensees, a provision for allotment has been made. It has been *inter alia* provided that where "some auctions have already been held", the allottee shall have to pay "the average price of the last auction". In cases where no auction has been held, the formula for working out the allotment price has been laid down. It has been further provided that the licensee should have paid market fee of at least Rs. 5000/- per annum for the last two years.

14. On an examination of the rule, it is clear that everyone is eligible to participate in the auction. In fact, the method of auction excludes all discrimination. It gives an equal opportunity to all contenders. It enables a person to acquire the property by offering more than the other. The method is apparently fair. It also serves a public cause in as much as it fills the public coffers.

15. There may be some who are genuine businessmen but are not in a position to participate in the open auction. For these men of limited means, a provision for allotment has been made. The method for determination of price has been laid down. Alongwith, the conditions of eligibility have been imposed. One of the conditions is that the dealer should have paid a market fee of at least Rs. 5000/- per annum for a period of two years. The obvious purpose is to enable the genuine dealers to get allotment and to exclude the others.

16. Mr. Jain contends that the provision imposes an unreasonable restriction on the freedom of trade. Is it so?

17. The market fee is levied @ 2%. In other words, a transaction of Rs. 100/- results in



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ment of Rs. 2/- as market fee. A dealer should have made transactions of a total of and a half lacs in a year so as to be able to pay Rs. 5000/- by way of market fee. In other words, the monthly sale should be of Rs. 20833/-. In a country where onions sell at Rs. 50/- or more per kg. the provision in the rule cannot be said to be unreasonable or unfair.

18. Learned counsel has produced nothing on record to show that the provision is arbitrary or unfair. It has to be remembered that every provision carries with it a presumption of constitutionality. The burden of proving that the provision is *ultra vires* is on the person who alleges it. It is a heavy burden. In the present case, nothing has been pointed out to show that the provision places an unreasonable restriction or that it is otherwise arbitrary and unfair. Resultantly, we find no ground to uphold the contention.

The first question is, accordingly, answered against the petitioners. It is held that the provision contained in Rule 3(1)(iv) is legal and valid.

Reg : (ii)

19. It was contended that the respondents cannot sell the plots by open auction.

The contention is misconceived. The petitioners do not fulfil the conditions of eligibility for allotment. They have the option to participate in the auction. The notice issued by the respondents affords them an opportunity. They have the right to exercise their choice. As already observed, transfer of property by open auction is one of the fairest methods. We find no infirmity in the notice for auction issued by the respondents.

20. Mr. Jain submitted that the petitioners had paid Rs. 5000/- for the allotment of plots to the Market Committee. It may be so. However, this confers no right. The petitioners have not placed anything on record to show that they were promised allotment. They have made no prayer for the refund of that money. If they want, they can seek the refund. So far as this petition is concerned, the only grounds urged are that the rule is invalid and that the method of auction is not proper. We find no merit in either of the contentions.

The second question is, accordingly, answered against the petitioners.

Resultantly, we dismiss the petition *is limine*.

Petition dismissed.



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

C.W.P. No. 18176 of 2007

Date of Decision: April 30, 2009

M/s Krishan Kumar Rohtas Kumar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR**

**HON'BLE MR. JUSTICE H.S. BHALLA**

Present: Mr. Rakesh Nehra, Advocate,  
for the petitioners.

Ms. Ritu Bahri, DAG, Haryana,  
for respondent No. 1.

Mr. C.B. Goel, Advocate,  
for respondent Nos. 2 to 4.

