

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CWP No. 5766 of 2015 (O&M)
Date of decision : 29.10.2015

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M/s Ranauta Properties and Investments
Private Limited and another
.....Petitioners

vs.

State of Punjab and others
.....Respondents

2) CWP No. 5847 of 2015 (O&M)

...

M/s Ranauta Properties and Investments
Private Limited and another
.....Petitioners

vs.

State of Punjab and others
.....Respondents

3) CWP No. 5848 of 2015 (O&M)

...

M/s Ranauta Properties and Investments
Private Limited and another
.....Petitioners

vs.

State of Punjab and others
.....Respondents

4) CWP No. 5849 of 2015 (O&M)

...

M/s Ranauta Properties and Investments
Private Limited and another
.....Petitioners

vs.

State of Punjab and others

.....Respondents

5)

CWP No. 5951 of 2015 (O&M)

...

M/s Ranauta Properties and Investments
Private Limited and another

.....Petitioners

vs.

State of Punjab and others

.....Respondents

**Coram: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

Present: Mr. S.S. Narula, Advocate for the petitioners.

Mr. Rajesh Bhardwaj, Additional Advocate General,
Punjab for respondent No.1.

Mr. Ashish Grover, Advocate for respondents No. 2 to 4.

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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?*

P.B. Bajanthri, J.

In these bunch of petitions, the petitioners have challenged the cancellation of allotment of commercial sites and resumption thereof by the Estate Officer, PUDA, Amritsar - 4th respondent vide order dated 19.9.2012 (Annexure P-5). They also assail the Appellate Authority order dated 11.12.2012 (Annexure P-6) and the order dated

22.1.2015 of the Revisional Authority (Annexure P-8), and further seek a direction to restore the allotted plot/commercial site allotted to each petitioner vide allotment letter dated 5.11.2007 and to refrain from charging any further interest. For deciding these bunch of petitions, facts are being taken from CWP No. 5766 of 2015.

(2) The 2nd respondent auctioned commercial sites in Urban Estate, Old Canal Rest House, Malikpur, Pathankot, on free hold basis on 19.9.2007. Pursuant to the same, petitioners who participated in the auction, were successful bidders. Thus, each one of the petitioners have been allotted commercial site on 5.11.2007. One of such letter is Annexure P-1/A (similar allotment letters were communicated to other petitioners).

(3) On 9.6.2010, petitioners sent a reminder to Estate Officer, PUDA, Amritsar, requesting for issuance of Zoning Plan of SCOs at Canal Rest House, Pathankot vide Annexure P-2/A. Similar requests were made on 29.7.2010 and 27.3.2012 vide Annexures P-2/B and P-2/C.

(4) The Estate Officer, PUDA, Amritsar, issued a show cause notice to the petitioners on 19.4.2012 narrating the allotment of site and non-payment of four installments and it was made clear by him that in case the petitioners do not pay the due installments alongwith penalty within 30 days, he will proceed for cancellation of allotment. Since there was no response to the communication dated 19.4.2012, Estate Officer, PUDA, Amritsar, issued one more notice, further granting 30 days time for remittance of balance amount alongwith

penalty etc., failing which cancellation proceedings would be made under Section 45 (3) of the Punjab Regional and Town Planning and Development Act, 1995 (for short “the Act”).

(5) Petitioners did not respond to the show cause notices dated 19.4.2012 and 15.6.2012. Consequently, 4th respondent – the Estate Officer, PUDA, Amritsar, proceeded to cancel the allotment of commercial site to each one of the petitioners, by invoking the provisions of Section 45 (3) of the Act, while forfeiting 10% of the total cost of plot, interest and other expenses, vide order dated 19.9.2012 Annexure P-5.

(6) The petitioners aggrieved by the order of 4th respondent dated 19.9.2012, preferred an appeal before the Additional Chief Administrator, Amritsar Development Authority, Amritsar. On 22.10.2012, the appeal was heard and counsel for the petitioners made a statement that **“they were ready to deposit the remaining amount alongwith interest”**. Consequently, the Appellate Authority - restored the allotment on the condition that the petitioners/appellants would deposit the remaining balance amount alongwith interest within 30 days. Accordingly, the Appellate order was endorsed vide No. ADA/VM.P./Amritsar/P.A./2012/11827 dated 11.12.2012 to the appellants and the 4th respondent.

