

CWP no. 14247 of 2015 (O&M) 1

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

CWP no. 14247 of 2015 (O&M)

Date of Decision :11.8.2016

Suresh Kumar and another

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE DR. SHEKHER DHAWAN**

**Present : Mr.Akshay Bhan, Sr. Advocate with
Mr. Abhishek Sangi and
Mr. Aman Bansal, Advocates for the petitioners**

Mr. Gaurav Garg Dhuriwala, DAG, Punjab

Mr. Nitin Kaushal, Advocate for GMADA

MAHESH GROVER, J.

The instant writ petition is under Article 226 of the Constitution of India praying for issuance of a writ in the nature of Certiorari to quash orders dated 15.3.2013, 8.5.2013 and 4.5.2015.

The petitioner made a successful bid in an auction held on 21.11.2011 for a residential plot no. 393 Sector 71, Mohali for a consideration of Rs.4,60,00,000/- out of which 10% was to be deposited on the fall of hammer and 15% within time stipulated i.e 30 days from the date of auction, which the petitioner did and was thus issued an allotment letter dated 22.2.2012.

The petitioner started paying the instalments but soon ran into some difficulties and on 11.3.2013 expressed his desire to surrender the plot

as he was unable to cope up with the demands of the instalments.

The competent authority noted there was no provision for surrendering the plot and passed an order purportedly exercising its powers under Section 45(3) of the Punjab Regional Town Planning and Development Act, 1995 (hereinafter referred to as the 'Act') to order a forfeiture of 10% of the total amount of the plot with interest which became a cause of grievance to the petitioner in appeal which was dismissed and so was the revision.

These are the orders that the petitioner now impugns in the present proceedings.

The contention of the learned counsel for the petitioner is that under Section 45 (3) of the Act, the authorities would be empowered to order resumption and forfeit upto 10% of the amount in the event of the allottee failing to pay the due instalments alongwith penal interest but in the instant case the proceedings of resumption were never resorted to and neither was any show cause notice issued to the petitioner in this regard. Instead forfeiture of 10% was ordered straightway which according to the petitioner was harsh considering the fact that he himself had volunteered to return the plot on account of his inability to pay the amounts. Section 45(3) of the Act, (before the Amendment of 2013) is reproduced herebelow for ready reference:-

Section 45- Resumption and forfeiture for breach of transfer:-

(1) xxxx

(2) xxxx

(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.”

The petitioner also places reliance on certain judgments of this Court in CWP no. 7909 of 2010 titled as **Estate Officer, Greater Mohali Area Development Authority Mohali vs. Harpal Singh and another** decided on 8.11.2011, CWP no. 8825 of 2013 titled as **Greater Mohali Area Development Authority vs. Parshottam Lal and others** decided on 5.8.2013 and CWP no.20902 of 2014 titled as **Preet Inder Singh and ors vs. State of Punjab and ors** decided on 23.4.2015 where a lesser amount than 10% was ordered to be forfeited in the exercise of the discretion of the authority(Estate Officer with the GMADA, Mohali) or even the appellate authority or revisional authority for that purpose.

He thus contends that given the observations of the Hon'ble the Supreme Court that resumption and forfeiture are rather a draconian measure, the imposition of forfeiture of 10% of the amount is extraordinarily oppressive to the petitioner.

Prayer is opposed by the learned counsel for the respondent-

authorities to take recourse to resumption and forfeiture and there being no challenge to this part, the impugned orders would not warrant any interference as they are strictly in order and in terms of the provisions of the law. He has further stated that since there was a tendency amongst various authorities to apply different yardsticks at the time of imposing penalty of forfeiture ranging from 1% to 10%, an amendment was brought to the statute and the discretion has been done away with, leaving absolutely no room for any other course except to enforce 10% forfeiture in the event of the resumption of the premises.

To this learned counsel for the petitioner stated that the amendment was effected on 5.12.2013 prior to the passing of the impugned orders in his case and thus would be irrelevant to his cause with which we agree for any amendment subsequent to the passing of an order would have no effect on the case of the petitioners.

We have heard learned counsel for the parties.

Notice of motion was issued on a limited issue as to why the case be not remanded to the revisional authority to reconsider the desirability of reducing the forfeited amount, particularly, when the petitioner upon being given an opportunity to place on record medical certificates disclosing his condition, as a cause for his inability to pay the amount.

A perusal of Section 45(3) of the Act reveals that if a transferee fails to pay the amount together with the penalty in accordance with an order made by the competent authority under sub section 2 of Section 45 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

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.

Prior to the amendment on 5.3.2013 the words regarding forfeiture of amount were “*under no case shall exceed 10% of the total amount of consideration money, interest and other dues payable in respect of a transferee of land or building or both*”.

Once a discretion is vested in an authority then reasons should manifest themselves in the order itself particularly if an extreme view is taken by an authority to impose the maximum amount of forfeiture i.e 10% considering the fact that it is a measure in addition to resumption of a plot and would thus assume draconian overtones. If left absolutely unfettered to the discretion of the authority, it may possibly result in an extremely harsh order. It is not without reason that the Hon'ble Supreme Court in numerous judgments held that the power of resumption and forfeiture should be exercised only as a last resort being a drastic path. **Teri Oat Estates (P) Ltd vs. U.T. Chandigarh and ors** reported as (2004) 2 SCC 130 would be one such judgment while the others in this regard would be the followings:-

1. **Sandeep Subhash Parate vs. State of Maharashtra** (2006) 7 SCC 501
2. **Jitendra Kumar vs. State of Haryana** (2008) 2 SCC 161
3. **Managing Director, Haryana State Industrial Development Corporation and others vs. Hari Om Enterprises and another** (2009) 16 SCC 208.

fact faded into insignificance rather it did not arise at all in view of the petitioner's voluntary surrender of the plot. There is indeed no provision for surrender but it would be inconsequential in the facts of the present case as the effect of resumption would also be reversion of the property back to the State. It is not in dispute that the petitioner has not claimed the plot thereafter.

That leaves us with only one question as to whether the forfeiture of 10% was justified in the given facts of the case or not or should the authority have exercised its discretion to order a lesser amount of forfeiture.

The petitioner has shown his bona fides by not clinging on to the plot for an inordinately long period. In fact after the issuance of allotment letter on 22.2.2012 in just one year i.e on 11.3.2013 he expressed his desire to surrender which prayer was dealt with by the competent authority on 15.3.2013 but for some strange reasons, the Estate Officer did not resort to the provisions of Section 45(3) in totality which envisaged the issuance of notice and resumption besides forfeiture rather it chose to impose a penalty of forfeiture alone while accepting the surrender despite their being no provision under the Act. This fact was noticed by the Estate Officer himself.

We are thus of the opinion that even though the order was passed purportedly in exercise of powers under Section 45 (3) of the Act, the same was not respected in letter and spirit. We are now confronted with a situation where we have the option of quashing the impugned orders to remit the matter back to the authorities for consideration afresh or to decide the issue in these proceedings.

We feel that once the possession of the plot is not being sought by the petitioner and neither is he questioning the surrender of the plot or reversion of the same to the authorities but confining his challenge only to the forfeiture it would be futile to refer the matter back to the competent authority for the simple reason that it is likely to result in another round of litigation and wastage of time besides prolonging the agony of the petitioner.

There have been instances that have been brought to our notice where the competent authority had reduced the forfeiture to 4% after initially having imposed the maximum of 10%. We also feel that it was a fit case where the authorities ought to have exercised a discretion in favour of the petitioner for a lesser amount of forfeiture considering that the petitioner himself offered to surrender the plot within just one year of the offer of allotment on ground such as health and did not cling on to the possession for an unduly long period to reveal a speculative tendency. This is one factor which goes a long way to establish his bona fides that ought to have been appreciated. For the reasons stated above, we would instead of remanding the matter back to the authority to enable it to exercise its discretion choose to reduce the forfeiture amount to 5% which in our considered view meet the ends of justice adequately. Ordered accordingly.

Disposed of in above terms.

(Mahesh Grover)
Judge

(Shekher Dhawan)
Judge

11.08.2016

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No