

CWP No. 20902 of 2014

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 20902 of 2014

Date of decision: April 23, 2015

Preet Inder Singh and ors.

..... Petitioners.

Versus

State of Punjab and ors.

.... Respondents

**CORAM:HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

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Present: Mr. Alok Mittal, Advocate for the petitioners.

Mr. Gaurav Garg Dhuriwala, DAG, Punjab

Mr. Balwinder Singh, Advocate
for respondent No.2 to 4.

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SATISH KUMAR MITTAL,J.(ORAL)

The petitioners, who appear to be the property dealers, participated in auction for purchase of a commercial plot bearing SCO site No. 20, Sector 69, Mohali. They gave the highest bid of Rs.5,10,00,000/- and paid 10% of the auction price of the site at the fall of hammer and 15% of the sale price of the site total Rs.1,27,50,000/- was also paid subsequently within the stipulated period. Thereafter, the respondent vide memo dated 01.08.2008 issued the allotment letter in favour of the petitioners indicating that the balance amount of 75% of the auction price was to be paid in four yearly installments as per schedule given in the same.

It is admitted case that none of the installments was paid by the petitioners and after the expiry of the last date of the entire payment, they moved an application for surrender of the site in question. The authorities concerned accepted the request made by the petitioners and after deducting 10% of the total price of the site in question with interest and penalty, the rest of the amount was refunded vide order dated 17.08.2012.

The aforesaid order was challenged by the petitioners before the Appellate Authority, who vide order dated 24.01.2013 (Annexure P-2) dismissed the appeal. Revision filed by the petitioners was also dismissed vide order dated 28.03.2014 (Annexure P-4).

Now the only grouse of the petitioners is that the authorities concerned, have wrongly deducted 10% of the total price of the site in question. It is their case that as per Section 45 (3) of the Punjab Regional and Town Planning & Development Act, 1995 for breach of any of the conditions of transfer resumption may be ordered and an amount not exceeding 10% of the consideration money may be forfeited. Reference has also been made to clause VIII of Para 7 of the terms and conditions of the allotment letter dated 1.8.2008 as per which also in case of breach of any of the conditions of allotment or of the regulations or non payment of the amount due etc. the plot may be resumed and an amount not exceeding 10% of the total amount of consideration money, interest and other fee payable in respect of the plot shall be forfeited. It has been urged

that 10% is the maximum amount that can be forfeited. Ordinarily the maximum amount ought not to be forfeited but in sound exercise of their discretion the respondents ought to have forfeited lesser amount. In this regard, learned counsel for the petitioners has referred to some other instances where lesser amount was deducted and in particular reference has been made to a decision of this Court copy of which is annexed as Annexure P-5.

A careful perusal of the said judgment reveals that the said judgment is not applicable to the present case as the facts and circumstances of this case are different from the facts in that case. In that case, after 25% of the sale price (10% earnest money and 15% of the sale price) had been paid and allotment letter issued, well before the first installment of the remaining 75% became due the petitioner therein made a request for surrender of site on ground of his inability to pay due to financial crisis. This request was accepted and the Estate Officer GMADA ordered resumption of the site along with forfeiture of 10% of the sale consideration. His appeal against the forfeiture was dismissed by the Chief Administrator, GMADA where after he filed a revision before the State Government which was partially accepted. Keeping in view the conduct and the compelling circumstances of the petitioner including the overall global recession the forfeiture amount was reduced from 10% of the sale consideration to 4% of the sale consideration.

The said order was challenged before this Court and while dismissing the writ petition, it was observed that once the

discretionary power has been reasonably exercised by the authorities, in the facts and circumstances of the case the order did not require any interference in writ jurisdiction.

The facts of the present case are entirely different. In this case the application for refunding the amount was filed after the expiry of the period of payment of all the four installments. At that belated stage, the authorities have rightly not exercised their discretionary power by ordering forfeiture of amount less than 10%. This is the case where the application for surrender of site was moved at a belated stage and due to which GMADA has suffered huge loss.

The allotment was in the name of eight persons. It appears that they are property dealers and had purchased the property for speculative gains.

We do not find any error in the order passed by the authorities in deducting 10% of the cost of the total sale consideration.

Dismissed.

(**SATISH KUMAR MITTAL**)
JUDGE

(**HARINDER SINGH SIDHU**)
JUDGE

23.04.2015
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