

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.27507 of 2015 (O&M)

Date of Decision: 12.01.2017

Dilbag Singh

...Petitioner

VERSUS

State of Punjab & others

....Respondents

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

Present:- Mr. Atul Sharma, Advocate for the petitioner.

Mr. Deepak Balyan, Addl. AG Punjab.

Mr. Kanwal S. Walia, Advocate for respondent Nos.2 and 3.

SUDIP AHLUWALIA, J.

The petitioner participated in an auction conducted by Respondent No.2/Corporation on 20.4.2010 for sale of commercial site/single storey shops in Industrial Area, Phase 8, Sector 72, Mohali for general purposes. Being the highest bidder he was allotted a shop for a total consideration of ₹ 1,12,58,000/-. He deposited 10% of the aforesaid amount promptly and was required to pay another ₹ 16,88,700/- within 30 days thereafter, which he did so on 24.5.2010. The possession of the site was thereafter, delivered to him. The balance amount of ₹ 84,43,500/- was payable in four equal annual instalments of ₹ 21,10,875/- each along with interest at the rate of 12 % per annum. As per the terms of Allotment, he was required to complete the construction of his building at the site within

two years. He claims to have completed the construction after spending an amount of ₹ 20 lacs for such purpose and informed the respondent No.2 accordingly. He also claims to have kept on depositing money with the respondent/Corporation and the total amount so deposited till the filing of the Writ Petition was ₹ 49,05,500/-. However, the respondent/Corporation issued a notice dated 4.10.2012 to him for his failure to deposit the instalments in time. It was also alleged in the notice that he had not constructed the building as per the approved building plans and had thereby committed breach of Clause 11 of the Allotment Letter. He was therefore, given time to remove the violations committed by him by way of deviation from the standard plan/building bye-laws of the Corporation. The time for this purpose was subsequently extended upto 10.11.2012 vide a subsequent letter dated 26.10.2012.

2. Thereafter on 7.12.2012, the respondent/Corporation cancelled the allotment of the shop by its order, which is Annexure P-7 to the Writ Petition.

3. He thereafter filed CWP No.26041 of 2012 challenging such cancellation. A Coordinate Bench of this Court did not issue any formal notice on the petition, but allowed the petitioner to pay the entire amount due towards him along with interest/penal interest within two months, in which case, the respondent/Corporation would ostensibly restore the site back to him. He however, failed to comply with the undertaking in this regard given by him before the Court. His aforesaid Writ Petition was finally dismissed on 19.7.2013. Yet the Court granted him liberty to make a representation for refund of the amount deposited by him, a part of which had been forfeited. He accordingly submitted such representation vide letter

dated 23.8.2013 which was however, rejected by the respondent/Corporation vide its letter dated 10.9.2013 and out of the total amount of ₹ 49,05,500/- deposited by him, the respondent/Corporation forfeited an amount of ₹ 39,66,589/-. The concerned rejection order is Annexure P-11 to the Writ Petition. The petitioner thereafter submitted another representation dated 3.10.2013 reiterating his request for reducing the amount of forfeiture to not more than 10% of the total consideration price. But no action was taken upon the same by the respondent/Corporation on account of which he filed this Writ Petition praying for issuance of an appropriate writ, order or direction in the nature of certiorari to quash the impugned letter dated 10.9.2013 (Annexure P-11) passed by the respondent/Corporation, apart from a direction in the nature of mandamus upon the Corporation for not forfeiting any amount exceeding 10% of the total sale consideration including interest/penal interest and other payable dues.

4. It has been contended by the respondent Nos.2 and 3 in their written statement that the petitioner has not come with clean hands and has concealed his conduct by presenting distorted facts. They have also contended that there has been undue delay in approaching the Court since the Writ Petition was filed on 23.12.2015 which is more than two years after the impugned order dated 10.9.2013. It has also been alleged that the petitioner has been running a Restaurant in the demised premises and also suffered a Collusive Decree in favour of his alleged tenant only in an attempt to mar the statutory rights of the respondent/Corporation. Above-all, it has been contended that there is no illegality whatsoever in forfeiture of the amount of ₹ 39,66,589/- by the respondent/Corporation since the same

was in full consonance with the original terms and conditions governing the allotment.

5. After considering the submissions of the contesting sides and available material on record, we may first of all observe that cancellation of the petitioner's allotment by the respondent/Corporation is a closed chapter since his earlier Writ Petition No.26041 of 2012 seeking to quash the same had been dismissed. We are now only to consider whether the rejection of petitioner's representation for refund of the money, which he had been permitted to apply for by the Court while dismissing the earlier Writ Petition is justified or not ? Admittedly Clause 12 of the original allotment letter provides -

“That the building on the site shall have to be completed within 2 years from the date of allotment. In case of failure to complete the building within the said period, the Corporation shall resume to site or building or both as the case may be and may further forfeit the whole or any part of the money paid which shall not exceed 25% of the total amount of the consideration money, interest/penal interest and other dues in respect of the sale of the site.”

6. At the outset, therefore, it may be observed that forfeiture of amount of ₹ 39,66,589/- which does not exceed 25% of the total amount of consideration money, interest/penal interest and other dues is within the ambit of the agreed terms & conditions governing the original allotment.

7. We also find from the record that in entertaining the petitioner's earlier Writ Petition, this Court had granted him adequate opportunities to clear his dues, but he still failed to do so. A lot of time was therefore, consumed in this situation till his Writ Petition was finally dismissed on 19.7.2013. The respondent/Corporation has also placed on record a certified copy of the alleged collusive decree suffered by the Writ Petitioner in

favour of plaintiff/his alleged tenant Kulwinder Singh, who was apparently running a Dhaba in the concerned premises. A copy of the judgment and decree passed by the Ld. Civil Judge (Jr. Division), Mohali dated 26.10.2014 which is Annexure R-7 to respondent's reply goes to show that the petitioner had not contested the aforesaid suit, which was therefore, decreed ex parte against him and on account of which he was restrained from interfering in the 'peaceful possession of the plaintiff in any manner and from forcibly dispossessing him' which indirectly also stood to affect the rights of the respondent/Corporation to take over the premises physically from the petitioner.

8. We are therefore, of the view that there is no scope to interfere with the impugned decision of the respondent/Corporation to forfeit 25% of the total consideration price plus interest/penal interest and other dues concerning the disputed shop, considering the over-all dilatory and motivated conduct adopted by the Writ Petitioner, particularly since such forfeiture was specifically provided in Clause 12 of the original agreement.

9. We therefore, find no merit in this Writ Petition, which is accordingly dismissed.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

12.01.2017

AS

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No