

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

CWP No.11759 of 2014

Date of decision:27.1.2015

Makhan Singh

....Petitioner

VERSUS

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE HARI PAL VERMA

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

Present: Mr. J.S. Bhandohal, Advocate for the petitioner.

Mr. P.S. Bajwa, Additional Advocate, General, Punjab,
for respondent No.1.

None for respondent No.2.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to an order dated 13.12.2013 passed by the Secretary, Housing and Urban Development Department, Punjab exercising the powers of Revisional Authority under Section 45 (8) of the Punjab Regional and Town Planning and Development Act, 1995 (for short 'the Act').

The petitioner participated in an open auction on 29.05.2008 and was the highest bidder of a plot measuring 250 square yards having offered a sum of Rs.1,37,00,000/-. The petitioner paid a sum of Rs.13,70,000/- as 10% of the sale price at the time of auction and remaining Rs.20,55,000/- towards 15% of the sale price to complete 25% price of the total sale price before the issuance of letter of allotment. The letter of allotment was issued on 17.07.2008. As

per conditions of allotment, the balance 75% of the amount could be paid in lump sum without interest within 60 days from the date of issuance of letter of allotment and/or in six half-yearly equated installments along with interest at the rate of 12% per annum. The petitioner did not pay the amount within 60 days. Therefore, the first installment fell due on 29.05.2009. The petitioner did not deposit the first installment and requested for refund of the amount deposited on 22.10.2009 after the petitioner was already defaulter of not paying the first installment. He supported his letter of withdrawal on 30.03.2010 when his statement was recorded. On the basis of the request of the petitioner as affirmed by him in his statement, the Estate Officer ordered resumption of the plot and forfeited 10% of the amount of the total sale consideration in terms of Section 45(3) of the Act. It is the said order which was challenged by the petitioner in an appeal which was dismissed on 05.08.2010. However, in revision the same was allowed on 12.07.2011 and the plot was ordered to be restored to the petitioner. Such order was challenged by respondent No.2 in CWP No.12320 of 2012 titled GMADA v. State of Punjab and another, decided on 19.02.2013 successfully before this Court and re-allotment was set aside and the matter remitted to the Revisional Authority to decide the revision petition filed by the petitioner afresh by sympathetically considering the forfeiture of 10% of the total amount. It is thereafter, the impugned order has been passed.

The only reason for withdrawal of the amount deposited is financial constraints in not depositing the amount. The petitioner has purchased the property in an open auction. He knew that he has to deposit the balance sale consideration either in lump sum or in six

half-yearly equated installments. The petitioner defaulted in making payment of the installments and sought to withdraw the amount deposited. In the entire writ petition there is no averment as to what was the nature of financial constraints. Having purchased the property in open auction, the petitioner was aware of the dues payable by him. Having failed to make the installments, the plot was resumed as per his request. There is no provision of withdrawal of the amount deposited under the Act. The request for withdrawal has to be treated as a request for resumption of the plot. In the absence of any justifiable financial constraint, the action of the forfeiture cannot be said to be arbitrary which may warrant interference in the writ jurisdiction of this Court.

We may notice the reliance of the petitioner on the order of this Court in CWP No.7909 of 2010 titled Estate Officer, GMADA v. Harpal Singh and another, decided on 08.11.2011, wherein forfeiture of 4% of the total sale consideration was upheld by this Court. The petitioner contended that since 4% forfeiture has been upheld, the same amount of forfeiture could be extended in the present case as well.

In the said case, the Revisional Authority has upheld 4% of the total sale consideration. It is the facts of each case, which determine the extent of forfeiture. There cannot be any parity in the amount of forfeiture which is permissible up to the extent of 10% amount of the total sale consideration. In the present case, the authorities have imposed forfeiture of the 10% of the total sale consideration. Such exercise of power can be said to arbitrary or

irrational warranting interference in the writ jurisdiction of this court even if we take different view on the extent of forfeiture.

In view thereof, we do not find any merit in the present writ petition. The same is dismissed.

(HEMANT GUPTA)
JUDGE

JANUARY 27, 2015
‘D. Gulati’

(HARI PAL VERMA)
JUDGE