- |    |   |     |
|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporters or not?                               | Yes |
| 3. | Whether the judgment should be reported in the Digest?                | Yes |

**M.M. KUMAR, J.**

The petitioners have approached this Court by filing the instant petition under Article 226 of the Constitution for quashing Survey Report in respect of Subzi Mandi, Charkhi Dadri, dated 20.11.2007 (P-13) and declaring them in-eligible for allotment of shop plots being old licencees of Category (ii) (*katcha arhtiya*) under the provisions of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (for brevity, 'the 2000 Rules'). A further prayer has also been made for directing the

respondents to allot shop plots to the petitioners on preferential basis on reserve price in the New Vegetable Market, Charkhi Dadri treating them eligible. The basic issue raised is 'whether the petitioners are required to have licence as *katcha arhtiya* for five years on the last date fixed for submitting application, which was 14.11.2007, or it is completion of five years as on 1.1.2000, which would expand the original period of five years to 12 years'.

2. Facts lie in a narrow compass. The petitioner firms are engaged in the business of Commission Agent (*katcha arhtiya*) in Charkhi Dadri Town for different period. The petitioners have claimed that they are Category (ii) licence holder for doing the business of *katcha arhtiya* under Section 10 of the Punjab Agricultural Produce Market Act, 1961. They have been issued licences from time to time on payment of requisite fee as per provisions of Rule 17(6) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (P-1 to P-11). Some of the petitioner firms are stated to be doing their business for more than 10 years regularly.

3. On 8.10.2007, the Chief Administrator, Haryana State Agricultural Marketing Board-respondent No. 3 sent a communication to the Estate Officer-cum-Secretary, Market Committee, Charkhi Dadri-respondent No. 4 in relation to allotment of shop plots on preferential basis on reserve price to the eligible old licencees of category (ii) (*katcha arhtiya*) in the New Vegetable Market, Charkhi Dadri under the provisions of the 2000 Rules (P-12). The eligibility of old licencees was to be determined by the Allotment Committee. Accordingly, respondent No. 4 was asked to inform all the old licencees of category (ii) (*katcha arhtiyas*) working in the old



notified market yard and to invite applications on Proforma-‘A’ appended with the 2000 Rules and to determine their eligibility as per the provisions of Rule 3(1) of the 2000 Rules. After ascertaining eligibility, the list of eligible licencees was to be sent to respondent No. 3. In the letter dated 8.10.2007, detailed programme for conducting the draw of lots was also given, which shows that 14.11.2007 was the date by which the old licencees of category (ii) were required to submit their applications in Form-‘A’. Their eligibility was to be determined by 19.11.2007 and the list of eligible old licencees was to be displayed by 23.11.2007. The applicant could file objections upto 28.11.2007 and speaking orders by the Allotment Committee after considering objections, were to be passed upto 3.12.2007. The draw of lots was to be held on 7.12.2007.

4. The petitioners submitted their applications to respondent No. 4, who after conducting a survey on 16.11.2007 and 17.11.2007 in the Subzi Mandi, Charkhi Dadri, prepared a Survey Report alongwith list of eligible and in-eligible firms (P-13). All the petitioners were considered as in-eligible and against their names, in the column of ‘Description’ it has been mentioned that ‘Ineligible Licence after 1.1.95’.

5. The allotment of plots is regulated by the 2000 Rules and the basic reason for declaring them ineligible is that they do not fulfil the requirements of clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules (P-14), which postulates that only those category (ii) licencees would be eligible for allotment of plots who had valid licence of two years on the date of first auction in the case of mandis where some auctions have already been held, whereas in the case of already

developed mandis where no auction have been held the licencees are required to have valid licence of category (ii) for at least five years as on 1<sup>st</sup> January, 2000. The said clause further prescribes that in the case of mandis to be developed in future, the licensee should have at least two years licence of category (ii) on the date of issuance of notification under section 4 of the Land Acquisition Act, 1894 (Act of 1894) or on the date of transfer of land to the Market Committee, if the land is obtained otherwise as the case may be. Clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules was further amended on 1.9.2008. However, the amendment would not govern the issue of allotment of plots as the last date for submission of application in the instant case was 14.11.2007.

