

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

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2023:PHHC:117940-DB

CWP No.14115 of 2023
Reserved on: 24.08.2023
Date of Decision: 06.09.2023

Diwakar Sagoonja

.....Petitioner(s)

Versus

State of Punjab and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Ashish Aggarwal, Advocate,
for the petitioner.

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

G.S.SANDHAWALIA, J.

1. The challenge herein is raised to the order dated 21.02.2023 (Annexure P-13) whereby the revision of the petitioner has been dismissed under Section 45(8) of the Punjab Regional and Town Planning and Development Act, 1995 (in short 'the Act') thus upholding the cancellation order dated 31.12.2013 (Annexure P-4), which had been upheld in appeal on 12.03.2014 (Annexure P-5) of a plot measuring 500 square yards. The said orders are also under challenge in the present petition filed under Articles 226 and 227 of the Constitution of India.

2. The reasoning which weighed with the Revisional Authority to dismiss the same was that the petitioner had been declared successful in the draw of lots for the plot of 500 square yards in Aero City Scheme at Mohali and had been issued a letter of intent dated 10.03.2011 (Annexure P-2). He

the total price of the plot within 30 days from the date of issuance as per Condition No.5 of the Letter of Intent. On his failure to deposit the same, the cancellation of the said letter of intent had been done and Rs.6,00,000/- had been forfeited. The explanation that the amount could not be deposited was rejected on the ground that the medical treatment of the mother of the petitioner was prior in point of time before the letter of intent was issued and at the time of filing an application for allotment of the plot, he was aware of the medical exigency and should not have applied for the same. The maximum delay was 180 days which could be condoned and the delay beyond that was held not to be condonable.

3. Counsel for the petitioner has tried to convince us that in similar circumstances in cases of two allottees, the Division Bench in **CWP-23196-2014, Bachittar Kaur vs. State of Punjab and others** and **CWP-6434-2015, Smt. Usha Viridi vs. State of Punjab and others** dated 08.09.2015 (Annexure P-6), similar relief had been granted for condoning the delay beyond 6 months and the State had been directed to consider their cases, which had accordingly been done in an affirmative manner. Reliance is accordingly placed upon the orders dated 24.12.2015 (Annexure P-7) and 12.07.2016 (Annexure P-8) wherein, in pursuance to the order of the Division Bench, the necessary benefits had been granted and the letter of intent had been restored. It is submitted that the said orders were also challenged by The Greater Mohali Area Development Authority unsuccessfully and the writ petitions i.e. CWP Nos.10203 of 2017 and 14909 of 2016 had been dismissed on 21.08.2019 and 28.04.2021 (Annexures P-9 and P-10, respectively). Accordingly, it is contended that the petitioner is also liable to be granted the

said relief of reconsideration.

4. After hearing the counsel for the petitioner and also having been assisted by Mr. Jauhar on account of having an advance copy, we are of the considered opinion that there is no merit in the writ petition and the same requires dismissal at the threshold. Apparently, the letter of intent was issued on 10.03.2011 and as per Clause 5, the balance 15% of the total price of the plot was to be payable within 30 days from the date of issuance of the letter of intent since 10% had already been deposited with the initial application. Clause Nos.5, 16 and 19 of the Letter of Intent read thus:-

“5. A sum of Rs. 9,00,000 being 15% of total price of lot shall be payable within 30 days from the date of issue of this letter of intent.

16. In case of refusal of this offer such refusal should be conveyed in writing through a registered post within 30 days from the date of issuance of the Letter of Intent. In such an event 10% of earnest money deposited shall be forfeited. However, in case such refusal is received after a period of 30 days from the issue of Letter of Intent, the entire earnest money deposited shall be forfeited.

19. This Letter of Intent shall be transferable after receipt of 25% of the total price of plot, by way of sale, gift or otherwise with the permission of Estate Officer, GMADA, SAS Nagar subject to the payment of 1% of the total price of plot as transfer fee and Rs. 1000 as processing fee. Further this letter of intent shall be transferred only, if the applicant is found eligible for allotment of plot at the time of scrutiny.”

