

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.674 of 2016 (O&M)

Date of Decision: 15.02.2017

Inder Mohan

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

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

Present: Mr. Paras Money Goyal, Advocate for the petitioner

Mr. Rajesh Bhardwaj, Addl. AG Punjab

Mr. RS Khosla, Senior Advocate with

Mr. Sarvesh Malik, Advocate for respondent PUDA/GMADA

SURYA KANT, J. (Oral)

(1) The petitioner seeks quashing of the order dated 10.12.2013 whereby Letter of Intent issued for allotment of 500 sq.yard plot in Aero City SAS Nagar, Mohali was cancelled and the earnest money of ₹ 6 lacs deposited by him has been forfeited.

(2) The petitioner was successful in the draw of lots held on 29.09.2010 for allotment of residential plot measuring 500 sq.yards in Aero City, SAS Nagar, Mohali. While 10% earnest money had already been deposited with application form, the petitioner was obligated to deposit 15% balance amount within 15 days of the issue of Letter of Intent i.e. on or before 09.04.2011. The petitioner could not arrange the amount and failed to deposit 15% earnest money within the stipulated period. It further appears that the petitioner offered such amount after a delay of 217 days i.e. on 11.11.2011. The authorities declined to accept the delayed deposit/belated payment and eventually cancelled the allotment. 10% of the earnest money deposited was

also forfeited in entirety. The petitioner challenged the order before superior authorities in appeal but having failed has filed the instant writ petition.

(3) When this case came up for preliminary hearing on 14.01.2016, following order was passed by this Court:-

“1. The petitioner was offered residential plot measuring 500 sq.yards in Aero City SAS Nagar Mohali vide Letter of Intent dated 10.03.2011 (P1). He was required to deposit 15% of the total price towards earnest money i.e. ₹9 lacs within 30 days from the date of issue of Letter of Intent. The petitioner did not do so. He deposited the said amount after 217 days i.e. on 11.11.2011. The offer was, however, withdrawn and allotment was cancelled on 10.12.2013 (P4) and 10% of the amount deposited by the petitioner was ordered to be forfeited. His appeal and revision petition have been dismissed giving rise to this writ petition.

*2. The petitioner relies upon the decision in a bunch of writ petitions in case of **Bachittar Kaur vs. State of Punjab & Ors.** **CWP No.23196 of 2014** decided on 08.09.2015 wherein this Court observed that mere non-deposit of the amount within the stipulated period does not preclude the authorities from considering the explanation, if any, tendered by the allottee for non-deposit of the amount and in a given case if the policy-makers are satisfied that the cause of justice requires condonation of delay, they can do so.*

3. The above-stated observations, in our considered view, are inapplicable in the instant case for the reason that as per the Letter of Intent (P1), the petitioner was required to deposit the balance 70% of the total price of plot by way of 7 instalments (without interest) on or before 10.05.2012. As per the second option, he could deposit 70% balance amount in 7 half-yearly instalment along with 10% interest per annum and as per the said schedule at least 5 instalments were required to

be deposited by 10.09.2013 i.e. before the allotment was cancelled/withdrawn.

4. *The petitioner admittedly did not deposit even a single instalment except 15% of the earnest money deposited by him after the delay of 217 days.*

5. *We thus do not find any merit so far as the petitioner's claim regarding restoration of allotment is concerned.*

6. *However, the authorities have chosen to forfeit 10% of the deposited amount which is the maximum limit of forfeiture provided under Section 45(3) of the Punjab Regional and Town Planning and Development Act, 1995. It appears that the authorities are obligated to consider, on case-to-case basis, as to why the rate of forfeiture cannot be less than 10%."*

(4) It may be noticed at the outset that this Court in para 6 of the above reproduced order took notice of Section 45(3) of the Punjab Regional and Town Planning and Development Act, 1995 as it existed before its amendment vide Punjab Act No.45 of 2013 w.e.f. 05.12.2013. Before that date, the provision used to expressly stipulate that the forfeited amount will not exceed 10%. However, after the amendment w.e.f. 05.12.2013, sub-Section (3) of Section 45 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 the 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) It may further be seen that the claim of the petitioner *re*: restoration of allotment has already been turned down by this Court and the only issue which survives for consideration is whether the petitioner is entitled to reduction in the amount of forfeiture?

(7) We have heard learned counsel for the parties in this regard and gone through the record.

(8) It appears to us that the case of the petitioner is required to be considered in the light of the unamended provision, for the default was committed in the year 2011 and the *de facto* decision to cancel the LOI also was taken in that very year. Since at that point of time, the forfeiture could not exceed more than 10%, we are of the considered view that it's a fit case where the amount of forfeiture deserves to be reduced for the reason that the petitioner's *bona fide* cannot be under doubt as no sooner he could arrange the amount, he offered the payment but it was not accepted by the authorities after expiry of the stipulated period.

(9) Taking into consideration the totality of the circumstances, we allow this writ petition in part to the extent that the amount of forfeiture is

reduced from 10% to 7%. Let the excess forfeited amount be refunded to the petitioner within a period of two months from the date of receipt of certified copy of this order.

(10) Ordered accordingly.

(Surya Kant)
Judge

15.02.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
No