

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP No.20990 of 2014

Date of Decision: 26.02.2015

Amandeep Singh

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. K.S.Sidhu, Senior Advocate, with
Mr. A.S.Sandhu, Advocate, for the petitioner.

Mr. P.S.Bajwa, Addl. AG, Punjab, for respondent No.1.

Mr. Balwinder Singh, Advocate, for respondent Nos.2 & 3.

HEMANT GUPTA, J.

The petitioner has invoked the writ jurisdiction of this Court claiming writ of certiorari for quashing of an order dated 02.12.2009 (Annexure P-2) passed by the Estate Officer, Greater Mohali Area Development Authority (GMADA), Mohali against the petitioner forfeiting 10% of the auction price alongwith interest and penalty while resuming site i.e. SCF No.28, Phase I, Mohali, as well as orders passed in appeal and revision on 22.04.2010 and 28.08.2014 (Annexures P-3 & P-4 respectively).

The petitioner participated in an open auction held on 02.09.2008. He was the highest bidder of SCF Site No.28, Phase I, Mohali having offered a sum of Rs.6,30,00,000/-. On deposit of Rs.1,57,51,250/- towards 25% of the total bid amount, the letter of allotment was issued to the petitioner on 21.11.2008. 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 allotment and/or in four equated yearly installments along

with interest at the rate of 12% per annum. Thus, the first installment fell due on 22.09.2009. However, as per the petitioner, due to recession in the market and failure of business, he could not deposit even the first installment. On 28.06.2009, the petitioner requested respondent No.3 – Estate Officer, GMADA, Mohali for surrender of the site in question and for refund of the amount deposited. Thereafter, on 04.08.2009, the petitioner conveyed his mind to retain the property. However, again on 22.09.2009, he submitted an application for surrender of the site and sought refund.

On the basis of the request of the petitioner, the Estate Officer, GMADA, Mohali vide its order dated 02.12.2009 ordered resumption of the site and to forfeit 10% of the total sale consideration along with interest penalty in favour of the GMADA. It is the said order which was challenged by the petitioner in an appeal, which was dismissed on 22.04.2010. The revision was also dismissed vide order dated 28.08.2014.

In the written statement, the stand of respondent Nos.2 & 3 is that the petitioner, who is a purchaser of a commercial site in an open auction, submitted an application for surrender of the site due to financial problems on account of recession in the business. However, when he appeared before the authorities for personal hearing on 25.08.2009, the petitioner sought to withdraw his application dated 26.06.2009 to surrender the site, which was allowed and the original allotment letter sent by the petitioner was returned to him. Thereafter, the petitioner again submitted an application on 22.09.2009 for surrender of the plot. The petitioner was called for personal hearing on 27.11.2009, when he supported his request for surrender. Consequently, on 02.12.2009, the site was resumed and 10% of the total cost along with interest and penalty had been ordered to be forfeited. It is pointed out that there is no provision in the Act and the Rules framed there-under for surrender of the plot. It is only resumption of the

plot on account of non-payment of the installments. It is pointed out that the petitioner was not in genuine need of the plot, but had purchased the same for speculative purposes. Therefore, whenever he felt that he would be in a position to strike a good bargain, he expressed his willingness to retain the plot and whenever he felt otherwise, he surrendered the plot not only once, but twice. It is also pointed out that in an application dated 28.09.2012, the petitioner has conveyed that not more than 10% i.e. (Rs. 63 lacs) should be deducted and the rest should be refunded.

Before this Court, the petitioner relies upon two Division Bench judgments of this Court rendered in CWP No.7909 of 2010 titled 'Estate Officer, GMADA Vs. Harpal Singh & another' and CWP No.7911 of 2010 titled 'Estate Officer, GMADA Vs. Amarjit Singh & another', both decided on 08.11.2011.

Having heard learned counsel for the parties at length, we do not find any merit in the present writ petition. 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 four yearly equated installments. The only reason for withdrawal of the amount deposited is financial constraints due to recession in the market and failure of business. The petitioner has been changing his mind twice in a span of five months. It appears that the purchase of the petitioner was for speculative purpose, therefore, there is wavering of options to surrender or to retain plot. Admittedly, the petitioner has defaulted in making payments of installments and sought to surrender the plot. In the entire writ petition, there is no averment as to what was the nature of financial constraints. The purchase of the commercial property with eyes open cannot be avoided on vague assertion 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 or of surrender of the site 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.

The petitioner has relied upon Harpal Singh and Amarjit Singh's cases (supra), wherein forfeiture of 4% of the total sale consideration was upheld by this Court, to contend that since 4% forfeiture has been upheld, the same amount of forfeiture could be extended in the present case as well. In both the cases, the Revisional Authority has ordered forfeiture of 4% of the total sale consideration. It is the facts of each case, which determine the extent of forfeiture. In case of death or disease of any the family member and that too in respect of residential property may warrant lesser amount of forfeiture of the sale consideration paid. 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 jurisdiction cannot be said to be arbitrary or irrational warranting interference in the writ jurisdiction of this court even if we take different view on the extent of forfeiture.

More so, the similar issue has been examined by this Bench earlier in CWP No.11759 of 2014 titled 'Makhan Singh Vs. State of Punjab & another' decided on 27.01.2015 upholding the forfeiture of the amount of consideration. It was observed as under:

“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.”

In view of the above discussion, we do not find any merit in the present writ petition. The same is accordingly dismissed.

(HEMANT GUPTA)
JUDGE

26.02.2015
Vimal

(HARI PAL VERMA)
JUDGE