IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 1468 of 2016

DATE OF DECISION : 30.08.2016

Dalip 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. R.C. Chaudhary, Advocate,
for the petitioner.

Mr. Rajinder Goyal, Addl. A.G., Punjab,
for respondent No.1.

Mr. Nitin Kaushal, Advocate,
for respondents No.2 and 3.

* * *

RAMENDRA JAIN , J.

1. The petitioner has filed this petition under Article 226 of the Constitution of India seeking quashing of the order dated 15.04.2013 (Annexure P-2) passed by the Estate Officer, GMADA, vide which Booth No. 420, Sector 70, SAS Nagar, Mohali, was resumed and 10% amount of the total sale price of the Booth was forfeited with interest, penalty and other charges. The petitioner has also challenged the orders dated 24.07.2013 (Annexure P-3) and 12.02.2015 (Annexure P-4) passed by the Additional Chief Administrator, GMADA, and the Special Secretary, Department of Housing and Urban Development, Government of Punjab,

dismissing the appeal and revision, respectively, preferred by him against the aforesaid order of the Estate Officer.

2. Briefly stated, the petitioner purchased Booth No. 420, Sector 70, Mohali, in an open auction held by GMADA on 21.11.2011, for a sum of ₹ 40,50,000/-. After deposit of ₹ 10,12,500/-, i.e. 25% of the total price of the Booth by the petitioner, within the prescribed period of 30 days, the allotment letter in his favour was issued vide memo dated 09.01.2012. Thereafter, when the first installment regarding the site in question was due, the petitioner wrote a letter dated 26.02.2013 (Annexure P-1) to the Estate Officer, GMADA, surrendering the site on account of his inability to deposit the due installments and requested for refund of the money deposited by him towards the site in question. The Estate Officer, GMADA, vide her order dated 15.04.2013 resumed the site and forfeited 10% amount of the total price of the site, as provided under Section 45 (3) of the Punjab Regional and Town Planning and Development Act, 1995 (hereinafter referred to as `the Act') with interest and penalty and other charges. In appeal and revision, filed by the petitioner, the said order was upheld vide orders dated 24.07.2013 and 12.02.2015, passed by the appellate and revisional authorities, respectively.

3. Learned counsel for the petitioner argued that keeping in view the fact that the petitioner had paid 25% amount of the total sale consideration within time and well before the due date of payment of first instalment, he surrendered the site in question with a request to the Estate Officer, GMADA, to refund the entire amount deposited by him, forfeiture of 10% amount of the total sale consideration, with interest and penalty, is

excessive. In the similar circumstances, in case of one Harpal Singh, the revisional authority reduced the forfeiture from 10% to 4% and directed the Estate Officer, GMADA, to refund 6% amount deposited by him. The said order of the revisional authority was upheld by this court in ***Estate Officer, Greater Mohali Area Development Authority, SAS Nagar, Sector 62, Mohali Vs. Harpal Singh and another*** (CWP No. 7909 of 2010, decided on 08.11.2011). Even the SLP filed by Estate Officer, GMADA against the said order was also dismissed by the Supreme Court vide order dated 03.08.2012 (Annexure P-6). Thus, the petitioner's case should also be treated on the same parity as of Harpal Singh and at the most, 4% amount of the total sale consideration of the site in question should be ordered to be forfeited.

4. On the other hand, learned counsel for the respondents argued that in the facts and circumstances of the instant case, the Estate Officer, GMADA, has rightly ordered to forfeit 10% amount of the total sale consideration of the site in question. The facts of ***Harpal Singh's case*** (supra) are different. In that case, the applicant had expressed his inability to deposit the due instalments due to his financial hardships, whereas in the instant case, while surrendering the site, the petitioner stated that there is no hope of flourishing the market in Sector 70 in future.

5. We have considered the submissions of learned counsel for the parties and have gone through the order passed by this court in ***Harpal Singh's case*** (supra).