(7) The petitioners instead of honouring their statement before the Appellate Authority, preferred an appeal (revision petition) before the 1st respondent – Secretary, Punjab Urban Planning and Development Authority (PUDA), Chandigarh, against the order dated

11.12.2012 of the Additional Chief Administrator, Amritsar Development Authority. The said appeal is stated to have been filed on 1.2.2013. On 22.1.2015, the 1st respondent dismissed the appeal (revision petition). Thus the petitioners are before this Court in challenging the action of the Estate Officer -4th respondent, Appellate Authority – Additional Chief Administrator - 3rd respondent and Revisional Authority – Special Secretary to Government of Punjab - 1st respondent.

(8) Learned counsel for the petitioners in support of the petitions, contended that Section 45 of the Act, which relates to Resumption and Forfeiture on Breach of Transfer, has not been complied with while passing order dated 19.9.2012 (Annexure P-5). An extract of Section 45 of the Act is reproduced herein:-

“45. RESUMPTION AND FORFEITURE OF BREACH OF TRANSFER; -(1) Where any transferee makes default in the payment of any consideration money, installment, or any installment, on account of the transfer of any land or building, or both, under section 43, the Estate Officer may, by notice in writing, call upon the transferee to show cause, within a period of thirty days, why a penalty as may be determined by the Authority be not imposed upon him;

Provided that the penalty so imposed shall not exceed the amount due from the transferee.

(2) After considering the cause, if any, shown by the transferee and after giving him reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded, in writing, make an order imposing the penalty and direct that the amount of money due along with the penalty shall be paid by the transferee within such period as may be specified in the order.

(3) If the transferee fails to pay the amount due, together with the penalty in accordance with the order made under sub-section (2) or commits a breach of any other condition of transfer, the Estate Officer may, by notice in writing call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the transfer of the land or building or both, should not be made.

(4) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (3), and any evidence that he may produce in respect

of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded, in writing, make an order resuming the land or building or both, as the case may be, and direct the forfeiture as provided in sub-section (3) of the whole or any part of the money paid in respect of such transfer.

(5) Any person aggrieved by an order of the Estate Officer under Section 44 or under this section may, within a period of thirty days of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner; as may be prescribed.

Provided that the Chief Administrator may entertain the appeal after the expiry of the period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(6) The Chief Administrator may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he thinks fit.

(7) The Chief Administrator may either on his own motion or on an application received in this behalf at any time within a period of six months from the date of the order, call for the record of any

proceedings in which the Estate Officer has passed an order for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order in relation thereto as he thinks fit.

(8) Where a person is aggrieved by any order of the Chief Administrator, deciding the case under Sub-section (6) or sub-section (7), he may, within thirty days of the date of communication to him of such order, make an application in writing to the State Government for revision against the said order and the State Government may confirm, alter and rescind the order of the Chief Administrator.”

(9) It was contended that resumption of plot by the Estate Officer - 4th respondent is nonest as Section 45 (1) of the Act, mandates issuance of notice to the extent that why penalty should not be imposed. No doubt, notice was issued to the petitioners on 15.6.2012 for payment of balance sale consideration within 30 days, failing which plot would stand resumed and penalty would also be levied. Thereafter, straightway allotment was cancelled and the commercial plot was resumed vide Annexure P-5 dated 19.9.2012. Learned counsel for the petitioners contended that there is no determination of penalty as envisaged under Section 45 of the Act. Without determination of penalty amount, question of cancellation of plot and resumption of plot is not permissible.

(10) He further contended that under Section 42 (2) of the

Act, show cause notice was not issued for imposition of penalty and giving ample opportunity of being heard, an order imposing penalty and directing the amounts due alongwith penalty to be paid ought to have been passed. It was also contended that there is non-compliance of Section 45 (3) of the Act, in other words, show cause notice for determining reason of resumption and forfeiture of any amount already paid by the allottees in case of breach of the order made under sub-section (2) of Section 45 of the Act.

(11) It was then urged that the petitioners have demanded for Zoning Plan. The same was not made available. Consequently, they were not in a position to take possession of the commercial plot and to construct building as in the absence of Zoning Plan, site plan for construction could not be sanctioned, when there is a condition in the allotment letter specifying that construction was liable to be carried out and made within three years from the date of issuance of allotment letter. Since possession of plot was not delivered to the petitioners, either physically at the spot or symbolically by issuance any letter, respondents could not seek payment of the balance amount of sale consideration from the petitioner. These contentions have not been appreciated by either of the authorities, therefore, the impugned actions of the respondents are liable to be set aside.

