

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Writ Petition No. 23786 of 2015
Date of Decision: 19.12.2016

Sandeep Singh and another .. Petitioners

versus

State of Punjab and others .. Respondents

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

Present: Mr. R.S.Khosla, Senior Advocate, with
Mr. Arun Singla, Advocate, for the petitioners.

Mr. Rajinder Goyal, Addl. Advocate General, Punjab
for respondent no.1.

Mr. Sarvesh Malik, Advocate,
for respondent nos. 2 and 3.

RAMENDRA JAIN, J.

1. The petitioners, in an open auction, held by the Estate Officer, Greater Mohali Area Development Authority, PUDA Bhawan, SAS Nagar, Mohali (respondent no.3) (for brevity "the GMADA"), on 24.09.2009, purchased SCF No. 5, Sector 71, SAS Nagar, Mohali, for a sum of Rs.2,24,00,000/- and paid 10%, i.e., Rs.22,40,000/- of the auction price at the fall of the hammer, the same day, itself. Since, as per the terms and conditions of the allotment, 15% of the sale price was to be paid, within 30 days of the auction, before the issuance of allotment letter, therefore, the petitioners further paid a sum of Rs.33,60,000/-, the stipulated price of 15%, within 30 days and thus, in this manner, the petitioners paid a total amount of Rs.56,00,000/-. The balance 75% payment was to be paid in four

equal yearly instalments along with 12% simple interest as per the allotment letter, dated 19.11.2009 (Annexure P-1). However, the petitioners could not pay the balance instalments in time and, therefore, received a letter, dated 12.9.2012, from the Estate Officer, GMADA (respondent no.3) calling upon them, to deposit due amount of Rs.1,38,00,054/-, out of which, during the course of personal hearing, the petitioners deposited a sum of Rs.62,16,000/- vide two different demand drafts, dated 25.9.2012 and 05.10.2012 but still, the Estate Officer, GMADA (respondent no.3) resumed SCF No.5, of the petitioners vide order dated 23.11.2012 under section 45 (3) of the Punjab Regional and Town Planning and Development Act, 1995.

2. Feeling aggrieved against the aforesaid resumption order passed by the Estate Officer, GMADA (respondent no.3)-, the petitioners filed an appeal before Additional Chief Administrator, GMADA, Mohali (respondent no.2), which was partly accepted and consequently, the case of the petitioners was remanded back to the Estate Officer, GMADA (respondent no.3) to decide the same afresh after giving hearing to them. During re-hearing before the Estate Officer, GMADA (respondent no.3), afresh the petitioners further paid a sum of Rs.57,12,000/- in favour of the Estate Officer, GMADA. However, when the petitioners could not pay the third instalment as per the order dated 04.04.2013 passed by Additional Chief Administrator, GMADA, Mohali (respondent no.2), the petitioners offered to surrender the aforesaid SCF vide application, dated 02.07.2013 (Annexure P-2) to the Estate Officer, GMADA, (respondent no.3), who accepted the same but forfeited 10% of the total auction price along with interest and penalty accrued thereon, vide order dated 22.7.2013 without affording an opportunity of hearing to the petitioners.

3. Feeling aggrieved, the petitioners preferred an appeal before the Additional Chief Administrator, GMADA, Mohali (respondent no.2), which was dismissed vide order dated 29.08.2013 (Annexure P-5). Further, the revision filed by the petitioners against the order dated 29.8.2013 also met the same fate of dismissal vide order dated 27.8.2015 (Annexure P-7) passed by the Special Secretary, Housing and Urban Development, exercising the power of revisional authority (respondent no.1). It is against this order that the petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of certiorari for quashing orders dated 22.7.2013 (Annexure P-3), passed by the Estate Officer, GMADA; dated 29.8.2013 (Annexure P-5) passed by the Additional Chief Administrator, GMADA and 27.8.2015 (Annexure P-7), passed by the Special Secretary, Housing and Urban Development, Government of Punjab, dismissing their representation, appeal and revision, respectively. Further prayer for mandamus has been made, directing the respondents to refund 10% of the total price along with interest and penalty forfeited by the respondents in respect of the SCF to the petitioners.

5. Learned counsel for the petitioners contended that the petitioners have surrendered their SCF and, therefore, forfeiture of 10% of the total price of the auction along with penalty and interest amounting to Rs.33,60,000/- by the respondents is arbitrary, illegal and against the principles of natural justice. In similar circumstances, this court, in Civil Writ Petition No.7909 of 2010 decided on 08.11.2011 (Annexure P-8) and in Civil Writ Petition No.8825 of 2013 vide order dated 05.08.2013 (Annexure P-9), has reduced the forfeiture amount from 10% to 4% and

10% to 5%, respectively and, therefore, treating the case of the petitioners on the same parity, the forfeiture amount may be reduced to 5% or 4%.

6. After giving our thoughtful consideration to the submissions made by learned counsel for the petitioners, we find that the present writ petition is completely devoid of any merit, inasmuch as the petitioners cannot be permitted to go beyond the terms and conditions of the allotment letter. For facility of reference, clause (viii) of the General Clause 7 of the allotment letter dated 19.11.2009 (Annexure P-1) is reproduced as under:-

“ 7 General

(i) to (vii) XX XX XX

(viii) In case of breach of any conditions of allotment or of regulations or non-payment of any amount due together with the penalty, the plot or building, as the case may be, shall be liable to be resumed and in that an amount not exceeding 10% of the total amount of consideration money, interest and other fees payable in respect of plot shall be forfeited as per the provision of section 45(3) of the Punjab Regional and Town Planning and Development Act, 1995 (hereinafter to be called the Act).”

7. From the aforesaid clause, it is evident that in case of non-payment of any due amount of the plot or the SCF, the petitioners were liable to be charged the forfeiture to the extent of 10% of the total sale consideration, along with interest and other fees payable. The quantum of forfeiture to be imposed in a given case depends upon totality of facts and circumstances prevalent in a particular situation. There cannot be any strict, hard and fast rule or any strait-jacket formula on the basis of which,

one can claim parity for application of rate of forfeiture. The cases cited by learned counsel for the petitioners were based on individual fact and situation involved therein and, therefore, no advantage can be derived by the petitioners therefrom. Keeping in view the totality of facts and circumstances of the present case, the forfeiture of 10% of the amount is justified, which cannot be said to be unreasonable in any manner.

8. In view of the foregoing reasons, the writ petition fails and is hereby dismissed.

(RAMENDRA JAIN)
JUDGE

19.12.2016
VK

(AJAY KUMAR MITTAL)
JUDGE

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|----|------------------------------------|--------|
| 1. | Whether speaking/reasoned speaking | Yes/No |
| 2 | Whether reportable | Yes/No |