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

CWP No.22624 of 2024
Reserved on: 12.09.2024
Pronounced on: 04.12.2024

Greater Mohali Area Development Authority ....Petitioner

Versus

State of Punjab and others ....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Ms. Munisha Gandhi, Senior Advocate with
Ms. Manveen Narang, Advocate, for the petitioner.

Mr. Jastej Singh, DAG, Punjab.

Mr. B.S. Patwalia, Advocate
Mr. Abhishek Masih, Advocate
Mr. Gaurav Jagota, Advocate, for caveator-respondent No.3

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VIKRAM AGGARWAL J.

1. The petitioner (Greater Mohali Area Development Authority) (for short the "GMADA") assails the order dated 21.02.2023 (Annexure P-1), passed by the Special Secretary, Department of Housing and Urban Development, State of Punjab (respondent No.2), vide which the request of respondent No.3 (Baldev Singh Sidhu) to condone the delay in depositing of 15% amount was allowed.

2. It is the case of the petitioner that a scheme for the allotment of 4000 plots, measuring 125 sq. yd. to 500 sq. yd. at Aero City, Mohali was floated by it. Draw of lots was to be held on 13.10.2010. As per the scheme, 10% of the price of the plot was to be deposited along with the application as earnest money and 15% of the price was to be deposited

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within 30 days of the issuance of letter of intent. Balance 70% was to be paid as per payment plan opted by the allottee and 5% was to be paid at the time of allotment.

3. Having applied for a plot measuring 125 sq. yd., respondent No.3 remained successful in the draw of lots and was issued a letter of intent dated 29.03.2011 (Annexure P-3) for a plot measuring 125 sq. yd. The tentative price was @ Rs.12000/- per sq. yd. A sum of Rs.1,50,000/- had been deposited at the time of submission of the application. Condition No.5 of the letter of intent laid down that 15% of the price amounting to Rs.2,25,000/- was payable within 30 days from the date of issue of the letter of intent.

4. Respondent No.3 did not deposit the said 15% amount within 30 days. However, the same was deposited on 18.08.2012 i.e. almost 1½ year post issuance of the letter of intent. Vide communication dated 21.08.2012 (Annexure P-4), a request was made by respondent No.3 for extension of time in depositing the remaining installments, stating that on account of financial difficulties, he was not in a position to deposit the same.

5. A show cause notice dated 18.10.2012 (Annexure P-6) was issued to respondent No.3 as regards the inordinate delay in depositing the 15% amount. Pursuant to the same, a personal hearing was afforded to him on 27.11.2012, wherein a written response (Annexure P-7) was submitted by respondent No.3. Not agreeing with the same, order of cancellation/resumption was passed on 22.01.2013 (Annexure P-8). An appeal (Annexure P-9) was preferred by respondent No.3 which also came to be dismissed on 21.03.2013 (Annexure P-10). The revision

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petition (Annexure P-11) met the same fate and was dismissed on 13.01.2015 (Annexure P-12).

6. Pursuant to the dismissal of the revision petition, the sum of Rs.2,25,000/- was refunded. Aggrieved by the order dated 13.01.2015, CWP No.7539 of 2015 was preferred by respondent No.3. The same was disposed of on 08.09.2015 (Annexure P-13), wherein, though, the reason given by respondent No.3 was rejected, liberty was given to him to approach respondent No.2 for the redressal of his grievance. Pursuant to the same, an application was submitted by respondent No.3 for reconsideration of his plea before respondent No.2, which, vide impugned order 21.02.2023 (Annexure P-1), was allowed leading to the filing of the instant writ petition.

7. It is the case of the petitioner that there was no power with respondent No.2 to condone the inordinate delay in deposit of 15% of the amount and that even policy dated 20.08.2002 (Annexure P-5) did not permit condonation of such delay, wherein the maximum delay up to 6 months could have been condoned. It is also the case of the petitioner that the order dated 08.09.2015 passed by a coordinate Bench in CWP-7539-2015 was completely misread by respondent No.2 and the request of respondent No.3 was erroneously allowed.

8. Learned Senior Counsel representing the petitioner and learned Deputy Advocate General, Punjab, as also Mr. B.S. Patwalia, Advocate, for the caveator-respondent No.3, who had put in appearance on advance copy having been served, were heard.

