

CWP No.4514 of 2012 (O&M)

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

**CWP No.4514 of 2012 (O&M)
Date of decision:18.11.2015**

Jagdev Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. D.S.Gill, Advocate,
for the petitioner.

Mr. V. Ramswaroop, Addl. A.G., Punjab.

Rakesh Kumar Jain, J.

The petitioner has prayed for a writ in the nature of *certiorari* for quashing of order dated 16.02.2012 by which allotment of land in the name of the petitioner, purchased in auction, has been cancelled.

In brief, the surplus land measuring 2.63 acres situated in village Virk Khera was put to auction on 29.12.1999. The petitioner was the highest bidder for an amount of ₹7,38,300/- and deposited ₹74,000/- being 10% of the bid amount, at the time of bid and also deposited ₹2,44,000/- on 16.05.2000. Thereafter, an agreement was entered into between the petitioner and the State Government on 20.07.2000 in which it was provided that the amount of ₹3,18,000/-, being 25% of the total cost of the site, shall be adjusted against the total price and the remaining 75% was

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to be paid by the petitioner in four installments with interest @ 15% per annum, as per the following schedule:-

Installment	Due date	Amount of installment	Interest	Total amount
Ist	06/04/01	105075	63045	168120
IInd	06/04/02	105075	47284	152359
IIIrd	06/04/03	105075	31523	136698
IVth	06/04/04	105075	15762	120837

It was also provided in Clause 7 of the agreement that “*in case the installment is not paid by the 10th of the month following the month, in which it falls due, the Executive Engineer, Abohar Canal Division, Abohar shall proceed to take action for imposition of penalty charged @ 2% per month in addition to 1.25% per month of the amount due from the due date. In case non-payment of the installment along with interest due thereon for a continuous period of 2 months, the whole or any part of the money paid in respect of the site shall be forfeited and the Executive Engineer, Abohar Canal Division, Abohar shall cancel the allotment and resume the site*”.

The petitioner deposited the 1st installment of ₹1,68,120/- on 10.04.2001 and 2nd installment of ₹1,52,359/- on 08.04.2002 but did not deposit the 3rd installment of ₹1,36,698/- in time, therefore, respondent No.3 issued the letter dated 20.05.2003 in which it was mentioned that since the petitioner has defaulted, therefore, he would be liable to pay the interest as well as the penalty. Thereafter, the petitioner deposited ₹1,00,000/- on 20.01.2004 and ₹36,698/- on 03.01.2005. The petitioner deposited the 4th installment of ₹1,20,840/- on 22.03.2005 but received the letter dated 06.07.2005, asking him to pay ₹73,852/- towards penalty and interest for the

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late payment of 3rd and 4th installments. It was followed by the another letter dated 19.10.2005. Thereafter, the petitioner deposited ₹28,482/- as interest charges on late payment on 18.11.2005 and ₹45,370/- as penalty charges on late payment on 21.03.2006 and made an application on 24.03.2006 for transfer of the land in his name, which was followed by another application dated 15.11.2006 but since the respondents did not pass any order, therefore, the petitioner filed CWP No.8620 of 2011, which was disposed of on 19.09.2011 with direction to respondent No.1 to take decision on Annexure P-15 within a period of 60 days. Since the representation of the petitioner was not decided in time, therefore, the petitioner filed COCP No.3101 of 2011 and then the respondents passed the order of cancellation, which has been challenged in this petition.

Counsel for the petitioner has submitted that the respondents has asked the petitioner to pay the amount of ₹73,852/- on 06.07.2005, therefore, they could not have taken the benefit of Clause 7 of the agreement to cancel the allotment.

On the other hand, the case of the respondents is that the petitioner has failed to comply with the mandatory provisions of the agreement as it has been clearly mentioned in Clause 7 thereof that besides the imposition of penalty and interest, if the payment is not made of the installment along with interest due thereon for a continuous period of 2 months, the whole or any part of the money paid in respect of the site shall be forfeited and the Executive Engineer, Abohar Canal Division, Abohar shall have a right to cancel the allotment and resume the site. It is submitted

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that even if the amount of ₹73,852/- was asked to be paid on 06.07.2005, the same was not deposited within 2 months thereafter as according to the petitioner himself, the interest of ₹28,482/- was deposited on 18.11.2005 and penalty charges of ₹45,370/- were deposited on 21.03.2006. The petitioner was repeatedly asked about the reason for not paying the 3^d and 4th installments in time and also the amount of penalty and interest, to which he could not give any cogent reply except submitting that he was ill but the ailment was not disclosed.

In such circumstances, once the parties are bound by the terms and conditions of the agreement in which Clause 7 specifically provides that if the installment along with interest due is not paid for a continuous period of 2 months, then the other party shall have a right to forfeit whole or part of the money deposited and also cancel the allotment and resume the site, no fault can be found in the impugned order of cancellation as it has been passed strictly in terms of Clause 7 of the agreement between the parties.

In view thereof, I do not find any merit in the present writ petition and hence, the same is hereby dismissed.

November 18, 2015
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(Rakesh Kumar Jain)
Judge