HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.27370 of 2015 (O&M)
Date of Decision: 23.02.2017

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Baldev Singh ... Petitioner

VS.

State of Punjab & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA

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Present: Mr. Hitesh Verma, Advocate for the petitioner

Mr. Rajesh Bhardwaj, Addl. AG Punjab

Mr. Balwinder Singh, Advocate for respondents NO.3&4

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SURYA KANT, J. (Oral)

(1) The petitioner was allotted residential plot No.207 measuring 300 sq.yards in Baba Farid University site at Bathinda vide allotment letter dated 12.06.2012. The petitioner is an ex-Army personnel and the plot was also allotted in defence category. The petitioner could not deposit 15% of the total sale consideration due to which the allotment was cancelled vide order dated 19.02.2013 and the Estate Officer forfeited the entire 10% amount which the petitioner had deposited as earnest money. The aggrieved petitioner filed appeal and revision petition but the same have also been turned down.

(2) When this writ petition came up for hearing on 24.12.2015, this Court viewed that the order of cancellation of allotment was justified as the petitioner failed to deposit 15% of the sale consideration. However, the respondents were called upon on the question of forfeiture of the entire 10% of the amount deposited by the petitioner.

(3) It may be mentioned here that the petitioner falls within the definition of "transferee" as defined under Section 2(zm) of the Punjab Regional and Town Planning and Development Act, 1995. Section 45(3) of the

Act as it existed before its amendment on 05.12.2013 used to provide as follows:-

> *"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, <u>paid in respect thereof which in no case shall exceed ten percent 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</u>."*
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> (emphasis applied)

(4) However, after the amendment w.e.f. 05.12.2013 vide Punjab Act No.45 of 2013, the scheme of the Act has substantially altered. Sub-Section (3) of Section 45 after the amendment w.e.f. 05.12.2013, read as follows:-

> *"If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub-section (2) of commits a breach or 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 be equivalent to the 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 case 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"

(5) The stark difference between the pre and post amendment provisions is that in the unamended provision, the forfeiture in no case could exceed 10% of the total amount of consideration money whereas after the amendment, the competent authority can ordinarily forfeit 10% amount but in exceptional cases of hardship, the rate of forfeiture can be reduced and that too only by the Authority.

(6) In the instant case, the unamended provision would apply whereunder it appears to us that in exceptional cases only the competent authority could forfeit the entire consideration money. The petitioner is an ex-serviceman. He has explained that due to financial hardship, he could not arrange 15% sale consideration on time. He sought further extension which was declined. The petitioner has referred to the orders passed in some of the cases by the Revisional Authority where due to individual hardship and mitigating circumstances, the amount of forfeiture was reduced from 10% to 5%. One of such order dated 26.04.2016 passed in the case of "Parwinder Singh s/o Major Singh r/o C/o Baljinder Dhaliwal (Notary) New Court, Barnala vs. Additional Chief Administrator, Bathinda Development Authority (File No.13/52/14-5HG1" has been referred to.

(7) Having heard learned counsel for the parties and taking into consideration the totality of the facts and circumstances including the financial condition highlighted by the petitioner, we are satisfied that the reduction of forfeiture from 10% to 5% would meet the ends of justice. The writ petition is accordingly allowed in part and the impugned order is modified to the extent that 5% of the amount deposited by the petitioner as earnest money shall stand forfeited whereas the remaining 5% shall be refunded to the petitioner within

three months from the date of receipt of certified copy of this order failing which he will be entitled to interest @ 7% per annum.

(8) Ordered accordingly.

(Surya Kant)
Judge

23.02.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? ***No***