9. It was strenuously urged by learned Senior Counsel representing the petitioner that respondent No.2 had gravely erred in

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accepting the request of respondent No.3 and condoning the inordinate delay in deposit of 15% of the amount. Learned Senior Counsel referred to the terms of the scheme, the letter of intent, the policy dated 20.08.2002 (Annexure P-5), the orders passed by the authorities cancelling the plot, the orders in appeal and revision, as also the impugned order and submitted that the impugned order is not sustainable. Learned Senior Counsel submitted that the order dated 08.09.2015 passed by a coordinate Bench was completely misread by respondent No.2. The order was read in detail by learned Senior Counsel and it was pointed out that no case of exceptional hardship was made out by respondent No.3 and practically the same grounds had been taken as had been taken before the authorities previously. It was also submitted that the policy dated 20.08.2002 had been upheld by the coordinate Bench and, therefore, no payment could have been accepted in violation of the same.

10. *Per contra*, learned counsel for the respondents submitted that the order is legal and valid. It was contended that 15% of the amount could not be deposited by respondent No.3 on account of extreme hardship which had duly been explained to the authorities but the authorities did not consider the matter from the correct perspective leading to the cancellation of the plot and rejection of the plea of respondent No.3 subsequently. It was submitted that CWP-7539-2015 was disposed of by a coordinate Bench along with three other writ petitions viz *CWP-23196-2014*, titled as ***Bachittar Kaur V/s State of Punjab and others***, *CWP-7299-2015*, titled as ***Sikander V/s State of Punjab and others*** and *CWP-6434-2015*, titled as ***Smt. Usha Virdi V/s State of Punjab and others***, wherein a similar issue was involved and all

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writ petitions were disposed of in the same terms. It was submitted that subsequently, a similar view had been taken by the authorities in the other cases as well and that in the case of Usha Virdi, the writ petition filed by the petitioner (GMADA) i.e. CWP-10203-2017 was dismissed on 21.08.2019. Similarly in Bachittar Kaur's case also, CWP- 14909-2016 filed by the petitioner (GMADA) was dismissed on 28.04.2021 and plots were duly allotted to Usha Virdi and Bachittar Kaur. Learned counsel submitted that the said orders have become final. It was submitted that under the circumstances, there would be no merit in the instant writ petition which otherwise has been filed after a delay of more than 1½ year and the same, therefore, deserves to be dismissed.

11. It was also submitted that pursuant to the passing of impugned order dated 21.02.2023, a committee consisting of the Estate Officer, Legal Advisor, SDO (Buildings) and Accounts Officer of the petitioner had been formed on 30.10.2020 to look into the cases of allotment of plots, wherein the directions issued by different Courts and the appellate and revisional authorities were to be considered and the said committee found the case of respondent No.3 to be fit for compliance and to be implemented. It was submitted that once such a decision had been taken by the committee, there was no occasion for the petitioner to prefer the instant writ petition.

12. It was also submitted by counsel for respondent No.3 that the exceptional circumstances in the case of respondent No.3 were rightly accepted by the authority, for the same were genuine and, therefore, no interference is called for, keeping in mind the ratio of law that resumption/cancellation should be a weapon of last resort.

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13. Responding to the submissions made by learned counsel for the respondents, learned Senior Counsel representing the petitioner submitted that after the decision of the committee to implement the impugned order, a legal opinion had been sought and the opinion was that the committee had failed to consider the financial implications and that if the order is implemented, it would lead to difference of Rs.5,98,496/- and, therefore, the request for condonation of delay should not have been accepted.

14. We have considered the submissions made by learned counsel for the parties.

15. The scheme in question opened on 07.06.2010 and was to close on 06.07.2010. Applications were invited for allotment of 4000 free hold residential plots in Aero City, SAS Nagar, Mohali, measuring 500 sq. yd., 400 sq. yd., 300 sq. yd., 250 sq. yd., 200 sq. yd., 150 sq. yd. and 125 sq. yd. As per the terms and conditions, 10% of the price of the plot was to be deposited along with the application, 15% was payable within 30 days from the date of issue of the letter of intent, 5% of the price and extra price on account of premium location was to be paid at the time of delivery of possession and balance 70% was to be paid as per the payment plan to be opted by the allottee;

> ***"TERMS AND CONDITIONS***
>
> ***i) 10% price of plot is to be deposited alongwith application.***
>
> ***ii) 15% price of plot is payable within thirty days from the date of issue of letter of intent.***
>
> ***iii) 5% price + extra price (on account of corner or facing park or both + additional price), if any is pyable at the time of delivery of possession.***

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Additional price means increase due to actual measurement of site as well as in the event of enhancement of compensation by any competent Court under the Land Acquisition Act 1894 and increase in the cost of development including amenities or otherwise.

iv) Balance 70% would be payable as per the following payment plans:-

PAYMENT PLAN

PLAN-A If the allottee deposits the balance 70% price in lump sum within 60 days from the date of allocation letter/Letter of Intent, 10% rebate shall be allowed.

