

CWP no. 14739 of 2017 (O&M) 1

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

CWP no. 14739 of 2017 (O&M)

Date of Decision : 07.03.2019

Naresh Kumar Aery and another

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE LALIT BATRA**

Present : Ms. Vertika H Singh, Advocate for the petitioners

Mr. Suveer Sheokand, Addl. AG, Punjab

Mr. Shekhar Verma, Advocate for respondents no. 2 to 4

MAHESH GROVER, J.(ORAL)

This writ petition has been filed by the petitioner praying for quashing of order dated 27.12.2016 and for issuance of any other appropriate writ or direction that the facts of the case may warrant.

The petitioners had purchased a residential plot no.373 measuring 500 sq. yards in Sector 71 Mohali in an open auction for a sum of Rs.4 crores and 5 lacs being a corner plot. The reserved price was higher than the one for the other plots in the area. The petitioners paid 25% of the amount in terms of the auction but realised that plot could not be put to use as there was an electric transformer in the midst of it. Several representations followed requesting the authorities to remove the electric transformer which went unanswered. In terms of clause 4(1) of the

allotment letter the possession of the plot was to be handed over by the respondents within 90 days from the date of issuance of allotment letter. Clause 3.2 warranted deposit of 75% of the amount either in lump sum with a rebate of 5% on the balance amount or within 60 days of issue of allotment letter or six half yearly instalments with 12% per annum interest. This liability mounted on the petitioners but the respondents did not hand over the plot within the stipulated time and neither did they remove the electric transformer. Frustrated with the approach of the respondents, the petitioners submitted a request for surrender of the plot and on 8.8.2013. Respondent no.3 allowed the surrender of the plot but ordered a deduction and forfeiture of 10% of the total price with interest and penalty calculated upto that date from the amount of Rs.1,01,25,000/- the petitioners had deposited till then. This implied that a sum of Rs.46,72,612/- was forfeited.

The aforesaid facts are not disputed as the reply reveals and no justification has been offered for effecting the forfeiture even though the respondents themselves were at fault. The reply was filed in the year 2017 and it has been asserted therein that in terms of Section 45 (3) of the Punjab Regional and Town Planning and Development Act, the competent authority in genuine case of hardship can reduce the amount of forfeiture after giving reasons in writing.

Today when the matter was taken up for hearing learned counsel for the respondents on instructions from Sh. Kamaljit Singh, Law Officer, GMADA states that the competent authority is likely to consider this aspect and reduce the forfeiture and penalty. When questioned about the timing of the meeting, the answer was evasive.

We have heard learned counsel for the parties and are of the

opinion that the approach of the respondents is highly arbitrary and perverse. On the one hand they put a plot for auction and set up a higher reserve price, being a corner plot when it was not even capable of being put to use till the time electric transformer existed in it. Despite several representations of the petitioners the respondents failed to rectify this defect. As a consequence the respondents unjustifiably withheld an amount of more than Rs.1 crore of the petitioners for the plot that was incapable of being put to use and resultantly the petitioners have been battling for their rights ever since they undertook this mis-adventure of transacting with the respondents. When the petitioners made request for surrender it was an expression of their frustration and rather than waking up to the situation, the respondents in a most insensitive way accepted the plea of surrender and ordered forfeiture of huge amount of more than Rs.46 lakhs. To our minds there was absolutely no justification with the respondents to do so, particularly, when they themselves were at fault. Even when the petitioners took the matter before the higher authorities in revision, the said authority declined interference on the ground of delay which again betrays the high-handedness of the authorities.

We are thus of the opinion that this is a case which deserves to be allowed with exemplary costs to recompense the petitioners for the loss that they have suffered on account of a totally unjustified retention of more than Rs.46 lakhs by the respondents and forcing the petitioners into litigation for absolutely no fault of theirs. Hence, instant petition is accepted. Respondents are directed to refund the amount retained by them illegally within a period of two weeks from today alongwith interest of 12% per annum (which is the rate prescribed by the respondents themselves in case

of a default) from the date of retention till the date of its realisation. They are also burdened with costs of Rs. 1 lac which shall be compensatory to the petitioner.

(Mahesh Grover)
Judge

07.03.2019
rekha

(Lalit Batra)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No