

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

CWP No. 22363 of 2015

DATE OF DECISION : 07.12.2016

Raj Kumar and another

.... PETITIONERS

Versus

Special Secretary, Housing and Urban Development, Government of Punjab
and others

..... RESPONDENTS

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

Present: Mr. Siddharth Gupta, Advocate,
for the petitioners.

Mr. Alok Jain, Addl. A.G., Punjab.

Mr. Balwinder Singh, Advocate,
for respondent Nos.2 to 4.

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RAMENDRA JAIN , J.

1. The petitioners, who are father and son, had purchased SCO No. 1, Phase-II, Urban Estate, Bathinda, in an open auction conducted by the Bathinda Development Authority (BDA) (respondent No.4 herein) on 21.11.2012, for a sum of ₹ 55,18,887/-. Accordingly, an amount of ₹ 13,79,834/-, i.e. 25% of the total sale consideration, was deposited by the petitioners with respondent Nos. 3 and 4. Thereafter, respondent No.3 issued allotment letter dated 18.02.2013 (Annexure P-1) with regard to the aforesaid SCO in favour of the petitioners. It is the case of the petitioners that they had purchased the said SCO only because of its location, as a road was adjoining the SCO, thereby making easy approach to the SCO.

However, in a meeting held on 08.02.2013, the respondents proposed to merge the road available on the back side of the SCO into the part and parcel of three residential houses constructed by respondent No.4. Minutes of the proceedings of the said (Annexure P-2) meeting were communicated to the petitioners and the general public on 21.02.2013, i.e. much after the date of auction. On coming to know about the aforesaid proposals, the petitioners submitted an application (Annexure P-6) to surrender the SCO on the ground that they were badly effected by the said decision, and their purpose to purchase the SCO in the open auction by giving the highest bid was defeated. The petitioners further requested respondent Nos. 3 and 4 to refund the entire amount, deposited by them at the time of auction of the SCO along with interest at the rate of 18% per annum. Accordingly, vide order dated 28.02.2013 (Annexure P-3), respondent No.3 cancelled the allotment of the aforesaid SCO and ordered to refund the amount after forfeiting 10% amount of the total sale consideration, interest and other dues. In appeal filed by the petitioners against the said order, respondent No.2 vide order dated 20.03.2013 (Annexure P-4) ordered that instead of 10% of the sale consideration, only 5% amount be forfeited. Still not satisfied, the petitioners filed revision petition before respondent No.1, which was dismissed vide order dated 30.07.2015 (Annexure P-5).

2. Hence, the petitioners have filed this petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the orders dated 28.02.2013, 20.03.2013 and 30.07.2015 (Annexures P-3, P-4 and P-5) passed by respondent Nos. 3, 2 and 1, respectively. The petitioners have further prayed for issuance of a writ of mandamus directing respondent Nos. 3 and 4 to refund 5% amount

of the sale consideration. A direction to respondent Nos. 3 and 4 has also been sought to pay interest at the rate of 18% per annum on the total amount deposited by the petitioners at the time of allotment of the SCO from the date of its accrual till the date of disbursement.

3. Learned counsel for the petitioners argued that the petitioners had purchased the SCO by giving highest bid in an open auction on 21.11.2012 after perusing the site plan shown by the respondents at the time of auction. At that time, there was a road adjoining the SCO, due to which it was convenient for the petitioners and their customers to approach the SCO. Considering these aspects, the petitioners had purchased the SCO. However, in order to deprive the petitioners of their valuable right of the street/entrance on the back side of the said SCO, respondents merged the area of the street in three residential houses constructed by respondent No.4 on the opposite side of the street. Hence, passage/entrance to the SCO from the backside was denied. In this view of the matter, the respondents have wrongly forfeited 5% amount of the total sale consideration, interest and other expenses incurred upon the SCO, and the impugned orders are liable to be set aside.

4. On the other hand, learned counsel for respondent Nos. 2 to 4 argued that though there was a road on the backside of the SCO, which was beyond the parking for the SCO, but at the time of auction, it was not held out to the prospective bidders that the same was a permanent feature approved in the layout plan. Further, it was also never held out that the approachability from the front as well as back side of the SCO would enhance business prospects. The petitioners were never allured or compelled by respondent Nos. 2 to 4 to give the highest bid. Even

otherwise, the appellate authority has already taken a lenient view and ordered forfeiture of 5% instead of 10% of the total sale consideration.

5. We have thoughtfully considered the rival contentions raised by learned counsel for the parties.

6. Admittedly, at the time of auction, it was never stated by respondent Nos. 2 to 4 to the prospective bidders that the road existing on the backside of the SCO was a permanent feature approved in the layout plan. It was also not claimed that approachability to the SCO from its front as well as back side would enhance the business prospects. The petitioners of their own free will had purchased the SCO by giving highest bid in the open auction. They were never allured or compelled by any body to purchase the SCO. Further, the Appellate Authority, while adopting soft view, has already reduced the forfeiture of 10% amount to 5% of the total sale consideration. In view of the facts and circumstances of the case, we are of the opinion that forfeiture of 5% amount of the sale consideration is reasonable and justified, in accordance with the terms and conditions of the allotment letter.

7. Petition is, accordingly, dismissed.

(RAMENDRA JAIN)
JUDGE

December 07, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes