

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.3260 of 2017.

Date of Decision: February 20, 2017

Harjinder Singh Waraich and another

.....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

Present: Mr.I.P.Singh, Advocate, for the petitioners.

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Surya Kant, J. (Oral)

The petitioners seek quashing of the order dated 18.08.2016 (P-11) passed by the Special Secretary-cum-Revisional Authority, Department of Housing and Urban Development, Punjab, in purported exercise of its powers under Section 45 of the Punjab Regional and Town Planning and Development Act, 1995 (for short, 'the 1995 Act'), whereby Revision Petition preferred by one of the petitioner against the order dated 27.06.2016 of Chief Administrator, Greater Ludhiana Area Development Authority (for short, 'GLADA'), has been dismissed. In the said Revision Petition, the petitioner(s) questioned the order of Chief Administrator, GLADA vide which the amount of forfeiture on the surrender of SCO No.20, Dugri Phase-II & III, Ludhiana, was reduced from 10% to 3% of the total bid amount while grievance of the petitioners was that no forfeiture ought to have been made at all.

[2] The facts of the case are like this.

[3] GLADA held open auction on 04.12.2014 for the sale of free-

petitioners, who are father and son respectively, gave highest bid in respect of SCO No.20 of Rs.4,11,10,700/-. The petitioners deposited Rs.90,44,355/- whereupon their bid was accepted. Thereafter, the petitioners moved an application dated 24.04.2015 for the surrender of SCO site on the ground that their financial condition was not good as meanwhile the 1st petitioner unfortunately lost one of his son who was living in Canada. The Estate Officer, GLADA accepted the request for the surrender of site but forfeited 10% of the total consideration money to the tune of Rs.42,64,250/- and refund the balance amount. The aggrieved petitioners filed appeal and it appears that it was turned down on 05.08.2015. They challenged both these orders before the Special Secretary-cum-Revisional Authority, Department of Housing and Urban Development, Punjab, who vide order dated 17.03.2016 allowed their Revision Petition in part and remanded the case to the Chief Administrator, GLADA to decide the same afresh. The Chief Administrator, GLADA vide order dated 27.06.2016 (P-8) substantially accepted the appeal and reduced the forfeited amount from 10% to “3% of the total consideration amount, interest and other dues payable”.

[4] Still aggrieved, the petitioners again filed Revision Petition before the State Government which has been turned down vide the impugned order dated 18.08.2016.

[5] The above-mentioned orders of forfeiting the consideration amount are under challenge in the instant writ petition.

[6] Many-fold contentions have been raised on behalf of the petitioners. Firstly, it is urged that there is no binding contract between the parties as the petitioners withdrew their offer before it could culminate into allotment letter, hence no forfeiture could be made; secondly, it is argued

that in the absence of contractual relationship, Section 45 of 1995 Act is not attracted; thirdly, the forfeiture could be made only in accordance with the terms and conditions which were notified at the time of the auction held on 04.12.2014 (P-1) wherein as regard to the forfeiture, the following was provided:-

“... In case the successful bidder does not deposit the 15% amount within 30 days from the date of auction, then 10% amount in case of booth site, 5% amount in case of SCO already deposited by him shall be forfeited if the applicant does not deposit 15% amount within 60 days from the date of auction and the applicant will have no claim in this regard.....”

[7] Fifthly, if at all the forfeiture is permissible, it can be 3% of the amount deposited by the petitioners and not 3% of the total sale consideration; sixthly, the action of the authorities imposing 3% forfeiture is discriminating as in similar circumstances, the forfeiture rate was reduced to 1% only. Reference is made to the order dated 28.03.2012 (P-13).

[8] Having heard learned counsel for the petitioners at a considerable length, we do not find any merit in either of the contentions.

[9] The first issue which requires determination is whether provisions of Section 45 of the 1995 Act are attracted to the facts of the instant case?

