IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16696 of 2015
Date of decision: 05.04.2016

Krishan Kumar
... Petitioner

Versus

State of Haryana and others
... Respondents

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

Present: Mr. Suman Jain, Advocate for the petitioner.
Mr. Rahul Dev Singh, DAG, Haryana and
Mr. Deepak Balyan, Addl. AG, Haryana.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

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ARUN PALLI J.

A writ of mandamus is prayed for directing the respondents to release a sum of Rs.1,60,000/- along with interest @ 15% per annum w.e.f. 01.06.2015 till its realization. Further, an interest @ 15% per annum be also awarded on Rs.62,48,000/- w.e.f. 01.06.2015 till 06.08.2015.

Briefly, the case set out in the petition is that the petitioner was allotted SCO No.6/GF+FF in the Housing Board Colony, Bhiwani, on 25.06.2013, in an open auction, for a consideration of Rs.1,20,20,000/-. 25% of the bid amount i.e.

Rs.30,05,000/- was deposited by the petitioner at the time of auction itself. And in terms of clause 3 of the letter of allotment, dated 19.08.2013 (Annexure P/1), he also deposited 15% of the sale consideration i.e. Rs.18,03,000/-. Petitioner opted to pay the balance sale consideration in ten equal half yearly installments, of Rs.9,33,999/- each inclusive of 10% interest. And Rs.76,10,000/- till 01.05.2015, he had paid. The respondent-Board, vide resolution dated 12.02.1985 (Annexure P4), adopted the policy formulated by Haryana Urban Development Authority (HUDA), regarding surrender of commercial sites/buildings sold by auction. And, in terms thereof, the allottee was free to surrender a commercial site/building on forfeiture of 10% of the total bid amount. Plus, the bidder was required to pay interest on every over-due installment to the Board. Accordingly, the petitioner vide an application, dated 01.05.2015 (Annexure P5), appended with the other requisite documents, surrendered the allotted SCO. As a result, the Head office finalized the refund sheet for a sum of Rs.62,48,000/-, for out of the total amount deposited by the petitioner i.e. Rs.76,10,000/-, Rs.12,02,000/- were forfeited being 10% of the bid amount and Rs.1,60,000/- was also deducted as rent charges. Though, there was hardly any basis there for. Be that as it may, even Rs.62,48,000/-, was not released for a period of 2½ months. And eventually, the Board, vide a cheque dated 07.08.2015, refunded the said amount to the petitioner. That is how, as indicated above, the petitioner is before this court to seek refund of Rs.1,60,000/-, with interest, that were deducted on account of rent charges.

As set out in the written statement, filed on behalf of respondents No.1 to 3, itself the issue as regards deduction of Rs.1,60,000/- on account of rent charges purports to have been reconsidered, during the pendency of the writ petition, and it is conceded that the said amount was wrongly deducted, for the surrender policy did not postulate any such deduction. However, it is maintained that the Board was entitled to deduct Rs.11,74,284/- from the amount deposited by the petitioner, for the allottee was liable to pay interest on over-due installments. Therefore, after adjusting a sum of Rs.1,60,000/- that was wrongly deducted on account of rent charges, the petitioner was rather liable to pay Rs.10,14,284/-, as reflected in the calculation sheet (Annexure R/1), which reads thus:

Calculation of Interest on due installments in respect of SCO No. 6 HBC Dadri Gate Bhiwani surrendered by the allottee on dt. 01.05.2015 as per policy of Housing Board Haryana.

Auction price of the SCO	**=**	**Rs.12020000/-**
Less:- 40% amount received before possession	**=**	**Rs. 4808000/-**
		Rs. 7212000/-
Add:- interest w.e.f. 25.06.2013 to 29.12.2013 (188 days) @ 10%	**=**	**Rs. 371467/-**
		Rs. 7583467/-
Less:- amount received on 30.12.2013	**=**	**Rs. 940000/-**
		Rs. 6643467/-
Add:- interest w.e.f. 30.12.2013 to 03.06.2014 (156 days) @ 10%	**=**	**Rs. 283940/-**
		Rs. 6927407/-
Less:- amount received on 04.06.2014	**=**	**Rs. 925000/-**
		Rs. 6002407/-
Add:- interest w.e.f. 04.06.2014 to 06.06.2014 (3 days) @ 10%	**=**	**Rs. 4933/-**
		Rs. 6007340/-
Less:- amount received on 07.06.2014	**=**	**Rs. 3000/-**
		Rs. 6004340/-
Add:- interest w.e.f. 07.06.2014 to 04.12.2014	**=**	**Rs. 297750/-**

		Rs. 6302090/-
Less:- amount received on 05.12.2014	=	**Rs. 934000/-**
		Rs. 5368090/-
Add:- interest w.e.f. 05.12.2014 to 30.04.2015 (Surrendered on 01.05.2015) (147 days)	=	**Rs. 216194/-**
		Rs. 5584284/-
Total interest accrued 1+2+3+4+5 (371467+283940+4933+297750+216194)	=	**Rs. 1174284/-**

We have heard learned counsel for the parties and perused the records.

The short question that arises for determination is whether Rs.11,74,284/- are recoverable from the petitioner on account of interest on over-due installments, as envisaged in the policy dated 12.02.1985 (Annexure P3). If the answer to this question is in affirmative, then the respondents are justified in retaining a sum of Rs.1,60,000/- and also in raising a demand for the balance amount i.e. Rs.10,14,284/-. Otherwise, the Board is under obligation to refund the deducted amount i.e. Rs.1,60,000/-.

Thus, we have reached a stage where we are required to analyze the relevant clause of the surrender policy (Annexure P3), which reads thus:

> **"2. The question of formulation of policy regarding acceptance of surrender of commercial sites/building sold by auction has been under consideration for some time. After consideration of all aspects, it has been decided that surrender of commercial sites/building may be allowed after forfeiting 10% of the total bid. In addition, the bidder will also be liable for interest on over-due instalments. For the purpose of calculation of interest, the date of application of surrender shall be the deemed date of surrender and interest calculated accordingly."**

Concededly, in terms of the allotment letter, the petitioner had deposited 40% of the auction price i.e. Rs.48,08,300/-, even before he was offered possession of the allotted site. He had also furnished the first three installments in time or within the stipulated period. However, before the fourth installment could fall due in June, 2015, petitioner moved an application, dated 01.05.2015, to surrender the allotted site. Ex facie, a sum of Rs.11,74,284/- is being claimed by the Board on account of interest on the installments that were due and not overdue, as is revealed by the calculation sheet (Annexure R-1):

> "**Calculation of Interest on due installments in respect of SCO No. 6 HBC Dadri Gate Bhiwani surrendered by the allottee on dt. 01.05.2015 as per policy of Housing Board Haryana/**"

However, a bare reading of the surrender policy shows that the bidder was liable to pay interest only on over-due installments. Concededly, in the matter in hand, there was no installment that was over-due or the petitioner had defaulted to deposit in time. Prior to the submission of an application dated 01.05.2015, to surrender the allotted site, all the three installments were duly furnished by the petitioner along with interest in terms of the allotment letter. Meaning thereby, each of the installments of Rs.9,33,999/- also contained an interest component of 10% per annum. That being so, claim of the Board to charge interest on the installments that were due is wholly misconceived and ill founded.

Accordingly, the petitioner is entitled to the refund as prayed for. Further, the surrender policy also envisage:-

> **"...For the purpose of calculation of interest, the date of application of surrender shall be the deemed date of surrender and interest calculated accordingly."**

If for the purpose of calculation of interest, the date of application to surrender is the deemed date of surrender, petitioner, concededly, surrendered the allotted site on 01.05.2015, but yet, for no plausible reason, respondent-Board withheld Rs.62,48,000/- till 06.08.2015. Therefore, petitioner shall also be entitled to interest on the said amount.

Accordingly, the writ petition is allowed and the respondents are directed to refund a sum of Rs.1,60,000/- with interest @ 10% per annum w.e.f. 01.05.2015 till its realization. And to also pay interest, at the same rate, on Rs.62,48,000/-, from 01.05.2015 to 06.08.2015.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

05.04.2016
Rajan