5. Apparently, as the requisite 15% i.e. Rs.9,00,000/- was not deposited, notice dated 03.12.2013 was issued by the Estate Office and the petitioner had made no effort till then to ask for extension or give any reasons

as to why the amount had not been deposited, though over 2-1/2 years had passed. On the issuance of the show cause notice, he replied that the hip joint of his mother was broken and, therefore, he was not able to submit 15% of the amount. The Estate Officer keeping in view his statutory limitations, invoked power under Section 45(3) of the Act and cancelled the letter of intent and forfeited Rs.6,00,000/- which had already been deposited. The Appellate Authority in its order dated 12.03.2014 (Annexure P-5) noticed that in the initial brochure of scheme of advertisement, it had been clearly stated that 10% of the cost of the plot had to be deposited with the initial application and the 15% had to be deposited within 30 days from the date of issuance of letter of intent, which has also been reproduced as Condition No.5 above. Resultantly, it was held that there was no occasion as such to interfere in the appeal.

6. The argument as such of the counsel for the petitioner that the benefit as granted in *Bachittar Kaur's case (supra)* and *Smt. Usha Viridi's case (supra)* should be granted also is without any basis. A perusal of the said judgment would go on to show that before the 30 days had expired, an application had been filed before the Estate Officer requesting him to extend the time for reasons given in the application. A show cause notice had been issued for forfeiture in which she had replied by adding more grounds. It was also noticed that the writ petitioner therein had also deposited the balance 15% alongwith penal interest on 28.07.2012 whereas the amount had to be deposited by 20.04.2011. It was in such circumstances the Division Bench, keeping in view the peculiar facts, had come to the conclusion that the matter would require consideration at the hands of the Authority and these facts had

not been noticed in appeal and in revision.

7. In the present case, as noticed, the petitioner made no effort to deposit any amount even though show cause notice dated 03.12.2013 had been issued after 2-1/2 years. The requisite amount had to be deposited by 10.04.2011. In such circumstances, cancellation of the plot in question had taken place. In ***Chaman Lal Singhal vs. Haryana Urban Development Authority and others, (2009) 4 SCC 369***, the Apex Court came to the conclusion that while examining the provisions of the Haryana Urban Development Authority Act, 1977 that in the absence of the deposit of 25%, there was no agreement/contract and, therefore, it could not be said that the provisions of the Act were violated. The judgment, thus, has laid down that the allottee having failed to accept the offer of the respondent-authority by making the payment of the amount of 25% could not claim that there was any binding contract between the parties. It was accordingly held that the allotment letter was also subject to certain conditions and if the amount had not been deposited, reference could not be made to Section 17 and it could not be said that the principles of natural justice were not followed. The relevant para i.e. Para No.15 of *Chaman Lal's case (supra)* reads thus:-

“In our considered opinion the appellant failed to comply with the aforesaid clauses of the letter of allotment and, therefore, his allotment stood cancelled and the earnest money deposited by him could be forfeited by the Authority. The order of cancellation came to be passed by the competent authority after 500 days. Be that as it may, the aforesaid allotment of plot of land in favour of the appellant came to be cancelled because of non-payment of the amount as stipulated in clause 5 and, therefore, the earnest money deposited by him could be forfeited by the Authority. Since the case

of the appellant comes within the ambit of clauses 4 and 5 of the allotment letter, the provisions of Section 17 of the Act would have no application and would not apply. It is thus established that there was no agreement/contract between the appellant and the respondent-Authority and there being no such agreement/contract and because of non-compliance of requirement of clause 5 the issue with regard to violation of principles of natural justice also would not arise. Therefore, the contentions that provisions of Section 17 of the Act are violated and that there is non compliance of the principles of natural justice have no merit.”

8. Keeping in view the above, we are of the considered opinion that nothing could be shown to us as to whether the respondents have violated any provisions and rather the onus was on the petitioner to deposit the amount to have a right to have a letter of intent to be transferable after the receipt of 25%, as provided under Clause 19, reproduced above. Having failed to do so and having not confirmed the factum of the offer which was given to him, he cannot now turn around and say that he has an indefeasible right as such and the cancellation was wrongly done. He was bound by the terms of the letter of intent which was conditional in view of Clause 16, which is also reproduced above, a perusal of which would also go on to show that there was an option as such to refuse the offer within 30 days from the date of issuance of the letter of intent and then only 10% of the earnest money which was deposited was to be forfeited. If the refusal was received after 30 days, the entire earnest money deposited was to be forfeited.

9. In the present case, as noticed, the balance amount having not been deposited, the respondents have chosen to forfeit the complete 10%

amount deposited in accordance with the letter of intent. Therefore, no fault as such can be found in the manner in which they have proceeded.

10. Accordingly, we do not find any merit in the present writ petition and the same stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

06.09.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No