

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

Sr. No.213-a

**CWP-10203-2017 (O&M)
Date of decision : 21.8.2019**

Greater Mohali Area Development Authority

..... Petitioner

VERSUS

Smt. Usha Viridi and another

..... Respondents

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Shekhar Verma, Advocate, for the petitioner.

Mr. Deepanshu Mehta, Advocate, for respondent No.1.

Mr. Sahil Sharma, DAG, Punjab, for respondent No.2.

SUDHIR MITTAL, J.

Greater Mohali Area Development Authority, SAS Nagar (Mohali), seeks quashing of order dated 12.7.2016 (Annexure P-16) passed by the Special Secretary, Housing and Urban Development Department, Government of Punjab, Chandigarh, whereby he has set aside the cancellation of Letter of Intent (for short 'LOI') in respect of a 125 Sq. Yards plot by condoning the delay in deposit of 15% of the tentative price of the plot.

2. In the year 2010, respondent No.1 had applied for allotment of a 125 Sq. Yards plot in Aerocity Project, SAS Nagar (Mohali). She

deposited 10% of the total tentative sale consideration as earnest money alongwith the application. A draw of lots was held on 13.10.2010 and respondent No.1 was successful therein. An LOI dated 29.3.2011, was issued in her favour, wherein the tentative price of the plot was mentioned as Rs.40 lakhs and a condition was incorporated that 15% of the price was to be paid within 30 days of the date of issuance of LOI so as to complete 25% of the total tentative sale consideration. Respondent No.1 failed to comply with this condition. On 26.5.2011, she swore an affidavit that she intended to obtain a loan of Rs.12 lakhs for payment of the tentative sale consideration and that the entire outstanding amount would be paid within 30 days of sanction of loan. Simultaneously, she applied for permission to mortgage the plot allotted to her to enable her to raise a loan. Vide letter dated 18.7.2016, the petitioner granted her permission to mortgage the plot. Thereafter, vide receipts dated 3.12.2009 and 15.12.2009, total of Rs.13.41 lakhs was deposited towards the balance outstanding price.

3. After the entire tentative sale consideration had been paid, a show cause notice dated 13.4.2012, was issued to respondent No.1 directing her to show cause why 15% of the total tentative sale consideration was not deposited within 30 days of issuance of LOI as stipulated therein and why further action should not be taken to forfeit/cancel LOI. It appears that the first respondent failed to respond to the said notice and vide order dated 9.7.2012, the LOI was cancelled on account of delay of 220 days in depositing the 15% amount. Statutory appeal and revision were also dismissed vide order dated 22.8.2012 and 14.7.2014, respectively.

4. Thus, the first respondent preferred CWP-6434-2014, challenging the order of cancellation of LOI as well as the appellate and revisional orders. Her writ petition was decided vide judgment dated 8.9.2015, passed in CWP-23196-2014 titled as **‘Bachittar Kaur Vs. State of Punjab and others.’** A Division Bench of this Court held as follows:-

“[10] It is undeniable that PUDA has formulated a policy decision dated 20.08.2002 which equally applied to GMADA also. As per the said policy-decision, the Chairman of the Authority can condone the delay upto 6 months “from the expiry of prescribed period in allotment letter” alongwith surcharge leviable on 15% amount at the rate of 3% of the amount due.

[11] It is also an admitted fact that amount deposited by the petitioner was much beyond the period of six months also.

[12] We have heard learned counsel for the parties and gone through the record.

[13] It appears to us that the policy-decision dated 20.08.2002 prescribing the extent of discretion which may be exercised by various authorities, i.e., the Estate Officer to Chairman of the respondent-authority in the matter of condonation of delay, is fair, just and reasonable as it not only enables the Authority to condone the delay upto a reasonable extent wherever it is so warranted in the facts and circumstances of a case and at the same time, it does not confer unguided or unlimited discretion within the Authority.

[14] Unfortunately, the petitioner failed to deposit the due amount not only as per the Letter of Intent but also within the maximum time limit given in the policy-decision.

[15] In these circumstances, per se the action of the authorities does not call for any interference by this Court.

[16] Having held that, it further appears to us that if in a given case the allottee could not deposit the due amount due to some exceptional circumstances and the authorities are fully satisfied with the reasons which prevented such allottee to honour his part of contract, the Competent Authority ought not to feel helpless in doing complete justice. In a peculiar or exceptional situation, the policy may not be construed like a statute. The makers of the policy, if they are so satisfied, would be well within their right to condone the delay even beyond 6 months provided that a very strong case on facts is made out. Once the Competent Authority is satisfied that noninterference will defeat the cause of fairness, equity and justice, it need not tie down itself with the time limit prescribed through an executive order.

[17] The so called explanation given by the petitioner and as available on record, surely does not make out it a case of circumstances where the Authority should be persuaded to condone the delay beyond 6 months. Nevertheless, we grant them liberty to approach the Special Secretary, Government of Punjab, Housing and Urban Development Department, and make out a case of strong and exceptional circumstances to seek condonation of delay beyond six months and/or to make out a case for the reduction of forfeited amount.

[18] Ordered accordingly.

[19] Dasti.”