6. The grievance of the petitioners is that they have been rendered ineligible for allotment of the sites in the New Vegetable Market under Rule 3 of the 2000 Rules, on the ground that their licences were not five years old on 1.1.2000 i.e. the date prescribed in the 2000 Rules although they fulfilled the eligibility condition of five years on the last date of submission of applications. They have submitted that fixation of date 1.1.2000 is wholly superfluous having no rationale with the object sought to be achieved.

7. In the written statement filed on behalf of respondent Nos. 2 to 4 the factual position as noticed above has not been denied. However, the respondents have justified rejection of the eligibility of the petitioners asserting that they do not fulfill the requirements of Clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules.

8. It is apposite to notice that while issuing notice of motion, this Court, vide order dated 30.11.2007, directed that the



draw of plots to be held will be subject to further orders of this Court. On 11.2.2009, respondent Nos. 3 and 4 were directed to file an affidavit explaining as to how many sites have been reserved/earmarked in the New Vegetable Market, Charkhi Dadri for the old licencees and as to how many out of them have already been allotted. In compliance to the said order, the Executive Officer-cum-Secretary, Market Committee, Charkhi Dadri-respondent No. 4 filed an affidavit dated 17.3.2009. In para 2 and 3 of the affidavit it has been pointed out that in the new vegetable market 47 shop plots were carved out. There were 34 licencees in the old vegetable market, who all have applied for allotment of plots in the new vegetable market and out of them only 20 were found eligible under the 2000 Rules. They have already been allotted the shop plots in the New Vegetable Market. Out of remaining 14 applicants whose applications were rejected, 13 approached this Court by filing instant petition and two other writ petitions, namely, C.W.P. No. 18891 of 2007 and 138 of 2008. It has been further mentioned that the remaining 27 plots were to be disposed of by open auction. In para 4 of the affidavit it has been mentioned that no plot was reserved/earmarked for the old licencees in the New Vegetable Market. Keeping in view the aforesaid position, this Court directed the respondents to reserve eleven plots for the petitioners of instant petition, vide order dated 17.3.2009. At the hearing, Mr. C.B. Goel, learned counsel for respondent Nos. 2 to 4 has stated that no draw of lot for the remaining 27 plots was held because the result of the instant petition was being awaited.

9. The colossal development and manifold increase in food

grains has necessitated construction and development of new market areas. In their endeavour to develop new market areas, the old established traders are required to be rehabilitated. Hon'ble the Supreme Court in the case of **Labha Ram and Sons v. State of Punjab**, (1998) 5 SCC 207, while interpreting the provisions of Punjab New Mandi Townships (Development and Regulation) Act, 1960, has laid down that the Government has inherent obligation to provide sufficient accommodation to all the existing licenced dealers having regard to the handicaps they suffered due to creation of the new market area. The aforesaid obligation could not be deemed to be discharged merely by allowing them to compete with the new entrant to the trade of food grains. It has been held that the Government may fixed a reasonable rate above the reserved price for such old licenced dealers.

10. By keeping in view the aforesaid object, it appears that the 2000 Rules have been framed by exercising powers under Section 43(1)(2)(iv) read with Section 18 of the Punjab Agricultural Produce Markets Act, 1961. The 2000 Rules provides rehabilitation of displaced old licensee and certain conditions to make them eligible for allotment of shops have been laid down. In the instant petition we are concerned with category (ii) licensee. Apart from other conditions, clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules has created a peculiar situation which has resulted in filing of the instant petition. In order to appreciate the controversy, it would be necessary to extract Rule 3(1)(iii) of the 2000 Rules, which reads thus:-

“3(1) All immovable properties in the markets developed



by the Board or Market Committees shall be disposed of by way of allotment/transfer/open auction in accordance with the provisions of these rules. The shops category (ii) of old market which is to be denotified, resulting in displacement of such licenced dealers of category (ii) on free hold basis for conducting the business of sale and purchase of agricultural produce in the new markets, on the following terms and conditions, namely,

(i) & ii)      xxx    xxx    xxx

(iii) only those category (ii) licencees shall be eligible for allotment of plots who had valid licence of two years on the date of first auction, in the case of mandis where some auctions have already been held. In the case of already developed mandis where no auction have so far been held the licencees should have valid licence of category (ii) for at least five years as on 1<sup>st</sup> January, 2000. In the case of mandis to be developed in future, the licence (licencees?) should have at least two years licence of category (ii) on the date of issuance of notification under section 4 of the Land Acquisition Act, 1894 (Act of 1894), or the date of transfer of land to the Market Committee, if the land is obtained otherwise as the case may be.”