PLAN-B Allottees are entitled to pay the 70% amount without interest in seven bimonthly equated installments from the date of issue of allocation letter/Letter of Intent.

PLAN-C Allottees are entitled to pay the 70% amount alongwith interest @10% p.a. payable half yearly, in 7 half yearly instalments from the date of allocation letter/Letter of Intent.

NOTE

i) If the allottee under the Plan B and C makes the entire outstanding payment in lumpsum at any time then a rebate of 5% shall be allowed on the outstanding principal amount.

ii) This benefit shall be allowed only if three or more instalments are to be paid when the lumpsum payment is made.

iii) Applicant shall have to opt for the payment plan at the time of filling of application form. However, if he/she intends to change the payment plan he/she shall have to inform in this regard before Draw. Thereafter, no change of plan will be allowed."

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16. Having remained successful in the draw of lots, a plot measuring 125 sq. yd. in '01 Category' situated in Aero City, SAS Nagar, Mohali was intended to be allotted to respondent No.3 at a tentative price of Rs.12000/- per sq. yd. As per Clause 5 of the LOI, a sum of Rs.2,25,000/- being 15% of the total price was payable within 30 days from the date of issue of letter of intent;

> ***"5. A sum of Rs.2,25,000/- being 15% of total price of plot shall be payable within 30 days from the date of issue of this letter of intent."***

As per Clause 9, no separate notice was to be issued for payment of installments;

> ***"9. No separate notice for payment of instalments shall be sent."***

17 The letter of intent having been issued on 29.03.2011, the 15% amount was payable by 28.04.2011. However, as is evident, the same was not deposited by the said date but was deposited on 18.08.2012 with a delay of 1 year, 3 months and 23 days and a request dated 21.08.2012 was made to grant extension of time for payment of the said amount so that the balance amount/installments could be deposited in time.

18. As per the policy dated 20.08.2002, the maximum delay in the case of a residential plot, which can be condoned, is up to 6 months and the power to condone the same is with the Chairman of the GMADA.

19. A show cause notice dated 18.10.2012 having been issued, a response dated 27.11.2012 was submitted by respondent No.3 stating that on account of a road accident, the father of respondent No.3 underwent

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treatment for a long time as a result of which he could not pay attention to the issue and he also became financialy weak due to long and expensive treatment of his father. As a result of the same, he was unable to deposit the amount within time. As and when the amount was arranged, the same was deposited. It was also submitted that in the letter of intent, it was not mentioned that after the expiry of 30 days, a further extension up to 180 days could have been given and had it been so mentioned, he would have applied for the same. Finding the response to be unsatisfactory, the plot was cancelled on 22.01.2013. As mentioned earlier, the appeal and the revision were also dismissed.

20. The petitioner and other similarly situated persons knocked the doors of this Court by way of CWP-23196-2014, CWP-7299-2015, CWP-7539-2015 and CWP-6434-2015, wherein the issue which arose before a coordinate Bench was as to whether delay beyond 180 days in depositing 15% of the allotment price could be condoned and whether such payment made by the allottees after a period of one year or so could be accepted. After hearing the parties, the coordinate Bench vide judgment dated 08.09.2015 held as under:-

> ***"[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.***

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> ***[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 non-interference 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."***

21. A perusal of the aforesaid shows that the policy dated 20.08.2002 was found to be fair, just and reasonable. It was, therefore, held that for the amount had not been deposited even within a period of 180 days, the action of the authorities did not call for any interference. However, it was held that if the said amount could not be deposited on account of some exceptional circumstances and the authorities were fully satisfied with the reasons which prevented such allottee to honour his part of the contract, the competent authority ought not to feel helpless in doing complete justice and that in such a situation, the policy be not

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construed like a statute. It was held that the makers of the policy, if so satisfied, would be well within their right to condone the delay of even beyond 6 months, provided a very strong case on facts was made out. It was held that once the competent authority is satisfied that non-interference could defeat the cause of fairness, equity and justice, it need not tie down itself within the time limit prescribed through an executive order. It was further held that the explanation given by the petitioner(s) did not make out a case of circumstances where the authority should have been persuaded to condone the delay beyond 6 months. However, at the same time, the coordinate Bench thought it appropriate to grant liberty to the petitioner(s) to approach the Special Secretary, Government of Punjab, Department of Housing and Urban Development 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.

