

To

1. All the ZAs and ZMEOs,
HSAMB in the State.
2. All the Administrators of the
Market Committees in the State.
3. All the DMEOs and
The Executive Officers-cum-Secretaries,
Market Committees in the State

C. No. 71

Memo. No. LA 25631-809
Panchkula, dated the 12-4-16

Subject: Guidelines for the Market Committees, Appellate and Revisional Authorities to decide appeals/revisions under Section 40 of The Haryana Agricultural Produce Markets Act, 1961'.

While considering a matter regarding whether to file a CWP against the orders of the Revisional Authority (ACS/Principal Secretary, Agriculture) or to file a revision petition before the State Government against the orders of the Appellate Authority (CA, HSAMB) in matters relating to the implementation of 'The Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000', the State Government directed the Board to prepare guidelines for the Appellate and Revisional Authorities as has been done by the HUDA.

It has been observed that the statutory provisions of The Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 have been interpreted differently by different Appellate and Revisional Authorities. Some grey areas have also led to varying interpretations which has resulted into increased litigation. It has also been observed that there should be an independent administrative mechanism to ensure that each order of the Appellate as well as the Revisional authorities is studied minutely regarding its their legal and financial propriety and therefore, an appropriate decision has to be taken to challenge these orders in the higher judicial/administrative forum, if so required.

The Hon'ble High Court for the State of Punjab and Haryana at Chandigarh in CWP No. 19503 of 2010, titled, '*Suresh Chand versus State of Haryana and others*' directed Haryana Urban Development Authority (HUDA) on 4.12.2012 to evolve guidelines for the Appellant and Revisional Authority to decide the appeals/revisions. In compliance with the Hon'ble High Court, HUDA after approval of State Government issued guidelines vide its memo No.213-217 dated 10.01.2013 for the Appellate and the Revisional Authorities established under Section 17 of The HUDA Act.

Accordingly, the following guidelines have been approved by the State Government for the Appellate as well as the Revisional Authorities while implementing the mandate of The Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000:-

1. The charging of interest, penal interest and extension fee depends upon the date of allotment and the extant applicable Rules. The Hon'ble High Court has settled the issue in L.P.A. No. 502 of 2012 (O&M) & LPA No. 1868 of 2011 (O&M) vide its decision dated 14th Sept., 2012 titled as Raksha Rani Vs. HSAMB others. The operative part of the order is given below:-

"29. In view of the above, the following directions are substituted as against the directions issued by the Learned Singled Judge:-

(1) All cases of allotment prior to amendment of statutory rules on 5.03.2002 shall be governed by the contract. Under the contract, there is no condition or covenant that the liability to pay interest, penalty shall be dependent upon providing facilities/amenities. Such of the allottees who were allotted plots prior to 05.03.2002 are liable to pay interest and penalty in accordance with the terms and conditions of the allotment letter.

(2) Such of the allottees who were allotted plots after 05.03.2002 are liable to pay interest and penalty from the date offer of possession was made. The offer of possession is to be made after the basic facilities, like roads, water supply, sewerage, electrification are made available. It would be a question of fact to be decided in each case as to whether the possession has been offered on completion of basic amenities, in contradistinction with such amenities as are in optimum utilization of the plot.

(3) The liability to pay extension fee is in terms of the policy formed by the Board/Market Committee from time to time prior to the framing of Rules on 10.03.2000. The plots allotted on or after the said date would be liable to pay extension fee in terms of the Rules framed."

2. In case of plots/booths allotted on or after 05.03.2002, even if the offer of possession is not made, the allottee is bound to pay the original installments of balance principal amount on the due date. If he does not make this payment of installments on the due date, then interest as provided in Sub-Rule (6) of Rule 4 of The Rules, 2000 shall be applicable.

3. The Appellate/Revisional Authorities shall not give relief to any allottee on any arbitrary ground by using expressions like financial hardship, unavoidable circumstances, health problems, illness of relatives, long period of absence from the Country/place of residence, ignorance of payment schedule, technical infirmities etc.
4. In case where the allottee has failed to pay the balance price of the plot, including the principal as well as due interest after the deposit of the initial 25% amount and his plot/booth stands resumed, then such allottee shall not be granted any relief beyond the terms and conditions specified in the allotment letter.
5. **Maintainability:-**
If any issue regarding maintainability of a particular proceeding is raised by any party then the concerned authority shall decide that issue first before taking up the matter on merits.
The Appellate/Revisional Authority shall keep in mind the principles of res-judicata and res-subjudice while deciding the appeals/revisions.
6. **Restoration:-**
The order of restoration of any proceeding must be well reasoned. It should explain in details the reasons for restoration.
7. **Preferential Allotment:-**
It has been observed that a large part of litigation relates to the status of the applicant-appellant as an allottee whether he is "eligible" for allotment of plot at a fixed price as provided under The Rules, 2000. The provisions of these Rules are very clear regarding conditions of eligibility. It is reiterated that the concerned licensee must meet independently each condition of eligibility as specified under Rule 3 (1) of The Rules, 2000. It is further clarified that if the allottee does not meet any of the conditions or requirements of The Rules, 2000 then he shall be disentitled for preferential allotment of a plot on fixed price.
The appellate as well as Revisional Authorities will consider the facts that in case where initially the applicant was held to be ineligible for allotment of a booth/shop plot, subsequently he/she should not be held eligible merely on the basis of surmises and conjectures on account of frivolous reasons giving any benefit of doubt.
8. The Secretary Market Committee shall review all the allotments made in his principal & sub-yards twice in a year i.e. on January 1st and July 1st or on the next working day, if 1st January/1st July happens to be a gazette holiday/Saturday/Sunday. He shall issue demand notice/reminders to all the defaulters by quoting the pending due amounts and the relevant conditions of the allotment letter. He shall

also simultaneously proceed with the resumption proceedings if the shops plot/booth is liable to be resumed as per the terms and conditions of the allotment letter. He shall also inspect all the plots in the market yard with the assistance of the concerned Junior Engineer/Sub Divisional Engineer/Executive Engineer of the Board to verify whether all the constructed plots have taken the completion certificate or not and whether there is any encroachment or violation of the approved design of the building? As far as non-constructed plots are concerned he shall issue the notice regarding payment extension fee/resumption, wherever applicable. The Secretary Market Committee shall take the necessary action to get the possession of resumed plots immediately after the resumption orders and send his recommendations to the Board for further disposal of the same by open auction. In the first instance, the Secretary Market Committee shall send a report on each of these points as on 1st May, 2016 by 30th June, 2016. After that these reports shall be sent regularly in the first week of January and the first week of July every year.

Disha
12/4/16
Architect,
for Chief Administrator

Endst. No.LA-II-2016/ 25809-13

Dated: 12-4-16

A copy of the above is forwarded to:-

1. Principal Secretary to the Hon'ble Chief Minister, Haryana for information please.
2. Private Secretary to Addl. Chief Secretary to Govt. Haryana, Agriculture Department for information and further necessary action please.
3. Private Secretary to Chief Administrator, Haryana State Agricultural Marketing Board, Panchkula for information and further necessary action.
4. Secretary, Haryana State Agricultural Marketing Board, Panchkula for information and further necessary action.

Disha
12/4/16
Architect,
for Chief Administrator

CC. All DCs for information and necessary action to ensure compliance by Secretary-cum-E.O. Market Committees.

Disha
12/4/16
Architect,
for Chief Administrator