

LPA no. 489 of 2016 (O&M)

1

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

**LPA no. 489 of 2016 (O&M)
Date of Decision :27.9.2016**

Jagdev Singh

....Appellant(s)

Versus

State of Punjab and others

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE DR. SHEKHER DHAWAN**

Present : Mr. J.S.Brar, Advocate for the appellant

Mr. Manoj Bajaj, Addl. AG, Punjab

MAHESH GROVER, J.

This appeal is directed against the judgment of the learned Single Judge dated 18.11.2015.

The appellant was a successful bidder in an auction which took place on 29.12.1999 by offering the highest bid of Rs.7,38,300/- out of which 30% was deposited within time leading to the execution of agreement (Annexure P-4 in the writ petition) on 20.7.2000. As per this agreement the remaining amount of Rs.4.20 lacs was to be paid in four equated instalments. Only two instalments out of these four were paid in time but default was committed qua 3rd and 4th instalment leading to proceedings qua the appellant when he was burdened with penalty with interest which he also paid subsequently.

The respondents, however, cancelled the allotment and resorted

to resumption leading to the filing of the writ petition which has now been dismissed with reference to clause 7 of the agreement which we may extract even though it has been extracted in the impugned judgment itself:-

“Clause 7- in case the instalment is not paid by the 10th of the month following the month, in which it fall due, the Executive Engineer, Abohar Canal Division, Abohar shall proceed to take action for imposition of penalty charged @ 2% per month in addition to 1.25% per month of the amount due from the due date. In case non-payment of the instalment alongwith interest due thereon for a continuous period of 2 months, the whole or any part of the money paid in respect of the site shall be forfeited and the Executive Engineer, Abohar Canal Division, Abohar shall cancel the allotment and resume the site.”

After hearing learned counsel for the appellant we are of the opinion that the appellant has been visited with harsh consequences. The Hon'ble Supreme Court has repeatedly held that resumption and forfeiture are draconian features and should be resorted to only as a last resort being a drastic path. **Teri Oat Estates (P) Ltd vs. U.T. Chandigarh and ors** reported as (2004) 2 SCC 130 would be one such judgment while the others in this regard would be the followings:-

1. **Sandeep Subhash Parate vs. State of Maharashtra** (2006) 7 SCC 501
2. **Jitendra Kumar vs. State of Haryana** (2008) 2 SCC 161
3. **Managing Director, Haryana State Industrial Development**

Corporation and others vs. Hari Om Enterprises and another (2009) 16 SCC 208.

4. HUDA Panchkula vs. FC and another (P&H) 2013 (4) PLR 531.

We do not find that the default of the appellant was so significant so as to warrant such a measure, particularly, when he had paid substantial portion of the amount and defaulted only qua 3rd and 4th instalments which he also deposited, by submitting himself to the imposition of the penalty and interest. We would thus set aside the order of the learned Single Judge affirming the resumption/cancellation of the allotment in view of the aforesaid judgments deprecating the use of power of resumption and since the amount has already been paid, we would direct restoration of the allotment in favour of the appellant forthwith.

Appeal stands allowed.

(Mahesh Grover)
Judge

27.09.2016
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(Shekher Dhawan)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No