

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

CWP-17392-2015 (O&M)

Date of decision:- 06.09.2017

Puneet Singh

...Petitioner

Versus

Special Secretary, Department of Housing & Urban
Development, Government of Punjab, Punjab Mini
Secretariat, Sector 9, Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present:- Mr. Harsh Bunker, Advocate,
for the petitioner.

Mr. Daldeep Singh Sukarchakia, Deputy Advocate General,
Punjab.

Mr. Nitin Kaushal, Advocate,
for respondents No. 2 to 4.

* * * *

S.J. VAZIFDAR, C.J. (ORAL)

The petitioner has sought a writ of certiorari to quash an order dated 28.10.2013 passed by the Estate Officer, Greater Mohali Area Development Authority, (GMADA) resuming the property allotted to him and orders dated 12.02.2014 and 11.12.2014 passed by the Additional Chief Administrator, (GMADA) and the Special Secretary, Department of Housing & Urban Development, Government of Punjab dismissing his appeal and revision application. The orders resumed the property and forfeited 10 per cent of the consideration paid by the petitioner. The resumption order has attained finality. The only issue that remains is whether the entire amount of 10 per cent is liable to be forfeited or not.

2. Our conclusions in a nutshell are as follows: Section 45(3) of the Punjab Regional and Town Planning and Development Act, 1995 as it stood prior to 5.12.2003 applies to the petitioner's case. The Estate Officer was entitled to forfeit an amount upto 10 percent of the consideration meaning thereby, he had the discretion to forfeit an amount less than 10 percent and that he is bound to exercise this discretion. The Estate Officer, however, forfeited an amount of 10% apparently in view of section 45(3) as amended on 05.12.2003. The appellate and the revisional authority proceed on the same basis. We have, therefore, set aside the orders and directed the revisional authority to determine the amount to be forfeited after considering all facts of the case.

3. The Greater Mohali Area Development Authority (GMADA) held an open auction on 21.11.2011. The petitioner's bid of about ₹ 3.71 crores being the highest was accepted. An allotment letter dated 09.02.2012 was issued by GMADA in favour of the petitioner. The relevant clauses of the allotment letter dated 09.02.2012 read as under:-

"7. General

(i) This allotment shall be governed by the provision of Punjab Regional and Town Planning and Development Act, 1995, Rules and Regulations framed thereunder, as amended from time to time.

(vi) 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 case 10% of the total price plus interest due till that date shall be forfeited."

4. The petitioner paid an amount of ₹ 2,32,80,250/-, but failed to pay the balance consideration. Before the third installment fell due, the petitioner by a letter dated 04.10.2013 sought to surrender the plot and requested a refund of all the amounts paid by him.

5. The Estate Officer, GMADA by the impugned order dated 28.10.2013 noted that there is no provision in the Rules for surrender of the site and that the property had been resumed by a communication dated 21.10.2013 under Section 45(3) of the Punjab Regional and Town Planning and Development Act, 1995. After deducting 10 per cent of the total price of the site alongwith interest and penalty, the Estate Officer approved the refund of the balance amount of ₹ 1,90,10,834/-.

6. The resumption order dated 21.10.2013 referred to in the impugned order dated 28.10.2013 has itself not been specifically challenged. In any event, the resumption has now attained finality. The petitioner does not even challenge the same as he in any event desires surrendering the plot. A copy of the order dated 21.10.2013 was tendered in Court. It is true that the order directs the forfeiture of 10 per cent of the total value alongwith interest and penalty. In the prayers, there is no specific challenge to the order dated 21.10.2013. For the purpose of this judgement and considering the view that we have taken, it is not necessary to compel the petitioner to amend the petition by including a specific challenge to that order. As Mr. Harsh Bunker, the learned counsel appearing on behalf of the petitioner, rightly submitted, on the petitioner's application for surrender, the Estate Officer by the impugned order dated 28.10.2013 reiterated the deduction of 10 per cent

of the total price alongwith interest and penalty. The challenge to this order is therefore, sufficient. Moreover, the order dated 28.10.2013 was challenged in the application for revision which was dismissed and that order has been challenged in this petition. In the circumstances, the challenge to the order of the revisional authority is sufficient even so far as the order dated 21.10.2013 is concerned. It is not necessary to compel the petitioner to amend the petition to challenge the order dated 21.10.2013 specifically even for that reason.

7. The petitioner's appeal was dismissed by the Additional Chief Administrator's order dated 12.02.2014. The appellate authority, however, directed the Estate Officer to prepare a special case and to submit the same in case the appellant had some actual difficulty. This direction was obviously on the basis that Section 45(3), as it was amended on 05.12.2013, applied to the petitioner's case. The Additional Chief Administrator by the impugned order dated 11.12.2014 dismissed the revision petition. The revisional authority has also proceeded on the basis of the amended Section 45(3).