(12) Per contra, learned counsel for the respondents submitted that the petitioners have not complied with the conditions imposed in the allotment letter dated 5.11.2007 vide Annexure P-1/A. The first installment was due on 19.9.2008, the second installment was due

19.9.2009, the third one was due on 19.9.2010 and the fourth one was due on 19.9.2011. If there is a delay, a penalty clause has been inserted vide Clause No. 3.2 (v). Learned counsel for the respondents pointed out that Clause 4 of the allotment letter deals with possession and ownership. As per the said clause the petitioners were required to pay 25% of the saleable price and thereafter possession was required to be taken by them within a stipulated period of 90 days from the date of issuance of the letter i.e. 5.11.2007. In other words, there is an obligation on the part of the petitioners to pay 25% of the saleable price and to take the possession. When things were made crystal clear to the petitioners in the allotment letter, they have failed to comply with the conditions imposed in the allotment letter. Firstly, the petitioners failed to take possession and did not deposit the installments, which were due on 19.9.2008 to 19.9.2011 (four installments). On the other hand, petitioners are posing one or the other lame excuses by seeking Zoning Plan of SCOs at Canal Rest House, Pathankot on 9.6.2010, 29.7.2010 and 27.3.2012. The Estate Officer issued show cause notice for payment of balance amount alongwith penalty on 19.4.2012, the date on which all the four installments, which were due to the PUDA as on 19.9.2011, were not paid. Despite providing sufficient time to the petitioners, they failed to adhere to the conditions imposed in the allotment letter and so also show cause notice issued by the Estate Officer - 4th respondent for remittance of balance amount alongwith penalty. Therefore, there is no infirmity in cancellation of the commercial plot allotted to the

petitioners and the impugned action is in accordance with law. It was vehemently contended that the petitioners' counsel admitted before the Appellate Authority stating that *“the appellant appeared through his counsel and made statement that they were ready to deposit the remaining amount alongwith interest”*. The Appellate Authority having accepted the willingness of the petitioners allowed the appeals, while restoring the allotment of the site with a condition that petitioners would deposit the remaining balance amount alongwith interest within 30 days. When things stood thus, the petitioners approached the Revisional authority – Secretary, Punjab Urban Planning and Development Authority (PUDA), Chandigarh. The Revisional Authority rightly dismissed the revision petition. The petitioners have not approached this Court with clean hands for the reasons that at one stage they admitted that they are ready to deposit the balance amount alongwith interest. Having said so before the Appellate Authority, they have preferred revision petition, as well as, the present petitions, contending that there is non-compliance of Section 45 of the Act. The petitioners cannot take 'U' turn. Therefore, the writ petitions are to be dismissed having regard to the conduct of the petitioners in the proceedings before the Appellate Authority, as well as, Revisional Authority.

(13) Heard learned counsel for the parties.

(14) It is undisputed that the petitioners being the successful bidders for allotment of commercial plot in the auction held on 19.9.2007, PUDA issued allotment letter/communication dated

5.11.2007 (Annexure P-1/A). It is relevant to extract Clause 3.2 (i) to (x) of the said letter which reads as follows:-

“3. Payment Schedule

Payment of Rs. 732353.00 made by you has already been adjust towards initial 25% of the sale price of site.

3.2 For Balance Payment of 75%

(i) The balance amount of Rs.3197057.00 being 75% of the sale price of plot can either be paid in lumpsum without any interest within 60 days from the date of issue of allotment or in 4 (Four) equated --- yearly installment alongwith an interest @ 12% per annum as indicated in the schedule given in (ii) below.

(ii) In case payment is made instalment, payment schedule shall be under:-

<i>S.No.</i>	<i>Due date</i>	<i>Principal amount</i>	<i>Interest</i>	<i>Total amount</i>
Ist	19.9.08	549265-00	263647-00	812912-00
IIInd	19.9.09	549265-00	197735-00	747000-00
IIIrd	19.9.2010	549265-00	131824-00	681089-00
IVth	19.9.2011	549265-00	65912-00	655177-00

(iii) In case balance 75% payment is made in lumpsum within 60 days from the date of issue of allotment letter, a rebate of 5% shall be admissible. However, in case payment of amount due is made in lumpsum at any stage, a rebate of 5% on the balance

principal amount shall be admissible.

(iv) In case of any advance payment which is not less than the next due instalment, then the remaining instalments shall be rescheduled.

(v) In case installment is not paid by the 10th of the following month in which it falls due, then without prejudice to any action under section 45 of the Punjab Regional and Town Planning and Development Act, 1995 allottee shall be liable to pay penalty on the amount due at the following rates for the delayed period:-

<i>Sr. No.</i>	<i>Delayed Period</i>	<i>Rate of Penalty</i>
1	If the delay is upto one year	Normal applicable rate of interest +3% P.A. for the delayed period.
2	If the delay is upto 2 years	Normal applicable rate of interest +4% P.A. for the delayed period.
3	If the delay is upto 3 years or more	Normal applicable rate of interest +5% P.A. for the delayed period.

However, before imposing penalty, Estate Office will give notice and provide opportunity of being heard to the allottee and will pass an order in writing. Provided that penalty so imposed shall not exceed the amount due including principal and the interest chargeable from the allottee.

(vi) In case of reduction/increase in area, the excess amount/amount due shall be refunded or added to amount due as the case may be on pro-rata basis within a period of 60 days.

(vii) All payments shall be made by a bank draft drawn in favour of Estate Officer, Amritsar at any local branch where he is situated. Payment by cheque shall not be accepted Details of plot number area sector and urban Estate should be indicated both in the following letter and on the back of demand draft for avoiding my misuse.

(viii) No separate notice for payment of instalment (s) shall be sent.

(ix) Receipt in respect of all payments received shall be issued within a period of 15 days.

(x) No interest will be paid for any amount whatsoever deposited with PUDA.

4. POSSESSION AND OWNERSHIP

(i) Possession of plot shall be banded over to allottee within 90 days of issue of allotment letter provided 25% of the saleable price has been paid If possession is not taken by the allottee within stipulated period. It shall be deemed to have been handed over on the expiry of said period. Specimen signature alongwith photographs duly attested by the Magistrate 1st Class may be submitted within 90 days from the date of issue of this letter.

(ii) xxx xxx xxx

(iii) xxx xxx xxx

(iv) xxx xxx xxx (emphasis applied)

(15) Clause (6) deals with extension fee. It was noticed that as per the payment schedule at Clause (3), the first installment was due on 19.9.2008 and second installment was due on 19.9.2009. Both the installments were not paid by the petitioners alongwith interest as on 9.6.2010. However, with lame excuse, petitioners requested for supply of zoning plan of SCOs. Similar request was made on 29.7.2010 and 27.3.2012. Petitioners have not placed any material to show that they had taken possession and paid installments which were due as on 27.3.2012 i.e. four installments would have been completed on 19.9.2011. They have also not placed on record that in the absence of zoning plan, they were not in a position to take possession of the allotted commercial plot and proceed for construction of the building. It is only their assumption that zoning plan was required. Even thereafter, petitioners have been provided sufficient time for depositing the balance amount alongwith penal interest. The petitioners have not availed the opportunity to pay the balance amount. In Clause 6 (ii) a table has been prepared in respect of delay period from 1 year to 3 years. The interest varies from normal applicable rate of interest +3% p.a. for the delayed period, so also for the 2nd year +4% interest p.a., and for the 3rd year +5% interest p.a., for the delayed period. This was made known to the petitioners at the time of allotment of commercial plot on 5.11.2007. Therefore the conditions imposed in the allotment letter are binding on the petitioners. The 4th respondent issued two show cause notices

before cancellation of allotment of commercial plot and resumption of plot, while invoking Section 45 (3) of the Act. In fact petitioners do not bother to reply to the show cause notice. The petitioners have failed to avail the concession given by the 4th respondent in the year 2012, therefore, petitioners do not have a voice to say that there is a non-compliance of Section 45 of the Act. In fact petitioners least bother to reply to the show cause notice. Moreover, the petitioners before the Appellate Authority clearly admitted that **“they were ready to deposit the remaining amount alongwith interest”**. Having said so, the petitioners should have remitted balance amount alongwith interest. On the other hand, they preferred the revision petitions before the Revisional Authority and suffered an order of dismissal of revision petitions. The Revisional Authority held that “it is very clear from the record that the applicant/petitioner through his counsel has made oral statement before Additional Chief Administrator in the appeal that he is ready to make payment of balance amount alongwith interest and this statement of the appellant debars him from re-agitating the matter on the point of interest in the present appeal”.

(16) In view of these facts and circumstances, the petitioners are unnecessarily prolonging the issue of remitting balance amount alongwith interest and penal interest to buy time before each and every authority, as well as, before this Court. Therefore, the petitions are liable to be rejected with costs.

(17) Accordingly, all the petitions are dismissed with costs of

Rs.10,000/- on each of the petitioners and the same shall be remitted
in the office of the 4th respondent.

(**Surya Kant**)
Judge

(**P.B. Bajanthri**)
Judge

29.10.2015.
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