11. A perusal of the aforesaid Rule shows that only those

category (ii) licencees are to be eligible for allotment of shops in case of already developed mandis that they should have valid licence of category (ii) for at least five years. The Rule further requires that the condition of five year licence must be fulfilled on or before 1.1.2000. In other words the petitioners who have applied in response to the circular issued to the old licencees must have licence on or before 1.1.1995. The communication has been sent to the petitioner in the year 2007 and the last date of receipt of applications was fixed as 14.11.2007. In other words, the period of five years provided in the Rules has been blown up upto 12 years merely because the date of 1.1.2000 has been fixed. The Rule makers cannot be imputed the intention that they wanted a static date of eligibility by which an applicant should fulfil a particular period of time. If such an intention is imputed to the framers of the Rules then every time applications are invited on the establishment of any new mandi then to become eligible a category (ii) licensee has to have licence on or before 1.1.1995 irrespective of the fact in which year the applications are being invited. The fixation of such a static date for determining the eligibility of a person would result into unjust and unfair consequences. A number of persons who have otherwise fulfilled the necessary requirement of completion of five years of holding licence of category (ii) would be rendered ineligible merely because they had obtained licence after 1.1.1995. It is true that some cut of date is required to be fixed but the same has to answer the basic requirements of Article 14 of the Constitution that it is not arbitrary. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation. Such a classification must satisfy the twin

tests, namely, (a) that the classification has been founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (b) that differentia must have a rational nexus to the object sought to be achieved by the statute in question. When we examine clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules, it becomes evident that the object of the aforesaid condition of eligibility is to ensure that only authentic old and established *Katcha Arhtiyas* are granted the benefit of allotment of shops who have remained in business for sufficiently long time. It is with the aforesaid object that the Rule provide for five years old licence. The period of five years cannot be determined by fixing a date of 1.1.2000 when the applications themselves are invited in the year 2007. In order to answer the twin test of Article 14 of the Constitution it has to be shown that those like the petitioners, who are left out of the group of eligible persons, constitute a distinct class from those who are grouped together by making them eligible. Such a classification is required to be founded on an intelligible differentia. The petitioners fulfilled the condition of five years like those who also fulfilled the condition of five years having licence on or before 1.1.1995. There is no intelligible differentia to create the classification between two categories by providing a superfluous date for determining the eligibility. There can be no rational nexus with the object of this legislation which aims at rehabilitating the 5 years' old licencees. If we take the instance that 1.1.2000 has been fixed and a licensee in order to become eligible must have five years old licence of category (ii), in such a case, in the year 2007 he would, in fact, have to require licence of 12 years.



12. It is well settled that if the fixing of a cut of date is arbitrary and violative of Article 14 of the Constitution then such a provision cannot be sustained. In that regard we may place reliance on a judgment of Hon'ble the Supreme Court in the case of **D.R. Nim v. Union of India**, AIR 1967 SC 1301. A 5-Judge Constitution Bench did not approve fixing of 19.5.1951 for the purposes of granting benefit of their continuous officiation in senior post. As a consequence, Superintendents of Police who were officiating earlier to that date were deprived of reckoning the earlier officiating period. Finding no justification for fixing the aforesaid date, the Constitution Bench in para 9 held that it was an artificial and arbitrary date having nothing to do with the application of the statutory rules. Hon'ble the Supreme Court further laid down that the Central Government could not *'pick out a date from a hat - and that is what it seems to have done in this case - and say that a period prior to that date would not be deemed to be approved by the Central Government'* for the purposes of reckoning the earlier service. Therefore, we are of the view that fixing of date in the present case is wholly artificial in the context of allotment of shops in the year 2007. Such a date could not be sacrosanct for all times to come because it would become capricious and whimsical. Moreover, we find that the rule makers after realising the situation created by clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules, has amended the said rule on 1.9.2008 and substituted the same, which reads thus:-

