

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 13392 of 2016

Date of Decision: 10.8.2016

Jaspal Singh

....Petitioner.

Versus

State of Punjab and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Vikas Mohan Gupta, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. By way of instant petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of the resumption order dated 2.12.2003 (Annexure P-2) and the orders dated 9.1.2009 (Annexure P-7), dated 13.9.2012 (Annexure P-9) and dated 19.3.2014 (Annexure P-12).

2. A few facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. A built up booth No. 99, measuring 22.6 square yards situated in Phase X, Mohali was allotted to the petitioner vide allotment letter dated 31.10.2000 (Annexure P-1) for a total sale consideration of ₹ 6 lacs. The petitioner had deposited 25% of the allotment amount, i.e. ₹ 1.50 lacs as earnest money. The remaining sale consideration was payable either without interest within a period of 60 days or with interest in four equal yearly installments. The first installment of

₹ 1,12,500/- was to be deposited on 31.1.2001 but due to ill health of the petitioner, the same could not be deposited in time and was deposited on 14.8.2002 amounting to ₹ 1.80 lacs which included 15% interest as per the allotment letter. The other installments were not paid in time. Accordingly, the respondents vide order dated 2.12.2003 (Annexure P-2) proceeded to resume the booth and ordered forfeiture of 10% of the total amount. Annexure P-2 was passed as an amount of ₹ 42,460/- remained unpaid at the time of passing of the resumption order. Feeling aggrieved, the petitioner filed an appeal against the resumption order, Annexure P-2 before the Additional Chief Administrator, exercising the powers of the Chief Administrator, who vide order dated 28.6.2006 (Annexure P-3) allowed the appeal and directed the petitioner to deposit the entire due amount along with cost of ₹ 5000/- within a period of 60 days. Respondents No.2 and 3 vide letter dated 25.8.2006 informed the petitioner that a sum of ₹ 7,39,518/- was to be deposited upto 10.10.2006. In response thereto, the petitioner deposited an amount of ₹ 1,16,250/- and ₹ 1,63,125/- vide demand drafts dated 28.7.2006. The remaining amount of ₹ 4,60,143/- could not be deposited by the petitioner as he met with a serious accident on 30.10.2005 and remained admitted for two months in PGI. The petitioner sought extension of time which was rejected. Accordingly, the petitioner filed an appeal before the Additional Chief Administrator, exercising the powers of the Chief Administrator on 8.1.2009 (Annexure P-5) for acceptance of payment of delayed installments. Along with the appeal, the petitioner submitted two demand drafts dated 16/18.12.2008 (Annexure P-6 Colly) for a total amount of ₹ 4,60,200/-. In the meantime, respondent No.3 vide order dated 9.1.2009 (Annexure P-7) ordered for vacation of the site

and directed the petitioner to hand over the possession within 30 days from the issuance of the said order. The petitioner filed revision under Section 45 (8) of the Punjab Regional and Town Planning and Development Act, 1995 (in short "the Act") on 12.1.2009 (Annexure P-8) against the order dated 28.8.2006 as the petitioner had failed to comply with the said order and in that eventuality the appeal stood rejected. The said revision was dismissed by the revisional authority vide order dated 13.9.2012 (Annexure P-9). As per the directions of the Additional Chief Administrator, the petitioner deposited a total sum of ₹ 6 lacs vide receipts (Annexure P-10 Colly) on different dates. Against the order, Annexure P-9, the petitioner filed CWP No. 25613 of 2012 which was dismissed as withdrawn by this Court vide order dated 25.3.2013 (Annexure P-11) with liberty to file departmental appeal against the order dated 13.9.2012. In pursuance thereto, the petitioner filed an appeal before the Additional Chief Administrator who exercising the powers of the Chief Administrator vide order dated 19.3.2014 (Annexure P-12) dismissed the said appeal as the petitioner had no right to again file appeal against the order of the revisional authority before the Chief Administrator. Thereafter, the petitioner filed review application dated 2.7.2014 (Annexure P-13) before the revisional authority. The said review application has not been decided till date. The petitioner made representations dated 16.11.2014 and dated 18.1.2016 (Annexure P-14 Colly) for issuance of no objection certificate, but to no effect. Even respondent No.1 vide letter dated 5.10.2015 (Annexure P-15) called respondents No.2 and 3 to place on record the copies of the earlier orders passed in revision petition against which review petition was filed. The respondents vide letter dated 16.3.2016 (Annexure P-16) informed the

petitioner that since the revision petition had been dismissed, therefore, the booth cannot be regularized in his favour. As per the details obtained from the official website of respondents No.2 and 3 on 24.5.2016 (Annexure P-17) all the payments made by the petitioner have been received. Hence, the present writ petition.

3. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

4. It would be expedient to notice the sequence of factual matrix as discernible from the record of the writ petition for the just decision of the case. The petitioner was allotted booth No. 99, measuring 22.6 square yards in Phase X, Mohali vide allotment letter dated 31.10.2000 (Annexure P-1) for a total sale consideration of ₹ 6 lacs. The petitioner had deposited 25% of the allotment amount, i.e. ₹ 1.50 lacs as earnest money. As per the allotment letter, the petitioner was required to deposit an installment of ₹ 1,12,500/- along with interest of ₹ 67,500/- totalling ₹ 1,80,000/- by 31.1.2001 where the allottee had opted to make the payment in installments. The amount of ₹ 1,80,000/- was deposited on 14.8.2002 as against the due date of 31.1.2001. A registered letter dated 12.12.2002 was issued to the allottee giving him personal hearing and intimating him that ₹ 42,460/- was due as there was delay in payment of 1st installment as per letter of allotment. In spite of repeated notices having been sent thereafter on 20.2.2003, 3.4.2003 and 17.7.2003, neither the allottee appeared for personal hearing nor deposited the due amount. Accordingly, the Estate Officer vide order dated 2.12.2003 (Annexure P-2) ordered resumption of booth No. 99, Phase X, Mohali under Section 46(4) of the Act and also forfeited 10% of the total amount. On appeal by the allottee, the appellate

authority issued conditional order on 28.6.2006 setting aside the order of the Estate Officer dated 2.12.2003 and restoring the site to the allottee subject to depositing second, third and fourth installment within 60 days in the office of the Estate Officer, PUDA, Mohali. Besides cost of ₹ 5000/- was also imposed for late filing of the appeal. It was clarified that failure of the allottee to deposit the second, third and fourth installment as per time allowed by the appellate authority, the order of resumption passed by the Estate Officer dated 2.12.2003 would become operative. On 25.8.2006, PUDA informed the allottee that the following amount along interest was due:-

1.	Amount of installments	₹ 3,95,250/-
2.	Interest/penalty on late installments	₹ 3,39,268/-
3.	Amount of penalty	₹ 5,000/-
	Total amount	₹ 7,39,518/-

The petitioner was directed to deposit the due amount by 10.10.2006 otherwise the order of the confiscation would remain operative. Thereafter, the petitioner did not pay the entire amount whereas the payment was made only in the year 2011 after a lapse of five years. The order of the Estate Officer dated 2.12.2003, thus, stood revived. The callous conduct of the petitioner is highlighted in paras 7 and 8 of the order of the revisional authority which reads thus:-

“7. I have heard both the parties and have perused the record. Even if the submissions of the petitioner with regard to his illness are accepted, the same relate to the years 2001 and 2005. The petitioner filed appeal against

the order of Estate Officer on 13.4.2006, there was no ground or reason whatsoever for not filing revision petition against the impugned order dated 28.6.2006 within the period of limitation. The delay of more than two years in filing the present revision petition was, therefore, avoidable and willful.

8. On merit, the fact remains that the installment which was due on 31.10.2001 was paid late and penalty as determined by the Estate Officer was not deposited despite notices. An amount of ₹ 43,500/- on account of penalty was paid on 7.3.2006 when the allotment had already been cancelled and the remaining three installments had become over due. So far as non payment of 2nd, 3rd and 4th installment is concerned, procedure as laid down under sub Sections 1, 2, 3 and 4 of Section 45 of the Act would have to be followed by the Estate Officer and the appellate authority was not justified in deciding the appeal on this ground. This fact however reflects the conduct of the petitioner. The petitioner has failed to pay the amount of penalty in time.”

5. Even otherwise, the last order which has been impugned in this writ petition is of 19th March 2014. No reasonable satisfactory explanation has been furnished for not filing the writ petition earlier. In such circumstances, when the booth was allotted in the year 2000 and the stipulated amounts were not paid in time and keeping in view of totality of

facts and circumstances as noticed above, the petitioner is not entitled to any relief as claimed.

6. In view of the above, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 10, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes