IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.20842 of 2014 (O&M)
DATE OF DECISION: 17.02.2016

Surjit Singh

…..Petitioner

versus

State of Punjab and others

.....Respondents

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

Present: Mr. N.K. Vadhera, Advocate for the petitioners

Ms. Minakshi Goyal, AAG, Punjab

Mr. Salil Sagar, Senior Advocate with Mr. Samarth Sagar and Mr. Sunil Kumar, Advocates for respondents no.3 and 4

..

S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

The petitioner seeks a writ of mandamus directing the respondents to deliver possession of a Shop-cum-Office (SCO) No.49 as per the terms of an auction held on 26.11.2012. The petitioner has challenged the respondents' demand for interest without delivering possession of the SCO. Lastly, the petitioner seeks an order directing respondent No.2 to grant a rebate of 5 *per cent* on the total consideration stating that he is ready to pay the entire amount in one lump-sum.

2. The petitioner was allotted a site, *inter alia,* on the following terms and conditions for auction of freehold SCO sites (Annexure P/1):-

> "2. Intending bidders are required to deposit Earnest Money eligibility fees @ Rs______/-. The Earnest Money shall be paid in cash or by an account payee

demand draft in favour of The Commissioner, Municipal Corporation, Ludhiana payable at Ludhiana against proper receipt issued by the LCIA, M.C. Ludhiana before the Commencement of auction. No person/Company(s) or associations(s) are eligible for participation in the auction, if the prescribed earnest money deposit is not deposited before the commencement of the auction.

3. Earnest money of the unsuccessful bidder shall be refunded at the venue. The successful bidder will be required to pay 10% of the bid amount in cash or by an account payee demand draft in favour of ther Commissioner, Municipal Corporation, Ludhiana payable at Ludhiana on the same day at the fall of hammer OR within one additional working day as the Presiding Officer may permit another 15% amount is to be deposited within 30 days from the date of auction. In case the successful bidder does not deposit the 15% (fifteen percent) amount within 30 (thirty) days to complete 25% amount from the date of auction, then the 10% (ten percent) amount already deposited by him shall be forfeited and the applicant shall have no claim in this regard. The balance 75% amount can be paid either in (06) Six equated half yearly installments within interest at the rate of 12% per annum with lump sum, without interest within 15 days from the date of issue of allotment letter. A rebate of 5% will be allowed on the balance 755 amount (sic) in case it is deposited in lump sum. In case of payment by installments, the first installment will become due immediately after six months from that date of auction. In case the installment has not been deposited in time an additional 18% interest shall be payable by the bidder as the penalty in addition to the 12% interest for the delayed period. The installment shall be accepted only by mean of account payee bank draft in favour of the Commissioner, Municipal Corporation, Ludhiana payable at Ludhiana. Payment by cheque shall not be accepted. If the two installments are not deposited within the prescribed time period then the allotment shall be cancelled and the amount already deposited shall be forfeited.

….. ….. ….. …..

7. The Commissioner, Municipal Corporation, Ludhiana will issue the detailed allotment letter to the successful bidder after the receipt of 25% of bid amount.

….. ….. ….. …..

12. The possession of the site will be given within 60 days from the date of issue of allotment letter. In case the allottee fails to take the possession of the site within the stipulated period, it shall be deemed to have been handed over on the due date. The allottee shall be allowed to undertake

> construction after the possession of the site as given subject to the approval of the Standard design in accordance with the approved layout plan Clubbing of 3 SCO's should be allowed.
>
> 13. The site is offered on "As is where is" basis."

3. It was contended on behalf of the petitioner that he was not obliged to pay interest for two reasons. The first is that the Commissioner did not issue the detailed allotment letter to the petitioner after the receipt of 25 *per cent* of the bid amount from him. The same was paid on 20.06.2013. It was further contended that the respondents had failed to deliver possession of the site within sixty days from the date of issue of the allotment letter. He contended that as the payment of 25 *per cent* of the bid amount had been made on 20.6.2013, the allotment letter ought to have been given on the same day and that the period of sixty days stipulated in Clause 12 starts from that date. Accordingly, the possession of the site ought to have been handed over to him by 20.08.2013.

4. The submissions are not well founded. The petitioner, admittedly, did not pay the balance 75 *per cent* of the amount. It was payable in six equated half-yearly instalments with interest @ 12 *per cent* per annum or in a lump-sum without interest within 15 days from the date of the allotment letter. The said communication was issued on 23.12.2013. Even thereafter, no further payment has been made. The petitioner was therefore, liable to pay interest and penal interest as per the provisions of Clause-3 of the terms and conditions.

5. The petitioner, however, contends that he was not liable to pay any further amounts as the respondents had failed to provide the basic amenities or to complete the development works. Even assuming that the basic amenities had not been made available or that the development works had not been carried out, it would make no difference. The petitioner was nevertheless bound to pay the amounts as per the said communication. The communication is a contract between the parties. It does not entitle the petitioner to refuse to pay the amounts as stipulated therein on the ground that basic amenities had not been provided or that the development works had not been carried out. There is not a single clause to this effect. Nor was our attention invited to anything on record that absolves the petitioner the liability of making payment as per the communication. To accept the contention on behalf of the petitioner would be to re-write the agreement. It would require our imposing contractual terms upon the parties.

6. The record does not even disclose an implied obligation upon the respondents to provide the basic amenities and to carry out the development works as a condition precedent to their being entitled to receive the amount as per the above terms and conditions.

7. Clause-13 militates against the petitioner's contention. The petitioner was offered the site on an "As is where is" basis. The petitioner accepted the site on that basis. The contention now raised is a mere after-thought to justify the default in payment and to try and wriggle out of the obligation to make payment.

8. The imposition of the non-existent terms would be fraught with difficulties and complications and a myriad uncertainties. Several questions would then arise. What are such basic amenities? What is the extent to which such amenities ought to be provided in terms of quantum and of value? At what stage could the basic amenities be said to have been provided entitling the respondents to receive the amounts under the communication? Of what quality should the basic amenities be to entitle the respondents to receive the amounts under the communication? Similar, if not identical, questions and uncertainties could arise in respect of the development works. The entire situation would be fraught with uncertainties enabling the allottee to avoid payment indefinitely.

9. We will assume that the respondents are bound to provide the basic amenities and to carry out the development works and that the respondents failed to provide the basic amenities and to carry out the development works. The remedy of the allottee is to adopt proceedings to ensure or compel the respondents to do so. The allottee, however, is not entitled to refuse payment on that ground. As we mentioned earlier, the petitioner accepted the allotment on an "As is where is" basis. The petitioner knew the ground-realities. It was there for everyone to examine. The petitioner does not and indeed cannot contend that he was not aware that the development works had not been carried out and that the basic amenities had not been provided. He nevertheless accepted the allotment. He cannot now accept the allotment and refuse to

comply with his obligations thereunder. If he is dissatisfied, he must annul the agreement.

10. The condition of the plot and the surroundings would, in all probability, have been factored into the price. Had what the petitioner considers to be the basic amenities been provided and had the development works been carried out at the time of the allotment, the price of the plot would conceivably have been much higher. The petitioner cannot have at once the benefit of a lower price and refuse to pay the same.

11. The petitioner cannot possibly contend that he could not commence the construction work. The neighbouring plot owners have completed the construction. The nature of the construction is immaterial. The fact is that the petitioner could have commenced construction.

12. In the circumstances, the petition is dismissed

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

17.02.2016 **(ARUN PALLI)**
parkash* **JUDGE**

Note: Whether reportable: YES