8. Section 45(3), as it stood prior to the amendment and as amended, reads as under:-

*Un-amended Section 45(3) prior to
05.12.2013:-*

If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub-section (2) or commits a breach of any other condition of transfer, the Estate Officer may, by notice in writing call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building or both, as the case may be, and

forfeiture of the whole or any part of the money, if any, paid in respect thereof, which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the transfer of the land or building or both, should not be made.

(emphasis supplied).

Amended Section 45(3) after
05.12.2013:-

If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub-section (2) or commits a breach of any other condition of transfer, the Estate Officer may, by notice in writing call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof, which shall be equivalent to ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the transfer of the land or building or both, should not be made.

Provided that in genuine cases of hardship of a class of person(s), the authority may, by general or specific order, reduce the amount of forfeiture for any person(s) for the reasons to be recorded in writing.

9. Mr. Harsh Bunker rightly submitted that the present case would be governed by Section 45(3) as it stood prior to its amendment which came into force on 05.12.2013. Apart from the fact that the petitioner's case pertains to the period prior to 05.12.2013, even the impugned order passed by the Estate

Officer was prior to the amendment. The petitioner's case, therefore, would be governed by the un-amended Section 45(3).

10. Under Section 45(3), as it originally stood, the authorities are entitled to forfeit the whole or any part of the money paid "which in no case shall exceed ten per cent of the total amount of the consideration money....". Thus, the forfeiture was not to exceed 10 per cent of the total amount of the consideration. The authorities are entitled to deduct an amount upto 10 per cent. It is axiomatic that they are entitled to deduct an amount less than 10 per cent of the amount of consideration, if a case for the same is made out. As per the provisions of Section 45(3), an amount less than 10 per cent can also be forfeited. This is clear from the words "which in no case shall exceed ten per cent of the total amount of the consideration money". If the intention was to forfeit an amount of 10 per cent and no less, Section 45(3) would have been worded entirely differently as indeed it has been by the amendment with the words "*which shall be equivalent to ten per cent of the total amount of the consideration money*". The petitioner is entitled to seek a deduction of an amount less than 10 per cent. Reasons for the quantum of deduction must in that case be furnished by the authority.

11. The impugned orders have forfeited 10 per cent of the total amount of consideration without considering whether the facts and circumstances of the case justify deducting an amount less than the maximum amount of 10 per cent of the consideration amount.

12. We hasten to add that the authorities are bound to take into consideration all the facts and circumstances of the case which affect not merely the allottee i.e. the petitioner

in this case, but also the revenue. There may be circumstances in which the surrender of the plot prejudicially affects the respondents especially financially. Such factors must also be taken into consideration by the authority. There may be cases where the authority is not in any manner prejudiced, but the allottee is. In that event, the authority would be justified in forfeiting an amount less than 10 per cent.

13. Faced with this, it was contended that under clause 7(vi) of the allotment letter, the parties had agreed to 10 per cent of the total price being forfeited in the event of the property being resumed. It was further contended that the parties having agreed to the same, the Estate Officer would not have the discretion to forfeit an amount less than 10 per cent of the total consideration.

14. The submission is not well founded. Section 45(3) itself confers the discretion upon the Estate Officer to forfeit an amount less than 10 per cent. We will presume that the parties are entitled to contract out of the statutory provisions. In the facts of the present case, it would make no difference. Clause 7(i) of the allotment letter specifies that the allotment would be governed by the provisions of the 1995 Act and the Rules and Regulations framed thereunder, as amended from time to time. Clauses 7(i) and 7(vi), therefore, provide for different consequences. Under sub clause (i), the authority was entitled to forfeit less than 10 per cent, if the facts and circumstances so warranted and under sub clause (vi), the respondents were entitled to deduct 10 per cent of the total price. The respondents having prepared the document following the rule of contra proferentem the terms and conditions must be read in favour of the petitioner.

15. It was then contended that the discretion conferred by section 45(3) as it originally stood was in fact exercised by stipulating the quantum of 10 per cent in clause 7(vi) of the Letter of Allotment.

16. This submission is not well founded either. As Mr. Bunker rightly submitted clause 7(vi) is not an exercise of discretion at all. It is a predetermined amount which cannot by any stretch of imagination be an exercise of discretion dependent upon the facts of the case which were yet to unfold. The discretion is to be exercised based on the facts of each case. This would include post contractual facts which obviously could not have been considered on the date of the Letter of Allotment.

17. The reliance upon the proviso to the amended Section 45(3) is not well founded. The proviso affords an allottee an opportunity of convincing the respondents not to deduct any amount in case of difficulty. The proviso introduced by the amendment cannot govern the provisions of Section 45(3) as it originally stood.

18. In these circumstances, the impugned orders are set aside in so far as they forfeit an amount of 10 per cent of the total consideration.

19. Instead of remanding the matter to the Estate Officer, in our view, the issue as to whether the entire amount of 10 per cent ought to be forfeited or an amount less than the same ought to be forfeited ought to be decided by the revisional authority itself. The revisional authority shall decide the quantum of forfeiture after granting the petitioner an opportunity of being heard.

20. The writ petition is accordingly disposed of.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

06.09.2017
Amodh

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No