Amended Clause (iii) of sub-rule (1) of Rule 3:

“(iii) Only those category (ii) Licencees shall be eligible for allotment of plots who had valid license of four years

on the date fixed for inviting applications for draw of lots”.

13. A perusal of the aforesaid amended rule would show that a plain period of four years of holding of valid licence has been provided which is to be determined with reference to the date fixed for inviting the applications for draw of lots. Therefore, the rule makers have themselves rectified the situation by incorporating the amendment. The date to determine the eligibility has been deleted.

14. The question then is how to resolve the controversy in hand. It appears to us that the substantive part of the rule can be saved which would answer the subscription of Article 14 of the Constitution. The doctrine of '*severability*' has to be applied in order to chop off the offending portion. The aforesaid doctrine was laid down by the Constitution Bench of Hon'ble the Supreme Court in the case of **State of Bombay v. F.N. Balsara**, AIR 1951 SC 318. Hon'ble the Supreme Court has also laid down that the doctrine of '*severability*' can be safely applied when it is not possible to read down the provision. The aforesaid observations have been made by Hon'ble the Supreme Court in the case of **Punjab Dairy Development Board v. Cepham Milk specialities Ltd.**, (2004) 8 SCC 621. Keeping in view the object of the 2000 Rules, background fact which has resulted in framing of the Rules and the observations of Hon'ble the Supreme Court in the case of **Labha Ram and Sons (supra)**, we feel that the date of 1.1.2000 has to be severed from the rules more so when the rule makers themselves have dropped the date and year for determination of eligibility of a licensee for allotment of a shop in a new market area. Accordingly, we declare that the words

‘as on 1<sup>st</sup> January, 2000’, appearing in clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules, are arbitrary and offend Article 14 of the Constitution and, therefore, they are severed from the rest of the Rule and the ‘.’ (full stop) has to be put after the words ‘five years’. Having held in the aforesaid manner, the general principle of law would apply and a licensee of category (ii) is required to have a valid licence for at least five years on the last date of submission of application. The aforesaid policy has also been followed by the rule makers when they amended the rule on 1.9.2008.

15. When the principle as laid down in the preceding para are applied to the facts of the present case then it becomes evident that petitioners Nos. 1 to 7 and 11 are found to be eligible as they had five years old licence of category (ii) preceding the last date of submission of applications i.e. 14.11.2007, as is evident from the survey list (P-13). However, petitioner Nos. 8, 9 and 10 are not eligible because they were issued licences on 7.12.2002, 13.12.2002 and 20.12.2002 respectively. Accordingly, the cases of the aforesaid petitioners would deserve consideration at the hands of the respondents for allotment of shops in the new mandi area. It may be clarified that we have determined the eligibility only in terms of clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules and the eligibility of these persons shall be subject to fulfillment of other conditions as per law.

16. As a sequel to the above observations, the writ petition is allowed. Petitioner Nos. 1 to 7 and 11 are declared eligible in terms of clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules. If they are found eligible in all other respects as per Rules, their cases be



considered for allotment of shops alongwith others. As the respondents have been awaiting the result of this petition, we deem it just and appropriate to direct that the needful shall be done within a period of two months from the date of receipt of a copy of this order.

17. The writ petition stands disposed of in the above terms.

**(M.M. KUMAR)**  
**JUDGE**

**April 30, 2009**

**(H.S. BHALLA)**  
**JUDGE**

Pkapoor