IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.17448 of 2016
Date of decision: **November 16, 2017**

Gurdev Singh and another ...Petitioners

Versus

Union Territory Administration and others ...Respondents

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

Present: Mr.Keshav Gupta, Advocate
for the petitioner.

Ms.Deepali Puri, Advocate
for the respondents.

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S.J.VAZIFDAR, Chief Justice :

The petitioners have challenged an order dated 31.03.2015 passed by the Estate Officer and an order dated 23.05.2016 passed by the Chief Administrator (Annexures P-12 and P-13, respectively). The petitioners have also sought an order directing the respondents to issue an allotment letter and to execute the conveyance deed in respect of plot No.1352, Sector-40B, Chandigarh.

The petitioners, now, do not seek the allotment of the plot. It is not necessary, therefore, to refer to the facts in detail. Suffice it to note that the petitioners had earlier filed CWP No.20990 of 2011, which along with three other similar matters was disposed of by a judgment and order dated 02.07.2012 passed by a Division Bench of this Court . The Estate Officer was granted liberty to consider the question of cancellation of lease in accordance with law.

Pursuant thereto, the Estate Officer considered the petitioners' case, but by the impugned order rejected it. The Estate Officer cancelled the allotment and forfeited 10% of the amount payable. The order clearly contains no reasons. The Appellate Authority, however, set aside the order and remanded the matter to the Estate Officer to decide the same by a speaking order. The Estate Officer, thereafter, passed the impugned order, but again without furnishing any reason. He merely referred to what had transpired earlier. Against this order of the Estate Officer, the petitioner filed an appeal, which was dismissed.

It is not necessary to consider the petitioners' case regarding the allotment and the cancellation thereof, as the petitioners do not wish to pursue the same.

Mr.Keshav Gupta, learned Counsel appearing for the petitioners contended that in the facts and circumstances of the case, the forfeiture of 10% of the entire amount is not warranted. He, however, fairly stated that this issue and the facts in support thereof had not been pleaded before the authorities as the petitioners were pursuing the remedy against the cancellation.

Section 8-A(1) of the Capital of Punjab (Development and Regulation) Act, 1952 reads as under:-

> *"**8-A. Resumption and forfeiture for breach of conditions of transfer** – (1) If any transferee has failed to pay the consideration money or any instalment thereof on account of the sale of any site or building or both, under Section 3 or has committed a breach of any other conditions of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause why an order of resumption of the*

> *site 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 sale of the site or building, or both should not be made."*

Forfeiture of an amount of 10% on account of a breach of a contract is not unreasonable. It does not constitute a penalty. The Estate Officer is, however, not bound to forfeit the whole of the money paid. Section 8-A(1) of the Act places a cap on the amount that can be forfeited, namely 10%. This is clear from the words, "... *which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable...".* The Estate Officer has a discretion to forfeit an amount less than 10% of the total amount paid as is clear from the words, "*... and forfeiture of the whole or any part of the money, if any, paid in respect thereof ..."* He may choose not to deduct any amount. The Estate Officer must, therefore, exercise his discretion depending upon the facts and circumstances of the case. The statute expressly confers a discretion upon the Estate Officer not to forfeit any amount or to forfeit any amount subject to a maximum of 10% of the total amount of the consideration money, interest and other dues payable.

As we mentioned above forfeiture of 10% of the consideration money, interest and other dues payable is not unreasonable and does not constitute a penalty. The onus, therefore, must be on the party to establish that no amount or in any event, an amount less than 10% ought to be forfeited. The petitioners have admittedly, not pleaded any special facts in this respect.

In our view, the petitioners ought to have an opportunity of contending before the authorities that no amount ought to be forfeited and that in any event, an amount less than the maximum permissible limit ought to be deducted.

The petition is, therefore, disposed of by the following order:-

> The impugned order, in so far as it cancels the sale under Section 8-A of the Act is confirmed as the petitioners do not wish to pursue the same. The matter is remanded to the Estate Officer only to the extent of the petitioners' application for refund of the amount deposited. The petitioners shall be entitled to file an affidavit in support thereof before the Estate Officer.

(S.J. VAZIFDAR)
CHIEF JUSTICE

November 16, 2017 **(HARINDER SINGH SIDHU)**
gian **JUDGE** Whether Speaking / Reasoned Yes / No Whethe
