IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.16827 of 2015
Date of Decision: August 14, 2015

Jaswant Singh Bhullar and others .....Petitioners

versus

State of Punjab and others .....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE JASPAL SINGH.

Present: Mr.Ramesh Goyal, Advocate, for the petitioners.

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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?

Surya Kant, J. (Oral)

The petitioners are aggrieved by the orders dated 16.05.2013, 11.06.2013 and 20.01.2015 (P-4, P-5 & P-7, respectively) to the extent of forfeiture of 4% of the amount deposited by them towards allotment of SCO No.677, Sector 70, SAS Nagar Mohali.

[2] The petitioners purchased the above-stated site in an auction held on 24.09.2009 for a consideration of Rs.6,05,00,000/-. While they deposited the 25% of allotment price, the balance 75% was to be paid in four installments as per the schedule mentioned in the allotment letter. It was stipulated in clause 7(viii) of the terms and conditions that "in case of breach of any conditions of allotment or of regulations or non-payment of any amount due together with the penalty, the plot or building, as the case may be, shall be liable to be resumed and in that an amount not exceeding 10% of the total amount of consideration money, interest and other fees payable in respect of plot shall be forfeited as per the

provisions of Section 45 (3) of the Punjab Regional and Town Planning and Development Act, 1995......"

[3] The petitioners admittedly did not deposit the first installment. They wrote a letter on 03.03.2011 (P-2) that there is a liquor vend near the site and they will not be able to run their business unless the liquor vend was removed. The petitioners further claimed that "till the liquor vend is removed, they shall not pay any interest on the installments".

[4] The Estate Officer, GMADA, informed the petitioners vide reply dated 12.08.2011 (P-3) that "the liquor vend is temporary and it will be shifted from the site when your show-room is constructed".

[5] It may be mentioned here that the first installment was payable on 24.09.2010, second on 24.09.2011 and the third installment was due on 24.09.2012. The petitioners did not deposit any of these installments. They made a representation on 08.05.2013 to 'surrender' the site as due to financial constraint, they were not interested to retain the same.

[6] It was on the aforesaid application that the Estate Officer passed the order dated 16.05.2013 (P-4) whereby the site was resumed and 10% amount was forfeited as per the terms and conditions of allotment.

[7] The aggrieved petitioners filed an appeal against the forfeiture which was allowed in part by the Additional Chief Administrator, GMADA vide order dated 11.06.2013 (P-5) who reduced the forfeiture amount from 10% to 4% on the ground that the liquor vend though temporary was still at the site.

[8] Still aggrieved, the petitioners preferred a revision petition before the State Government which has been turned

down vide order dated 20.01.2015 (P-7).

[9] The above-mentioned orders are now under challenge in this writ petition.

[10] It is not in dispute that Section 45 (3) of 1995 Act empowers the authorities to forfeit an amount not exceeding 10% of total consideration money etc. in the event of resumption or surrender of the site. It was so expressly stipulated in the allotment letter also.

[11] The only question that may arise for consideration is whether the petitioners voluntarily surrendered the site or they were compelled to do so?

[12] It may be seen that the petitioners did not deposit the very first installment which was due on 24.09.2010, instead they submitted a representation on 03.03.2011 stating that the liquor vend near the site would hamper their business prospects. The so called apprehension of the petitioners was adequately redressed by the Estate Officer, GMADA vide reply dated 12.09.2011 promising to shift the temporary site of liquor vend as soon as the show-room was constructed.

[13] It is a matter of record that the petitioners never applied for the sanctioning of building plans and obviously, no construction was raised. Meantime, the second installment became due but that too was not deposited.

[14] The petitioners finally surrendered the site in question because they were not satisfied with the response of the authorities regarding removal of liquor vend.

[15] In their representation dated 08.05.2013, they made a candid admission that there were financial constraints due to which they were not interested to retain the site. Their request was accepted.

[16] In this process, the respondent-authorities neither received the balance amount towards the sale consideration nor they could re-auction the site. For having suffered such a loss, the forfeiture of 4% amount is neither excessive nor can be termed harsh.

[17] Adverting to the plea of discrimination raised by the petitioners on the basis of order dated 28.03.2012 (P-10) whereby forfeiture of only 1% was imposed on the auction purchasers of SCO No.25, Sector-70, SAS Nagar Mohali, we find that the facts of that case are together distinguishable. There the auction purchasers were informed at the time of auction that they will be permitted to raise six storey building, the basement with 100% coverage on the pattern of commercial sites in Chandigarh or Panchkula. They accordingly participated in the auction proceedings, however, when they submitted the site-plan, they were asked to leave the setbacks and the covered area was also reduced thereby freezing the FAR to 4.5. The allottees then decided to surrender the site. It was in this backdrop that forfeiture of 1% was imposed.

[18] The fact situation of the case in hand is altogether different.

[19] No case to interfere with the orders passed by the authorities is made out.

[20] Dismissed.

[SURYA KANT]
JUDGE

August 14, 2015
mohinder

[JASPAL SINGH]
JUDGE