6. Admittedly, while surrendering the site in question vide letter dated 26.02.2013, the petitioner cited the reason that there is no hope of flourishing the market in Sector 70 in future. But the fact remains that 25%

amount of the total sale consideration of the site in question was deposited by the petitioner within time. The auction in this case took place on 21.11.2011, and the petitioner purchased the site for a sum of ₹ 40,50,000/-. Within the prescribed period of 30 days, i.e. by 21.12.2011, the petitioner had deposited a sum of ₹ 10,12,500/-, i.e. 25% of the total price of the site, and the allotment letter in his favour was issued vide memo dated 09.01.2012. Thereafter, on 26.02.2013, i.e. after more than one year and two months of making the payment of 25% amount of the sale consideration of the site, and before taking possession of the auction site, he surrendered the site to the authorities by moving an application to the Estate Officer, GMADA, with a request to accept the surrender and refund the amount already deposited by him. Thus, at that time, he was not a defaulter and he had not even taken possession of the site. It is an admitted case of the respondents that the said application of the petitioner was accepted and without providing him an opportunity of hearing, the order of resumption along with forfeiture of 10% of the total sale consideration including interest and penalty was passed by the Estate Officer, GMADA, under Section 45 (3) of the Act, which provides a discretion to the Estate Officer to order for forfeiture of the amount upto the extent of 10% of the total sale consideration. While considering all these facts, this court in ***Harpal Singh's case*** (supra), upheld the order of the revisional authority ordering forfeiture of 4% amount of the total sale consideration. The relevant observations made by this court in ***Harpal Singh's case*** (supra) read as under :-

> *"In the light of the aforesaid principles, if we examine the impugned order, passed by the*

revisional authority, in the facts and circumstances of the case, we find that it is neither illegal, irrational or suffering from procedural impropriety, nor is exceeding the jurisdiction. As indicated above, when the order of resumption and forfeiture was passed by the Estate Officer, GMADA, respondent No.1 was not a defaulter. In the life of a person, there may be hundreds circumstances, when he fails to fulfill his commitment due to financial hardship. In the present case, due to financial crunch and suffering of loss in the business, when respondent No.1 was not able to fulfill the commitment of the agreement with the GMADA, then without taking possession of the site and without making default in making payment of any instalment, he approached the Estate Officer, GMADA, by moving an application explaining his circumstances to surrender the site. The said application was accepted and the order of resumption and forfeiting 10% of the total sale consideration, including interest and penalty in favour of the GMADA was passed under Section 45 (3) of the Act. In this case, the Estate Officer had passed this order, without affording opportunity of hearing to respondent No.1 and without giving any reason. In the given circumstance, the statute provides a discretion to the Estate Officer to order for forfeiture of the amount upto to the extent of 10% of the total sale consideration. In the present case, the Estate Officer has failed to exercise his discretion in a reasonable manner. It is neither the case of the GMADA that respondent No.1 has dishonestly

> *surrendered the plot with an ulterior motive nor there is any such evidence. Therefore, the revisional authority, by keeping in view the facts and circumstances of the case as well as the heavy amount of the total sale consideration, has exercised the said discretion, while reducing the amount of forfeiture from 10% to 4% of the total sale consideration. In this case, respondent No.1 has surrendered the site within one year without any loss caused to the other side, as noticed by the revisional authority. He was not handed over possession of the auction site and thus, he has not enjoyed the fruits of the site even for a single day. Learned counsel for the petitioner could not point out that the forfeiture of 4% of the total sale consideration is less than the damage suffered by the GMADA due to surrender of the site by respondent No.1. The Estate Officer neither in his order nor in the pleadings before this Court has given any fact or figure with regard to suffering of any damage by the GMADA. Thus, in the absence of any material, the Estate Officer was not justified in forfeiting the maximum 10% of the total sale consideration."*

The Supreme Court vide order dated 03.08.2012 (Annexure P-6) dismissed the Special Leave Petition No. 12841 of 2012 against the order passed in ***Harpal Singh's case*** (supra).

7. After hearing learned counsel for the parties, in the light of the observations made in ***Harpal Singh's case*** (supra), keeping in view the quantum of amount deposited by the petitioner with the GMADA, being 25% of the total sale consideration, as back as in December, 2011, and the

other facts and circumstances of the instant case that possession of the auctioned site is still with the GMADA, and without committing any default in making payment of instalment, the petitioner surrendered the site by moving an application to the Estate Officer, GMADA, in February, 2013, which was accepted without giving an opportunity of hearing to the petitioner, we are of the opinion that no prejudice has been caused to the GMADA in accepting surrender of the site, and the ends of justice would be met if 5% amount of the total sale consideration of the site is ordered to be forfeited. Consequently, the order dated 15.04.2013 (Annexure P-2) passed by the Estate Officer, GMADA, is modified to the extent that instead of forfeiture of 10% amount of the total sale price of the site, 5% amount be forfeited, and the remaining 5% shall be refunded to the petitioner forthwith.

8. Disposed of in the aforesaid terms.

(RAMENDRA JAIN)
JUDGE

August 30, 2016 **(AJAY KUMAR MITTAL)**
ndj **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes