IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 4567 of 2017

Date of Decision : 08-01-2020.

Paramjeet Singh .... Petitioner

vs.

State of Punjab and others .... Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.

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Present : Mr. Pankaj Katia, Advocate
for the petitioner.

Mr. Sahil Sharma, DAG, Punjab.

Mr. Rupinder Khosla, Senior Advocate
with Mr. Sarvesh Malik, Advocate
for respondents no. 2 and 3.

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MEENAKSHI I. MEHTA, J.

The petitioner has sought the indulgence of this Court for issuance of a writ in the nature of mandamus directing the respondents to deliver the possession of Plot No. 8447 measuring 150 sq. yds. to him with the further prayer for issuing a writ in the nature of certiorari for quashing the condition as imposed vide letter dated 27.06.2016 requiring him to deposit the excessive/exaggerated amount.

2. Bereft of unnecessary details, the facts necessitating the filing

of this petition, are that the petitioner applied to the respondent-department for allotment of the plot under its Aerocity Scheme and deposited earnest money to the tune of Rs.1,80,000/- on 06.07.2010. In the draw of lots as held on 12.10.2010, he succeeded and deposited the balance amount so as to fulfil the condition of deposit of 25% amount of the total price at that stage. The Letter of Intent (hereinafter to be referred as "LOI") was issued to him on 18.03.2011 and he opted to deposit 70% amount out of the balance amount/price as per Plan-C, whereby he was supposed to pay this amount in seven half-yearly instalments commencing from the date of LOI and thus, the entire period stretching from 18.09.2011 to 18.09.2014, as described in para no.3 of this petition.

3. Thereafter, he deposited the first instalment of Rs.2,46,000/- on 19.10.2011 and the second instalment amounting to Rs.2,34,000/-on 14.03.2012 and the remaining five instalments were deposited by him during the period from 11.01.2017 to 03.02.2017 and the total amount as deposited by him, including the transfer-fee and the interest on the delayed payment, comes out to be Rs.19,71,165/-. As per the brochure of the said scheme, the possession of the plot was to be handed over to him within 2½ years from the date of issuance of LOI but the respondents did not hand over the possession of the plot to him within the afore-prescribed period which came to an end on 18.09.2013. Though he could not deposit the balance instalments as per the schedule but later on, he paid the entire sum

alongwith the interest on the delayed payments. However, vide letter dated 27.06.2016, the GMADA has raised the demand of Rs.14,70,500/-, which includes penal interest, from him whereas he was liable to pay the actual amount of Rs.10,35,000/- and thus, the demand of this excessive amount is not justified and is, rather, arbitrary because it was GMADA which had failed to deliver the possession of the plot to him within the above-said stipulated period.

4. In the short reply filed by respondents No.2 and 3 in the form of the affidavit of the Estate Officer of GMADA, i.e. respondent no. 3, the factum of the petitioner having applied for the allotment of a plot under the said scheme as well as his having remained successful in the draw of lots and also the issuance of LOI to him on 18.03.2011 is not disputed. It has also been admitted that the petitioner had opted for Plan-C for paying the allotment amount/price but it has been categorically mentioned therein that the petitioner deposited the amount of instalments no. 3 to 7 after the delay of 1576, 1402, 1218, 1053 and 869 days respectively. Rather, during this period, he applied to GMADA on 15.06.2016 seeking transfer of his 50% share in the plot in the name of his brother but his request could not be acceded to for want of the payment of instalments as per the prescribed schedule and then, vide the impugned letter, he was required to deposit the aforesaid amount on account of the delayed payment of instalments along with the penalty on this count but despite that, he failed to pay the amount

due from him and rather, vide his letter dated 16.09.2016, he requested for the refund of the transfer money and also for the return of the original LOI.

5. It has been further deposed in the said affidavit that the penalty amount as well as the interest have been charged in accordance with condition no. 8 of the LOI and as per the latest statement of the account of the petitioner, a sum of Rs.6,16,652/- is still due from him on the score of balance 5% price and interest as well as the penalty. In case of delay in the delivery of possession of the plot, conditions No.17 and 18 of LOI provide for withdrawal from the scheme and refund of the deposited amount and he could have opted for withdrawal from the scheme accordingly and in this eventuality, he would have got the refund of the amount, as deposited by him, along with the simple interest thereon @ 10%. Now, the entire development work qua the said scheme is complete and most of the allottees have taken the possession of their respective plots. The petitioner is also at liberty to get the possession of the plot on payment of the above-mentioned balance amount due from him.

6. Subsequently, in compliance of the order of this Court as passed on 18.10.2019, an additional affidavit of the Estate Officer, GMADA, i.e., respondent No.3, has been placed on the record explaining therein that originally, some poly houses existed in the site in question and the same were got cleared in April 2014 and then, the development works were initiated but the same could be completed in November 2016 only on

account of ban on the mining activity in the area during this period.