22. The matter then went to respondent No.2. An application was submitted by respondent No.3 praying for reconsideration of his plea of acceptance of the balance amount. It was submitted that on account of a theft which had taken place at the house of the petitioner, a grave financial loss had been suffered by him. To substantiate the fact of theft, a copy of DDR dated 13.10.2010 was produced before respondent No.2. The ground of treatment of the father of respondent No.3 was also raised. It was submitted that he had three daughters and he was the sole bread winner of the family having no other source of income as a result of which, he could not despite the requisite amount of 15% within the stipulated period. The authority was of the opinion that respondent No.3

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had made out a case of strong and exceptional circumstances of financial hardship and accordingly the delay was condoned;

> ***"In the course of hearing of this case, the parties were afforded opportunity to produce documentary evidence in support of their claim on different dates. In support of his case the petitioner has submitted that due to the theft, which had taken place at petitioner's house, he has suffered a great financial loss and to substantiate the fact of theft, the petitioner has produced a copy of DDR dated 13.10.2010 registered at Police Station, Kharar. Besides this, another setback was given to him because of sudden and untimely death of nis father, who remained under treatment for very long time. The petitioner has further submitted that he has three daughters and he is the sole bread-winner in the family and having no other source of income. Due to these circumstances he could not deposit the requisite 15% amount within stipulated period. However, the petitioner deposited requisite 15% amount Rs. 2,25,000/ on 18.08.2012.***
>
> ***The Law Officer, GMADA has rebutted the claim of the petitioner on the ground that as per condition no. 5 of the LOI, the petitioner was required to deposit the 15% amount within stipulated period of 30 days from the date of issue of the Letter of Intent, but the petitioner has deposited this amount with the delay of 1 year, 3 months and 23 days and this delay is not condonable in any circumstances. He has further submitted that only in particular circumstances the maximum delay of 180 days may be condoned.***
>
> ***In the light of the facts and circumstances discussed in the preceding paras, I have examined the record. As the issue of condonation of delay is concerned, I, in view of submissions and circumstances of the petitioner, am of the considered view that the case of the petitioner is made out of 'strong and exceptional***

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circumstances of financial hardship and as per the above mentioned order dated 08.09.2015 passed Hon'ble Punjab and Haryana High Court, the delay is condoned in favour of the petitioner and the cancellation order dated 28.12.2012 passed by Estate Officer, GMADA and order dated 21.03.2013 passed by Appellate Authority cum Additional Chief Administrator, GMADA are set aside. Further, the petitioner is directed to deposit the balance amount of the plot, alongwith all kind of charges/fees/penal interest whichever is due, in seven half-yearly installments. The schedule of installments shall be communicated to the petitioner by Estate Officer, GMADA within a period of 30 days from the date of receipt of this order. In case the petitioner tails to comply with the schedule of installments, the cancellation order dated 28.12.2012 passed by Estate Officer, GMADA, shall stand revived automatically."

23. At the first blush, the view taken by respondent No.2 appears to be in the teeth of the observations made by the coordinate Bench, wherein it was found that the action of the authorities did not call for any interference and that the explanation given by respondent No.3 did not make out a case of exceptional circumstances, wherein the authority should be persuaded to condone the delay beyond six months. The facts in that writ petition had been extracted from CWP-23196-2014, titled as ***Bachittar Kaur V/s State of Punjab and others***. However, when Bachittar Kaur approached the authorities, her case was that the LOI dated 21.03.2011 was received by her in the third week of April 2011 and during the said period, her husband Ravinder Singh had been bitten by a stray dog and was under treatment at Government Hospital, Sector-16, Chandigarh. She submitted a representation dated 19.04.2011 for granting her some more time to pay the amount after which she met with

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an accident on 05.05.2011 and suffered grievous injuries. She submitted a number of representations dated 08.02.2012, 29.02.2012, 06.03.2012 and 22.03.2012 but she was not permitted to deposit the said amount. Her allotment was cancelled and earnest money was forfeited. However, vide demand draft dated 28.07.2012, a sum of Rs.2,95,000/- (Rs.2,25,000/- being 15% of the total price and Rs.70,000/- on account of interest) was deposited. After dismissal of the appeal and revision and disposal of the writ petition, her request was allowed on 24.12.2015. The said order was challenged by way of CWP-14909-2016 by the petitioner (GMADA) but the same came to be dismissed on 28.04.2021, holding that the competent authority had exercised its powers to condone the delay in exceptional circumstances to restore the plot. (These facts have been extracted from judgment dated 28.04.2021 passed in CWP-14909-2016).

