

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

CWP No.27517 of 2015 (O&M)

Date of Decision: 06.01.2016

Pritpal Singh

... Petitioner

VS.

GMADA & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE P.B. BAJANTHRI

Present: Mr. Sanjeev Sharma, Advocate for the petitioner

SURYA KANT, J. (Oral)

(1) The petitioner participated in an open auction and purchased the commercial site SCF No.14, Sector 63, SAS Nagar Mohali. The site was allotted to him vide allotment letter dated 26.05.2009 (P1) for the sale price of ₹3.53 crore. In the allotment letter, names of two more persons, namely, Ankush Sood and his wife Saloni Sood were also added as co-allottees.

(2) The petitioner deposited 25% earnest money and vide his letter dated 30.10.2009 pointed out the mistake regarding addition of the above-named two more persons as his co-allottees. The authorities vide memo dated 03.03.2010 (P2) corrected the mistake and informed the petitioner that the names of Ankush Sood and Saloni Sood have been deleted from the allotment letter and that “therefore, you shall be the sole allottee of the site”.

(3) After three years, the petitioner made a written request on 18.03.2013 to surrender the site and sought refund of the amount

deposited by him. His request was accepted vide order dated 22.03.2013 (P3) and he was permitted to surrender the site but 10% of the allotment price together with interest and penalty was forfeited in purported exercise of powers under Section 45(3) of the Punjab Regional & Town Planning & Development Act, 1995.

(4) The aggrieved petitioner filed statutory appeal which was declined by the Chief Administrator. He thereafter filed a revision petition before the State Government which has also been turned down vide order dated 01.01.2015 (P8). The above mentioned orders are now assailed in this writ petition.

(5) We have heard learned counsel for the petitioner at a considerable length and gone through the record.

(6) Two-fold contentions are raised, namely, (i) Section 45(3) of the 1995 Act though empowers the authorities to forfeit the amount in case of cancellation of allotment but the expression used is “not exceeding 10%...”. Hence there vests a discretion in the competent authority to forfeit less than 10% amount also. In the instant case, no aggravating circumstances are disclosed to justify the forfeiture of 10% amount. Secondly, the authorities themselves are responsible to frustrate the petitioner’s object of buying the property as two unwanted persons were added as co-allottees and the authorities took long time to carry out the necessary correction.

(7) In support of the first contention, reliance is placed on the view taken by this Court in **Punjab Urban Planning and**

Development Authority vs. Revisional Authority 2013(2) PLR 784.

(8) Having given thoughtful consideration to the submissions, it appears to be a fit case where this Court need not to interfere with the impugned action in exercise of its discretionary jurisdiction. We say so for the reasons that the petitioner apparently belongs to an affluent section of society who with open eyes participated in the auction and gave the highest bid of ₹3.53 crores in the year 2008 when there was a boom in the real estate market. True that the allotment letter was defective as it included the names of two more persons without the knowledge of petitioner but that mistake was corrected within few months and the petitioner was admittedly informed that the allotment was in his name alone. The mistaken inclusion of two more co-allottees in the allotment letter was not a factor which compelled the petitioner to surrender the site as no such immediate decision was taken by him, rather he made the surrender after three years. It was only in 2013 when the real estate market unfortunately crashed down that the petitioner surrendered the site. It clearly suggests that the petitioner purchased the subject site purely for speculative gains and having visualized that it was not a profitable venture, he surrendered the same. The petitioner was, therefore, bound to suffer the resultant consequences.

(9) It is pertinent to mention that as per the allotment letter, all instalments were required to be deposited before 02.09.2012. In

this manner the authorities would have received the entire sale price (more than four crores with interest) by September, 2012. Instead the petitioner surrendered the site in March, 2013 forcing the authorities to refund the amount except what has been forfeited in exercise of their statutory powers. In such like case where the allottee wanted to make quick gains out of a speculative investment, the authorities are well within their right to make good the losses suffered by GMADA. Since the Statute empowers the authorities to forfeit the amount not exceeding 10% and in the instant case, 10% amount only has been forfeited, we see no reason to interfere with the impugned action.

(10) The facts and circumstances of the cited-decision are totally distinguishable. There a differently-abled person was allotted two plots and he was asked to surrender one of the allotment. He complied with the direction and surrendered one of the plot. Yet 10% of the allotment price was deducted which the Revisional Authority reduced to 5%. PUDA challenged the order of Revisional Authority and this Court declined to interfere with the same.

(11) Similarly, petitioner's reliance on the order dated 05.08.2013 of this Court in **Greater Mohali Area Development Authority vs. Parshotam Lal and others (CWP No.8825 of 2013)** and other connected cases (P10) upholding the order of revisional authority in reducing the forfeiture amount from 10% to 5%, does not advance his case for the reason that the facts and circumstances

which prompted the revisional authority to reduce the amount are not on record. Suffice it to observe that the discretion vested under the Act has to be exercised keeping in view the facts and circumstances of each case and no uniform yardstick can be applied in this regard.

(12) Faced with this, learned counsel for the petitioner submits that the authorities have unjustifiably levied penal interest and non-construction charges which cannot be added in the definition of the 'allotment price', a part whereof can be forfeited under Section 45(3) of the Act.

(13) If that is so, we grant liberty to the petitioner to represent to the Estate Officer, PUDA to re-calculate the amount liable to be forfeited, if the penalty, interest and/or other charges, as claimed by the petitioner are not to be included. If such representation is made, the same shall be sympathetically considered within three months.

(14) With liberty afore-mentioned, the writ petition is dismissed.

(Surya Kant)
Judge

06.01.2016
vishal shonkar

(P.B. Bajanthri)
Judge