

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP no. 15735 of 2015 (O&M)

Date of Decision :11.8.2016

Harvinder Singh and others

....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

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

Present : Mr. Naresh Kumar Joshi, Advocate for the petitioners

Mr. Gaurav Garg Dhuriwala, DAG, Punjab

Mr. R.S.Khosla, Sr. Advocate with  
Ms.Ishrat Phulka, Advocate for GMADA

**MAHESH GROVER, J.**

In this writ petition under Article 226 of the Constitution of India the petitioners pray for quashing of orders dated 20.9.2011, 18.3.2014 and 10.2.2015. The petitioners having successfully participated in the auction for a commercial site bearing SCO no.4 Sector 69, measuring 242 sq. yards at Urban Estates SAS Nagar, Mohali were required to deposit 10% on the fall of the hammer and 15% within 30 days thereafter which they did. According to one of the terms of the allotment made in favour of the petitioners on 5.8.2008, construction of the plot was to be completed within

3 years from the date of issue of allotment letter after getting building plans duly sanctioned from GMADA. We may extract the condition below:-

#### **5. Construction of Building**

i) Construction on plot shall be completed within a period of 3 years from the date of issue of allotment letter after getting the building plans duly sanctioned from the Estate Officer, GMADA.”

Learned counsel for the petitioners contends that the respondent defaulted in providing the building plans in order to enable him to raise the construction and thus they represented on 10.11.2008 urging the authorities to issue the building plans which was followed up by another request on 13.1.2009. On 9.3.2009 they submitted a demand draft of Rs. 300/- as requisite fee for the building plans and soon thereafter on 20.3.2009 they asked for a refund of the amount that they had deposited (25% of the sale price) which was followed up by a legal notice and since the respondents failed to respond they filed a CWP no. 7103 of 2009 which was disposed of with a direction to the competent authority to look into the grievance and take a decision thereon.

The respondents then passed an order dated 21.7.2009 by observing that there was no provision for surrender of the plot but if the petitioners desire, the amount of 10% would be forfeited in terms of Section 45 (3) of the Punjab Regional and Town Planning and Development Act, 1995 (hereinafter referred to as the 'Act'). This decision was taken in response to the legal notice submitted by the petitioners and it was also stipulated therein that the applicants deposited the requisite fee on 12.3.2009

and the drawings were issued to them on the same date which fact is

seriously contested by the learned counsel for the petitioners with material on record that fee was deposited on 9.3.2009 but no building plans were ever prepared or submitted to them.

We may at this stage observe that on this aspect there is a serious dispute between the parties where the petitioners assert that no building plans were sanctioned while the respondents assert that building plans were ready on 12.3.2009 in response to deposit of requisite fee of Rs. 300/- on 9.3.2009 and thus there being no delay on their part the respondents would be justified in resorting to the forfeiture of the amount, particularly when in June, 2009 the building plans were sent to the petitioners by speed post.

The order dated 21.7.2009 was challenged by the petitioners by way of another CWP no. 15850 of 2009 which was disposed of and the petitioners relegated to an alternate remedy of appeal which they availed of resulting in the order dated 6.1.2010 ordering the refund of the amount to the petitioners after deducting the requisite amount (i.e 10%) in terms of Section 45 (3) of the Act. The petitioners then impugned this order as well by way of revision where revisional authority held that petitioners were not at fault when the site was offered to be surrendered but no prejudice would be caused to the GMADA in accepting the surrendered site and thus reduced the 10% forfeiture amount to 5%.

This order dated 20.9.2011 was challenged by way of CWP no. 4260 of 2012 but was withdrawn with liberty to approach the revisional authority to clarify the order whether 5% of the amount related to the deposit by the petitioners or did it pertain to 5% of the sale consideration. Pursuant

revisional authority rejecting the plea of the petitioners against which they filed a review petition which was also dismissed on 10.2.2015 (Annexure P-20).

This implies that 5% of the amount forfeited was to relate to the amount of the total consideration money, interest and other fees payable in respect of the plot.

The instant petition has now been filed with a grievance that even though the amount of forfeiture was reduced from 10% to 5% it ought to have been reduced more favourably to 1% which has been done in numerous other cases some of which have been appended to the petition by filing a separate application.

Prayer is opposed by the learned counsel for the respondents who state that sufficient equitable discretion has been exercised in favour of the petitioners who cannot claim any further relief.

It has also been stated by the learned counsel for the respondents that even according to the case of the petitioners they had submitted the fee for the drawings/building plans on 9.3.2009 and barely after 10 days they made an offer to surrender the plot which indicated that they were not serious in raising the construction at all. He further contended that in any event they cannot be faulted for this and therefore, impugned order does not warrant any interference.

We have heard learned counsel for the parties and notice that there is a serious dispute on facts. In so far as issue of preparation of building plans is concerned the petitioners would assert that the building plans were never given to them though respondents state that it was ready on

dispatched to him in June, 2009 by speed post which cannot be construed to be an inordinate delay so as to provoke the petitioners to surrender the plot by assuming that the respondents had defaulted in their commitment. We notice that the petitioners had not shown any inclination to retrieve the plot and the entire argument of the learned counsel for the petitioners has been addressed on the issue of desirability of the forfeiture clause which has been reduced to 5% and which according to the petitioners ought to be reduced further.

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.”

Evidently, the authority is vested with a discretion to enforce a forfeiture upto 10% and the Estate Officer by strict interpretation of the provisions of law did enforce the maximum amount of forfeiture which was further reduced by the revisional authority to 5% largely on the issue that the petitioners were not given the drawings in time thereby frustrating their attempts to raise a construction leading to the offer of surrender.

To our mind the discretion has been exercised by the competent authority by balancing equities and we in the exercise of writ jurisdiction cannot interfere with an order in the absence of any perversity to enforce our perception over and above that of the competent authority particularly when sufficient reasons have been given to balance the claim of both the sides. We have also noticed above the dispute on facts regarding the preparation of the drawings/building plans and it is for this reason also that we cannot offer any further justification to reduce the forfeited amount even if the best case of the petitioners is to be accepted. Also the bonafides of the petitioners also are clouded for they deposited the fee on 9.3.2009 and surrendered the plot within 10 days thereafter. Therefore, we decline interference.

Learned counsel for the petitioner places reliance on decision of this Court rendered in CWP no. 15845 of 2006 titled as **Baldev Singh Jhajj vs. The Secretary to the Government of Punjab and others** decided on 29.9.2016 and a Hon'ble Supreme Court decision in a case titled as **Jagmohan Singh vs. State of Punjab and others** reported as 2008(2) LAR 538 to contend that similar treatment on the ground of parity should have been given to the petitioners but we at the cost of repetition state that in view of the conflict of facts the parity with the case of the instances cited may not

Hence, dismissed.

(Mahesh Grover)  
Judge

11.08.2016  
rekha

(Shekher Dhawan)  
Judge

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |