

CWP No.19996 of 2015

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.19996 of 2015
Date of decision: 14.12.2016

Amar Singh Dhanao

....Petitioner

Versus

State of Punjab and others

....Respondents

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

Present: - Mr. N.S. Diwana, Advocate, and
Mr. Yashpal Marken, Advocate, for the petitioner.
Mr. Alok Jain, Addl. A.G., Punjab.
Mr. Sanjeev Patiyal, Advocate, for respondents No.2 and 3.

RAMENDRA JAIN

This writ petition has been filed for issuance of a writ in the nature of *certiorari* for quashing the ex parte order dated 04.11.1997 (Annexure P-1) passed by the Estate Officer, whereby MIG Flat No.1369/5, Phase 11, Mohali, of the petitioner has been cancelled, order dated 17.07.2013 (Annexure P-2) passed by Additional Chief Administrator, GMADA, Mohali, whereby appeal filed by the petitioner has been dismissed and the order dated 04.05.2015 (P-3) passed by the Special Secretary, Housing and Urban Development-cum-Revisional Authority, whereby the revision petition filed by the petitioner has been dismissed.

2. Put pithily, petitioner purchased Flat No.1369/5, Phase 11, Mohali, from one Santosh Devi Behl i.e. the original allottee for a total amount of ₹ 62,185/- on 12.01.1988. Petitioner paid 25% of the total amount along with one instalment before taking over the possession of the

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said plot. The balance amount was to be paid in 156 monthly instalments of ₹ 621/- each. Thereafter, as per the hire purchase agreement, petitioner regularly paid the instalments. However, vide order dated 24.10.1997 conveyed vide endorsement dated 04.11.1997 (Annexure P-1) allotment of the petitioner was cancelled by the Estate Officer, PUDA for non-payment of ₹ 21,114/- from 34 instalments. Even after cancellation of the allotment in favour of the petitioner, respondent continued to receive the monthly instalments regularly from the petitioner. On coming to know about the cancellation of the allotment in April, 2013, petitioner filed appeal before the ACA, GMADA – respondent No.2, which was dismissed by the Appellate Authority vide order dated 17.07.2013 (Annexure P-2) on the ground of delay. Aggrieved against both the orders, petitioner filed revision petition before the Special Secretary, Department of Housing and Urban Development Authority, which has also been dismissed vide order dated 04.05.2015 (Annexure P-3) by the Revisional Authority. Hence, this writ petition.

3. Learned counsel for the petitioner contended that the orders passed by the authorities below are arbitrary, illegal and the result of non-application of mind, therefore, not sustainable in the eyes of law. Petitioner regularly paid the monthly instalments as per the agreement. Without affording an opportunity of hearing, Estate Officer cancelled the allotment of the plot. The delay in filing the appeal against the order of the Estate Officer was beyond the control of the petitioner. The petitioner has deposited the entire amount as ordered by this Court. Therefore, impugned

orders deserve to be set aside and the writ petition be allowed.

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4. We have heard learned counsel for the parties and perused the record.

5. On 05.10.2016 following order was passed by this Court: -

“Learned counsel for the petitioner on instructions states that the petitioner is prepared to pay ₹ 24.40 lacs, which was intimated vide communication dated 4th April, 2016, depicting the present price of the house along with penal interest due thereon. He further states that demand draft for an amount of ₹ 12.20 lacs i.e. 50% of the total amount shall be produced in Court on the next date of hearing in favour of the Greater Mohali Area Development Authority (GMADA).

Learned counsel for respondents No.2 & 3 submitted that in the said communication dated 4th April, 2016, the market value of the property has been recorded as ₹ 25 lacs and GMADA is prepared to accept the same.

After hearing learned counsel for the parties, we consider it appropriate that in the interest of justice, the said flat be restored on the deposit of ₹ 24.40 lacs i.e. due on account of installments along with penal interest as referred in communication dated 4th April, 2016 instead of ₹ 25 lacs the present market price. Accordingly, the petitioner shall produce a demand draft of ₹12.20 lacs i.e. 50% of the total amount of ₹ 24.40 lacs, in Court on the adjourned date.

Adjourned to 26.10.2016.”

6. On 26.10.2016 following order was passed by this Court: -

“In terms of order dated October 05, 2016, learned counsel for the petitioner has produced a demand draft bearing No.”280853”, dated 25.10.2016, in the sum of ₹12,20,000/-, in Court today. Photocopy of the same is taken on record, subject to all just exceptions and the Demand Draft in original has been handed over to the learned counsel for respondents No.2 & 3, who has

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accepted the same without prejudice to the rights of respondents No.2 & 3 in the pending writ petition.

At the request of learned counsel for the petitioner, adjourned to 05.12.2016.

The balance amount of ₹12,20,000/- shall be produced in Court by the learned counsel for the petitioner, on the adjourned date.”

7. On 05.12.2016 following order was passed by this Court: -

“In terms of order dated October 26, 2016, learned counsel for the petitioner has produced two demand drafts bearing No.280886 dated 02.12.2016, in the sum of ₹ 8,20,000/- and No.011530 dated 01.11.2016, in the sum of ₹ 4,00,000/-, totalling ₹ 12,20,000/-, in Court today. Photocopy of the same is taken on record, subject to all just exceptions and the demand drafts in original have been returned to learned counsel for the petitioner to deposit the same with respondent No.3, who shall accept the same without prejudice to its rights in the pending writ petition.

To come up on 14.12.2016.

Interim order to continue.”

8. Keeping in view the fact that petitioner has deposited the sum of ₹ 24.40 lakhs towards the present price of the house in question, the claim of the respondents is restricted to ₹ 24.40 lakhs instead of ₹ 25 lakhs, as claimed in letter No.GMADA/LA/2016/15195 dated 4.4.2016 by the respondents. In other words, the amount claimed is reduced to ₹ 24.40 lakhs from ₹ 25 lakhs in terms of order dated 05.10.2016. Resultantly, the same shall be treated to have been paid by the petitioner to the respondents towards full and final settlement of the claim of the respondents and now nothing remains recoverable from the petitioner towards the cost of the house in question.

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9. With the above observations, writ petition is allowed. Impugned orders are set aside. Respondents are directed to re-allot the said plot to the petitioner and deliver the possession within two months from today without asking for any further amount.

(RAMENDRA JAIN)
JUDGE

December 14, 2016
R.S.

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No