IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.18522 of 2013 (O&M)
Date of Decision: 10th May, 2016

Kabal Singh son of Sangat Singh

…..Petitioner

versus

Greater Mohali Area Development Authority, Mohali and another

.....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Pankaj Jain, Advocate, for the petitioner.
Mr. D.V.Sharma, Senior Advocate with
Ms. Shivani Sharma, Advocate, for the respondents.

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

The petitioner seeks a writ of certiorari to quash an order dated 22.05.2013 passed by respondent No.2-Estate Officer of the first respondent rejecting the petitioner's application to deposit the amount in respect of a residential plot allotted to him.

2. In the year 2011, the respondents floated a scheme for allotment of residential plots in Mohali. The petitioner applied for a plot under the category reserved for riot victims. On 17.10.2011, the petitioner paid a sum of Rs.9,50,000/- towards earnest money. He had applied to the Punjab State Cooperative Bank for a loan to pay the balance amount. The petitioner contends that the bank wrongly mentioned his father's name as Mangat Singh instead of Sangat Singh. This caused a delay in issuance of the 'Letter of Intent' (LOI). Upon this issue being cleared, the respondents

issued a LOI for the allotment of a plot admeasuring 500 sq. yards under the riot victim/terrorist victim category. The LOI recorded that the petitioner was successful in the draw of lots and that the first respondent intended allotting the plot to him subject to the conditions mentioned therein. Clauses 6, 7 and 20 thereof read as under:-

> "6. (i) You were required to deposit a sum of Rs. 1,90,0000.00 (nineteen lakh only) being 30% by 15th March, 2012. Owing to discrepancies in documents submitted by you LOI could not issued by the date fixed earlier. Now you are required to deposit the amount with 2% penalty within 30 days from 15th March, 2012. Delay upto 60 days may be condoned within 3% penalty and upto 90 days with 5% penalty on prior written request.
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> (ii) For balance payment of 65%;
>
> Plan-A
>
> A sum of Rs. 61,75,000.00 (Sixty one lakh seventy five thousand only) being balance 65% of the tentative price can be paid @ 12% interest in 6 half yearly instalments from the date of the issue of LOI. Payment schedule mentioned as under:-

#	No. of instalment	Installment date	Principal amount	Interest	Total amount
1.	1	07-Nov-2012	1029167.00	370500.00	1399667.00
2.	2	07-May-2013	1029167.00	378750.00	1337917.00
3.	3	07-Nov-2013	1029167.00	247000.00	1276167.00
4.	4	07-May-2014	1029167.00	185250.00	1214417.00
5.	5	07-Nov-2014	1029167.00	123500.00	1152667.00
6.	6	07-May-2012	1029165.00	61750.00	1090915.00
	Total		**6175000.00**	**1296750.00**	**7471750.00**

> 7. Balance 5% amount shall be payable within 30 days of the issue of allotment letter.
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> 20. This Letter of Intent shall be transferable by way of sale, gift or otherwise with the prior permission of Estate Officer, GMADA, SAS Nagar, after payment of 30% of the price of the plot and in addition to transfer fee @ 2% of the price of the plot."

3. The petitioner contends that he thereafter approached the bank for the release of the loan to enable him to pay the balance consideration for the allotment of the plot. The bank, however, took about 9 to 10 days to

complete the formalities. The bank informed him that the time to deposit 30% of the price expired on 13.06.2012 and therefore, required him to have the time extended by the respondents in order to release the loan. This aspect was not recorded either by the petitioner or by the bank. That, however, would make no difference considering what transpired thereafter.

4. By a letter dated 02.07.2012 the petitioner requested the respondents for extension of two month's time in terms of clause-6 of the LOI expressing financial problems. He agreed to pay the interest and penalty etc. for the extended period. Even assuming that 13.06.2012 was the last date for making the payment, the delay was not such as to warrant cancellation of the LOI. The delay was minimal. Considering the facts and circumstances of the case the petitioner's averments regarding his application for the loan and the delay on account of the procedural aspect are probable. The financial difficulty referred to in the letter dated 02.07.2012 pertains to the procedural hurdles and not an inability to make the payment.

5. The petitioner by his letter dated 28.08.2012 reiterated his request for an extension of two months' on the same ground. What we said in respect of the letter dated 02.07.2012 would equally apply to the letter dated 28.08.2012.