It is, thus, apparent that the Policy dated 20.8.2002 was held to be fair, just and reasonable and that the action of cancellation of LOI was justified. However, it was further held that the competent authority

should not feel helpless if it is seized of a case, the facts of which justify condoning the delay beyond the period prescribed in the Policy dated 20.8.2002. Accordingly, respondent No.1 was permitted to make a fresh representation before the Government in order to persuade it to condone the delay exceeding six months.

5. In compliance with the directions of the Division Bench, respondent No.1 submitted a representation dated 9.10.2015, inter alia stating therein that she was prevented from depositing 15% of the total tentative sale consideration within 30 days of the issuance of the LOI because her parents, who are settled in the United State of America had to return, but did not have sufficient money to purchase the air tickets. Being the only child, respondent No.1 felt obliged to help them. After returning to the United States of America, her parents failed to re-pay the amount on account of their poor financial condition. Being a Government school teacher working on contract basis, she did not have any other resources to make the payment. Consequently, she applied for permission to mortgage the plot to raise a loan and as soon as the loan was sanctioned, not only 15% of the total tentative sale consideration, the entire amount due was paid by 15.12.2011. Thus, even though, the tentative sale consideration was payable upto 29.12.2015 according to the schedule mentioned in the LOI, the same was paid almost three years in advance. The show cause notice dated 30.4.2012, was issued after receipt of the entire payment and although, respondent No.1 appeared on the date specified in the said notice and produced the entire record regarding permission granted to mortgage the plot, sanction of loan and deposit of

the complete sale consideration, yet the Estate Officer cancelled the letter of allotment. Vide the impugned order, the competent authority has accepted the representation of respondent No.1 and has condoned the delay in depositing 15% of the total tentative sale consideration after noticing the Division Bench judgment of this Court in **Bachittar Kaur's case (supra)**.

6. Learned senior counsel for the petitioner has contended that according to the policy dated 20.8.2002, framed by the petitioner, the maximum period of delay which can be condoned is six months and that too on payment of 3% of the amount due as surcharge. The authority competent to grant the condonation is the Chairman of the petitioner. Thus, the order passed by the Government is without jurisdiction. Further, the Special Secretary, Housing and Urban Development Department, Government of Punjab, Chandigarh, is a statutory authority under the Punjab Regional and Town Planning Development Act, 1995 (hereinafter referred to as 'the Act') and it cannot go beyond the policy framed by the petitioner. Reliance is also placed upon observations in the Division Bench judgment in **Bachittar Kaur's case (supra)**, wherein it has been found that the action of the authorities concerned was justified.

7. Learned counsel for respondent No.1 submits that delay in making 15% payment has been sufficiently explained. Circumstances beyond the control of answering respondent came into play preventing her from making the payment in prescribed time. Being a Government teacher on contract basis, she did not have any other source available to her and therefore, she sought permission from the petitioner to mortgage

the plot allotted to her to enable her to raise the amount. The petitioner granted permission and the entire outstanding tentative sale consideration was paid the next day after the loan was sanctioned as is apparent from the pleadings to this effect in the representation dated 9.10.2015. Show cause notice was issued four months after receipt of the complete payment and thus, the authorities concerned were not justified in cancelling the LOI. Moreover, this Court had granted liberty to the answering respondent to make a fresh representation in order to convince the Government that she was prevented by circumstances beyond her control from making payment within prescribed time and having succeeded in doing so, the impugned order does not call for any interference. The answering respondent has managed to purchase a small plot to construct a house for the family after taking a loan, the instalments of which are still being paid. In case the LOI is cancelled, untold hardship and misery would result. Thus, this Court should not interfere with the impugned order in exercise of its writ jurisdiction.

8. A perusal of the impugned order shows that the Special Secretary concerned, took into consideration a very important aspect of the matter i.e. grant of permission by the petitioner to mortgage the plot in dispute to enable respondent No.1 to raise a loan for making payment of the entire outstanding amount including the balance sale consideration. Post grant of the permission, complete payment was made on the day following the sanction of loan. He also found favour with the explanation given by respondent No.1 and keeping both these aspects in view, felt that

the case was one which was covered by the observations of the Division Bench judgment in **Bachittar Kaur's case (supra)**.

9. Having heard learned counsel for the parties and having carefully perused the record, we do not find any perversity in the impugned order and thus, refrain from exercising our jurisdiction under Article 226 of the Constitution of India, to issue a writ in the nature of certiorari. The impugned order has advanced the ends of justice as it has enabled a contractual Government teacher to retain her plot for constructing a family house. The petitioner has also not suffered financially as it has obtained the entire sale consideration almost three years in advance.

10. The argument of learned senior counsel for the petitioner that being a statutory authority under the Act, the Special Secretary concerned could not have gone beyond the policy framed by the petitioner only deserves notice for rejection. May be, that the Special Secretary concerned, is a statutory authority under the Act, but he exercises the powers of the State Government. The policy dated 20.8.2015 has been framed by the Greater Mohali Area Development Authority and not by the State Government and thus, it cannot be said that the State Government cannot go beyond the terms thereof. This Court in **Bachittar Kaur's case (supra)** has specifically permitted the competent authority to exercise its powers of condonation of delay in special deserving cases beyond the period prescribed in policy and thus, it cannot be said that the impugned order is without jurisdiction.

11. For the reasons aforementioned, we do not find any merit in this writ petition and the same is dismissed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

21.8.2019
Ramandeep Singh
Whether speaking / reasoned
Whether Reportable

Yes / No
Yes/ No