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

**CWP-12419-2018 (O&M)
Date of decision : 25.08.2022**

Sanjita Goyal and others

... Petitioners

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. G.C. Shahpuri, Advocate for petitioners.

Mr. V.G. Jauhar, Additional A.G. Punjab.

Mr. Ashish Grover, Advocate for respondents No. 3 and 4.

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HARINDER SINGH SIDHU, J.

Petitioners have filed this petition for quashing the order dated 4.12.2012 (Annexure P-2) whereby on an application for surrender of shop (S.C.O. No.50, Urban Estate, Phase 3, Bathinda) submitted by petitioners, respondent No.4 - Estate Officer, Bathinda Development Authority, Bathinda directed forfeiture of 10 per cent of the total consideration amount. They have also assailed the orders dated 17.1.2014 (Annexure P-3) and order dated 2.8.2016 (Annexure P-4), whereby appeal and revision filed by them had been dismissed.

Petitioners had purchased S.C.O. No.50, measuring 121 sq. yards in Urban Estate, Phase 3, Bathinda at an auction for Rs.71,02,700/- from Bathinda Development Authority, Bathinda. The petitioners

deposited Rs.17,75,675/- i.e. 25 per cent of the total price of the said shop-cum-office with the Bathinda Development Authority, Bathinda. Allotment letter dated 24.2.2012 (Annexure P-1) was issued to the petitioners. As per the allotment letter, the balance 75 per cent of the sale price could be paid either in lump sum without any interest within 60 days from the date of allotment or in 4 yearly installments alongwith interest at the rate of 12 per cent per annum. As per the payment schedule indicated in the allotment letter, the first installment of Rs.19,70,997/- was payable on 22.12.2012.

It is stated that the husband of petitioner No. 2 was suffering from cancer. A huge expenditure was incurred on his treatment. Thereby, petitioners were not in a position to pay the installments. Before the first installment became due, the petitioners requested Bathinda Development Authority, Bathinda for surrender of the S.C.O. allotted to them and for refund of the amount deposited by them. The Estate Officer, Bathinda Development Authority, Bathinda, vide order dated 4.12.2012 (Annexure P-2), accepted the request of the petitioners for surrender of the S.C.O. and ordered the refund of the amount, if any, after deducting 10 per cent of the total consideration amount and interest etc. The appeal and revision filed by petitioners were dismissed.

The forfeiture of 10 per cent was ordered in terms of condition No. 7 (viii) of the allotment letter (Annexure P-1) which is as under :-

“7 (viii) In case of breach of any condition (s) of allotment or of regulations or non-payment of any

amount due together with the penalty, the plot or building, as the case may be, shall be liable to be resumed and in that case an amount not exceeding 10% of the total amount of consideration money, interest and other fees payable in respect of plot shall be forfeited as per the provisions of Section 45 (3) of the Punjab Regional and Town Planning and Development Act, 1995 (hereinafter to be called the Act). ”

Learned counsel for petitioners has argued that the impugned orders have been passed mechanically without adverting to the facts of the case. As per condition of the allotment letter and as per Section 45(3) of the Punjab Regional and Town Planning and Development Act, 1995 (in short “the Act”), the authorities were required to take into consideration the facts and circumstances of the case before passing an order regarding forfeiture. It is not in every case that an order of forfeiture of 10 per cent of total consideration amount is to be passed. It was open to the authorities to forfeit less than 10 per cent of the total consideration amount, if the facts and circumstances of the case justified it.

Reliance has been placed on a decision of this Court in **Puneet Singh Vs. Special Secretary, Department of Housing and Urban Development, Government of Punjab, Punjab Mini Secretariat, Sector 9, Chandigarh**, 2018(1) RCR (Civil) 922. In that case, the Court was considering Section 45 (3) of the Act as it existed prior to 5.12.2013.

Section 45(3), as it stood prior to the amendment (5.12.2013) reads as under :-

“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 in no case shall exceed 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.”

The relevant paras No.10 to 12 of the judgment are reproduced as under :-

“10. Under Section 45 (3), as it originally stood, the authorities are entitled to forfeit the whole or any part of the money paid “which in no case shall exceed ten per cent of the total amount of the consideration money.....”. Thus, the forfeiture was not to exceed 10 per cent of the total amount of the consideration. The authorities are entitled to deduct an amount upto 10 per cent. It is axiomatic that they are entitled to deduct an amount less than 10 per cent of the amount of consideration, if a case for the same is made out. As per the provisions of Section 45 (3), an amount less than 10 per cent can also be forfeited. This is clear from the words “which in no case shall exceed ten per cent of the total amount of the consideration money”. If the intention was to forfeit an amount of 10 per cent and no less, Section 45 (3) would have been worded entirely differently as indeed it has been by the amendment with the words “which shall be equivalent to ten per cent of

the total amount of the consideration money”. The petitioner is entitled to seek a deduction of an amount less than 10 per cent. Reasons for the quantum of deduction must in that case be furnished by the authority.

11. The impugned orders have forfeited 10 per cent of the total amount of consideration without considering whether the facts and circumstances of the case justify deducting an amount less than the maximum amount of 10 per cent of the consideration amount.

12. We hasten to add that the authorities are bound to take into consideration all the facts and circumstances of the case which affect not merely the allottee i.e. the petitioner in this case, but also the revenue. There may be circumstances in which the surrender of the plot prejudicially affects the respondents especially financially. Such factors must also be taken into consideration by the authority. There may be cases where the authority is not in any manner prejudiced, but the allottee is. In that event, the authority would be justified in forfeiting an amount less than 10 per cent.”

The ratio of the aforesaid case would govern the petitioners as order of respondent No.4 - Estate Officer, Bathinda Development Authority, Bathinda is dated 4.12.2012 when the un-amended Section 45(3) of the Act was applicable.

Accordingly, the impugned orders are set aside to the extent that they forfeit an amount of 10 per cent of the total consideration and interest etc. Instead of remanding the matter to the Estate Officer, Bathinda Development Authority, Bathinda, in our view, the issue as to

whether the entire amount of 10 per cent or an amount less than that ought to be forfeited, may be decided by the Revisional Authority itself.

The Revisional Authority – respondent No.2 shall decide the quantum of forfeiture after granting an opportunity of hearing to the petitioners. The needful be done within a period of 4 months from today.

(HARINDER SINGH SIDHU)
JUDGE

August 25, 2022
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(HARKESH MANUJA)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No