6. It is pertinent to note that there was no response to the letter dated 02.07.2012 seeking an extension of time. Nor was there any response to the petitioner's request for extension of time contained in his letter dated 28.08.2012. Under clause-6 the respondents were entitled to condone the delay upto 60 days with 3% penalty and upto 90 days with 5% penalty on

prior written request. The contention on behalf of the respondents that the payment could have been made nevertheless is not well founded. Under clause-6 the petitioner was bound to make a request for extension of time. If the extension was refused there was no question of the petitioner making the payment. The question of making the payment beyond the stipulated date would arise only in the event of the time for payment being extended. Not having responded to the petitioner's request for extension of time, it cannot be contended that the petitioner could have made the payment nevertheless.

7. Instead of responding to the petitioner's request for extension of time to make the payment, the respondents issued a notice dated 06.10.2012 calling upon the petitioner to show cause why the LOI ought not to be cancelled on account of his failure to deposit 20% of the amount. At the hearing on 21.11.2012, the petitioner offered to pay the balance amount with interest and penalty. He recorded the same by his letter dated 21.11.2012 and requested his case to be considered sympathetically. The petitioner filed a Civil Writ Petition No. 4056 of 2013 which was disposed of by an order and judgment dated 26.02.2013 directing the respondents to take a decision in the matter within two months.

Ultimately the 2nd respondent passed the impugned order dated 22.05.2013 rejecting the petitioner's application.

8. The impugned order curiously records that although as per clause-6 of the LOI the time for payment could be extended by 90 days the period had already expired. As we mentioned earlier the respondents had not even responded to the petitioner's application for extension of time.

There was no question, therefore, of the petitioner being entitled to make the payment beyond the original stipulated date for payment. The petitioner could have made the payment beyond the original stipulated date only in the event of the respondents extending the time. Thus the basis of the impugned order is erroneous. The impugned order is, therefore, liable to be set-aside.

9. Clause-6 of the LOI merely provides for payment of 30% without stipulating the date for the same. The words "*now you are required to deposit the amount…………*" indicate that the amount was to be paid within a reasonable time of the Letter of Intent dated 07.05.2012. The date 15.03.2012 obviously refers to the date from which 2% penalty is to be computed. It could not possibly have required the petitioner to pay 30% of the amount within 30 days of 15.03.2012 for that period would have expired on 15.04.2012 and Letter of Intent is itself dated 07.05.2012. We will presume therefore that 30% of the amount together with penalty at 2% from 15.03.2012 was to be paid within a reasonable time of the date of Letter of Intent dated 07.05.2012.

10. As a matter of fact, the date for payment under the LOI is in this case irrelevant as under clause 6 extensions of 60 days and 90 days were permissible. The application for extension was made almost immediately on account of the procedural difficulties expressed by the bank in disbursing the loan. There was no deliberate default on the part of the petitioner in paying the amount. This is a fit case for extending the time for payment. The impugned order rejected the application on the erroneous basis that the extended period had also lapsed. As we mentioned earlier the

respondents never responded to the petitioner's application for extension which was made well within this period.

11. The matter, however, does not end here. It was contended in this writ petition that the application for allotment was not made by the petitioner himself but was made on behalf of a third party. Photocopies of the original documents have been relied upon to contend that blank documents were signed by the petitioner. In support of this, it was contended for instance that the petitioner's signatures appeared outside the normal place where the signatures ought to have appeared. A Division Bench of this Court by an order dated 01.12.2015 noted this objection and observed that it was necessary to find out the source of petitioner's income to discharge the loan liability.

However, as the show cause notice was not issued on this basis and the impugned order was also not passed on this basis, it would be unfair to the petitioner to decide this matter against him on this ground. If the respondents intend cancelling the LOI on this ground they must issue a fresh show cause and pass a fresh order. We do not express any opinion as to whether they are entitled to issue a fresh show cause notice. Nor we do make any observation regarding the validity of such a show cause notice, if issued. All the contentions of the parties in this regard are kept open.

12. The petition is, therefore, disposed of the following order:-

> The impugned order dated 22.05.2013 is set aside. The petitioner's statement that he would pay the entire amount as per clause-6 is accepted. The petitioner shall make the payment within four weeks of the receipt of the intimation from the respondents as to

the exact amount payable. If the petitioner fails to make the payment as demanded, subject to any order or direction of a Court, Tribunal or authority, the petition shall stand dismissed and the impugned order shall be deemed to have been validly passed.

There shall be no order as to costs.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

10th May, 2016
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(ARUN PALLI)
JUDGE