24. In the case of another similarly situated person namely Smt. Usha Virdi also, the LOI was issued on 29.03.2011 i.e. the date on which the LOI was issued to respondent No.3 and the 15% of the amount was not paid. On 26.05.2011, an affidavit was sworn by Usha Virdi 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 the sanction of loan. She also applied for permission to mortgage the plot allotted to her to enable her to raise a loan. Vide letter dated 18.07.2016, permission was granted to her to mortgage the plot. Thereafter, the total amount was deposited. However, the LOI was cancelled on account of delay of 220 days in depositing the 15% of the amount. Appeal and revision were also dismissed after which CWP-

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23196-2014 was preferred by her. She then approached the authorities and submitted a representation dated 09.10.2015 after which vide order dated 12.07.2016, her request was allowed. She had submitted that she has not been able to deposit 15% of the tentative sale consideration within 30 days because of her parents who were settled in the USA had to return but did not have sufficient money to purchase the air tickets. Being the only child, she felt obliged to help them and after returning from the USA, her parents failed to repay the amount. Being a Government teacher, she did not have any other resources to make the payment as a result of which she applied for permission to mortgage the plot. Considering the same, the delay occurred. Pursuant to the directions of the coordinate Bench, representation dated 09.10.2015 was submitted and vide order dated 12.07.2016, her request was allowed by the concerned authority and the writ petition (CWP-10203-2017) filed by the petitioner (GMADA) against that order came to be dismissed on 21.08.2019. (These facts have been extracted from judgment dated 21.08.2019 passed in CWP-10203-2017).

25. A perusal of the factual matrix given in CWP-14909-2016 and CWP-10203-2017 in the case of Bachittar Kaur and Usha Virdi shows that their cases were almost at par with the case of respondent No.3 and there was a delay of more than 1 year in depositing of 15% of the amount, which was in any case beyond the maximum period of 180 days, for which the delay could have been condoned in terms of the policy dated 20.08.2002. Despite a specific observation of the coordinate Bench that the explanation given by the petitioner(s) did not make out a case of exceptional circumstances where the authority should be

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persuaded to condone the delay beyond 6 months, the authority concerned accepted the contention of the said allottee(s) and condoned the delay. In the present case, the authority took its own time in deciding the matter and finally decided the same on 21.02.2023. No reason is forthcoming for this inordinate delay in deciding the claim of respondent No.3, especially when the claim of similarly situated persons was decided years back.

26 Though this Court is not truly convinced with the reasons given by respondent No.3 for the delay which occurred in depositing the 15% amount, which was the accident of the father of respondent No.3, when the initially representation dated 18.10.2012 was submitted which changed to a theft in his house, besides being the sole bread winner of a family having three daughters before respondent No.2 apart from the death of his father, the question of parity would come in. The case of respondent No.3 is at par with that of Bachittar Kaur and Usha Virdi and the judgments in their cases have become final. There is nothing on record to show that the said judgments were interfered with at any stage. In fact, plots already stand allotted to Smt. Bachittar Kaur and Smt. Usha Virdi vide letters of allotment dated 07.01.2022 and 09.03.2020 respectively. Under such circumstances, the principles laid down in the case of ***M/s Teri Oat Estates (Private) Limited Vs. U.T., Chandigarh*****, (2004) 2 SCC 130** and ***Dheera Singh Vs. U.T. Chandigarh Administration*****, 2012 (4) RCR (Civil) 970** come to our mind, wherein it was held that resumption should be a weapon of last resort. Once a decision was taken in the case of similarly situated persons, it would be

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unfair to say that in the case of respondent No.3, such a decision should not have been taken.

27. Be that as it may, keeping in view the facts and circumstances as have been noticed in the preceding paragraphs, we do not find any reason to interfere in the impugned order and accordingly, the writ petition stands dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on :12.09.2024
Pronounced on: 04.12.2024
vcgarg

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

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