7. We have heard learned counsel for both the parties in the instant petition. Learned counsel for the petitioner has contended that though the petitioner had not deposited the amount of instalments no. 3 to 7 in time but the respondent-department had also failed to hand over the possession of the allotted plot to him in compliance of the terms and conditions as laid down in the LOI and in these circumstances, it did not lie in the mouth of the respondents to assert that the petitioner was liable to pay the penalty/penal interest on the delayed payment of the instalments.

8. However, learned Deputy Advocate General, Punjab for respondent no.1 and learned counsel for respondents no. 2 and 3 have argued that the failure on the part of the respondents to deliver the possession of the plot to the petitioner in time does not vest him with the right to stop the payment of the instalments as per the scheduled plan as opted by him and this delay had occurred due to unavoidable circumstances as narrated/explained in the additional affidavit of respondent no. 3 and after making the payment of second instalment on 14.03.2012, he paid the remaining instalments in the year 2017, i.e. after almost five years and it being so, he was liable to pay the interest as well as penal interest/penalty on the delayed payments, as agreed between him and the respondents, as per condition no. 8 of the LOI.

9. After perusing the record of the case in hand and giving careful

thought to the arguments as advanced by learned counsel for both the parties, we are of the considered opinion that this petition is devoid of any merit because it goes undisputed between the parties that the petitioner is a successful applicant for allotment of a plot under the said scheme, as floated by the respondent-department and that he had deposited the initial 25% amount of the total allotment amount/price within the stipulated period. It is also an admitted fact that after the deposit of first two instalments under Plan-C as opted by the petitioner for payment of the balance amount, he had failed to adhere to the payment schedule prescribed for this purpose and that the respondent department had also not delivered the possession of the allotted plot to the petitioner within the stipulated period of 2 ½ years from the date of issuance of the LOI which expired on 18.09.2013.

10. As regards the contention of learned counsel for the petitioner to justify the non-payment of the instalments of the allotment amount/price by the petitioner well in time on account of the lapse on the part of the respondents to deliver the possession of the plot to him within the stipulated period, the same does not hold much water because he has not been able to refer to any such term/condition in the LOI/Brochure giving the petitioner such liberty. Rather, condition No.6 of the LOI provides three options to the petitioner, i.e. Plan-A, Plan-B and Plan-C to pay 70% of the balance price after depositing the initial requisite 25% of the total price. Plan-A provides for deposit of 70% price in lump-sum whereas Plan-B gives the

option to pay it in bimonthly equated instalments and Plan-C provides to pay the same in seven half-yearly instalments from the date of allocation letter/LOI and admittedly, the petitioner has opted to pay this amount as per Plan-C. Had it been the intention of the respondent department to make the delivery of the possession of the allotted plot to a successful applicant a pre-condition for the payment of the price thereof, they would not have given the afore-described options to the allottees and the petitioner would not have exercised his entitlement to choose any of the said three options.

11. Seen from yet another angle, condition No.17 as contained in the LOI provides that the possession of the plot, had to be delivered to the allottee within 30 months, i.e. 2½ years from the date of issuance of the LOI and this letter was issued to the petitioner on 18.03.2011 meaning thereby that the possession of the allotted plot was supposed to be handed over to him up to 18.09.2013 but the petitioner himself has averred in para No.4 of this petition that after depositing the amount of second instalment on 14.03.2012, he started paying the remaining instalments w.e.f. 11.01.2017 whereas as mentioned in the payment Plan-C in the LOI, i.e., Annexure-R3/1, he was required to pay 3rd, 4th and 5th instalments on 18.09.2012, 18.03.2013 and 18.09.2013 respectively. Thus, it is explicit that he failed to adhere to the payment Plan-C even prior to the completion of the said period of 2 ½ years, as stipulated for delivery of the possession of the plot to him. In these circumstances, the justification as put forth by him for not

paying the instalments in time on account of non-delivery of the possession of the plot to him, does not seem to be tenable at all.

12. Lastly, condition No.17 of the LOI provides that in case of inability of GMADA to deliver the possession of the plot within the stipulated period, the petitioner shall have the right to withdraw from the scheme and in such case, GMADA shall refund the entire amount deposited by him alongwith simple interest @ 10% meaning thereby that the only remedy available with the petitioner in case of delay in the delivery of possession of the plot is as discussed above. The afore-discussed facts and circumstances speak volumes of the fact that the petitioner has failed to deposit the amount of the instalments of the price of the allotted plot as agreed by him and hence, the demand as raised by the respondent for payment of interest and penalty from him on this score in accordance with the terms and conditions of the LOI, can not be held to be arbitrary or unjustified.

13. As a sequel of the foregoing discussion, this petition, being sans any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

08-01-2020
monika

Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*