[10] Section 45 of the 1995 Act deals with resumption and forfeiture for breach of transfer. Its sub-section (1) provides that where any transferee makes default in the payment of any consideration money, or breach any condition of transfer of any land or building or both, the Estate Officer may,

by notice in writing, call upon the transferee to show cause as to why a penalty be not imposed. If the transferee fails to pay the amount due together with penalty as imposed under sub-section (2), sub-section (3) of Section 45 of the 1995 Act, provides as follows:-

“...(3) 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.....”

[11] Before advertizing further, it would be useful to reproduce Section-2 (zm) which defines the expression 'transferee', which means:-

“...2. Definitions:- In this Act, unless the context otherwise requires:-

XX XX XX XX

(zm) “transferee” means a persons, including a firm or other body of individuals whether incorporated or not, to whom a site or building is sold, leased or transferred under this Act and includes his successors and assignees and.....”

[12] It may be seen from the above reproduced provision that once a site or building has been sold/leased-out or transferred under the Act, such

buyer/lessee or transferee falls within the definition of 'transferee'. Section 45(3) applies to 'a transferee' who fails to honour the terms and conditions of the mode of sale, lease or transfer of property, as the case may be.

[13] In the instant case, the petitioners were highest bidder for the sale of subject commercial site. Their bid was accepted and 25% earnest money was also accepted. The site thus stood 'sold' to them for all intents and purposes subject to the agreed terms and conditions.

[14] The petitioners were fully aware of the due dates of the next installments to be deposited by them. Instead of depositing the due installment(s), they applied and surrendered the site. This tantamounted to the petitioners' failure to honour the terms and conditions of sale of the site. There being a breach on their part, Section 45(3) of the 1995 Act is fully attracted.

[15] The petitioners themselves have accepted that it was a case of allotment of site in their favour. They were not in a position to pay the due installments. It was candidly acknowledged by them in their request dated 24.04.2015 submitted to the Estate Officer, which reads as follows:-

“.... Due to the sudden death of my son Bhupinder Singh in Canada the family is in great emotional and financial stress. We will not be able to pay the rest four annual installment so, keeping in view my specific reason the allotment of plot be cancelled and my earnest money described above may be refunded without any forfeiture as a special case.....”

[16] It may be seen from Section 45(3) of the 1995 Act that the Competent Authority can ordinarily forfeit the amount deposited by a transferee in default, equivalent to 10% of the total amount of consideration

Officer had initially forfeited 10% of the total amount of consideration money but the Appellate Authority accepted the appeal of the petitioners to a large extent and reduced the forfeited amount from 10% to 3%. When the authorities have been prevented from selling their property through open auction to the second highest bidder, due to the action of the petitioners, the insistence of the authorities to make good the loss suffered by them, by forfeiting the amount of highest bidder surely calls for no interference by this Court.

[17] The petitioners' plea that the authorities could forfeit only 3% of the amount deposited by them and not 3% of the total sale consideration runs contrary to the express provision of sub-section (3) of Section 45 of the 1995 Act whereunder the Competent Authority is entitled to forfeit equivalent to 10% of the total amount of consideration, namely, the allotment price of a site. In view of the unambiguous provision and express language of the statute, the petitioners' contention in this regard merits rejection. As regard to their plea of discrimination, the rate of forfeiture may vary from case to case depending upon the peculiar facts and circumstances of each case. The order dated 28.03.2012 (P-13) relied upon by the petitioners where 1% of the amount was forfeited, does not improve their case as the said order was passed before the amendment in Section 45(3) of the 1995 Act on 05.12.2013. Prior thereto, the provision expressly prohibited that the forfeited amount shall not exceed 10% of the total amount of the consideration money. Thus, under the un-amended provision, obligation was on the authorities to justify the rate of forfeiture. In these circumstances, forfeiture of amount at the reduced rate does not become the binding or persuasive precedent after the amendment in Section 45(3) of the

Act on 05.12.2013.

[18] For the reasons afore-stated, we do not find any merit in this
petition.

Dismissed.

[SURYA KANT]
JUDGE

February 20, 2017
mohinder

[SUDIP AHLUWALIA]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No