2024:PHHC:110102-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.35202 of 2019
Reserved on: 24.07.2024.
Pronounced on:27.08.2024.

M/s A.K. Vidyamandir Private Limited

....Petitioner

Versus

State of Punjab and others

....Respondents

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

Present: Mr. Vijay Lath, Advocate with
Mr. Ajay S. Dhiman, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G. Punjab.

Mr. Aman Sharma, Advocate with
Ms. Sital Sharma, Advocate and
Mr. Chirag Suri, Advocate for respondents No.2 to 4.

VIKRAM AGGARWAL J.

1. Challenge in the instant writ petition is to the revisional order dated 13.11.2018 (Annexure P-18) upholding the appellate order dated 27.09.2012 (Annexure P-14) and the order dated 03.04.2012 (Annexure P-12) vide which the Shop-cum-Office site allotted to the petitioner was resumed and a sum of ₹48,67,141/- was forfeited.

2. The case set out by the petitioner is that pursuant to an advertisement issued by the respondents for the auction of commercial sites in Urban Estate, Phase-2, Jalandhar, the petitioner participated in the auction held on 11.10.2006 and having emerged successful in the same, was allotted SCO No.53-54 (hereinafter referred to as the disputed SCO) vide letter of allotment dated 05.12.2006 (Annexure P-2).

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3. Certain communications ensued vide which the petitioner sought possession of the disputed SCO as also with regard to raising construction up to six storeys. The communications were also on account of the fact that as per the petitioner, the drawings available with the respondents were for buildings up to four storeys whereas a six storey building had to be constructed by the petitioner. The petitioner also applied for extension in the time granted for construction as the possession of the disputed SCO had been handed over on 12.09.2007 (Annexure P-6). The communications referred to above have also been placed on record as Annexures P-3 to P-5 and P-7 to P-9.

4. A show-cause notice dated 11.11.2011 (Annexure-P10) was issued to the petitioner calling upon the petitioner to pay the outstanding amount of ₹2,65,29,590/- failing which the allotment would be cancelled after deducting 10% of the total sale consideration and interest. Certain communications again ensued but finally vide order dated 03.04.2012 (Annexure P-12), the disputed SCO was resumed in terms of the provisions of Section 45(3) of the Punjab Regional & Town Planning & Development Act 1995 (for short 'the 1995 Act') and 10% of the total sale consideration amounting to ₹48,67,141/- was forfeited.

5. An appeal (Annexure P-13) was preferred against the order of resumption but the same was also rejected vide order dated 27.09.2012 (Annexure P-14).

6. The petitioner then knocked the doors of this Court by way of CWP No. 6316 of 2016 which was disposed of by a Coordinate Bench on 18.07.2018 (Annexure P-17) and the matter was remitted to the

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Revisional Authority with a direction to re-examine the issue of forfeiture of 10% of the total sale consideration.

7. The petitioners then again approached the Revisional Authority, but the Revisional Authority reiterated its original view of forfeiture of 10% of the total sale consideration vide order dated 13.11.2018 (Annexure P-18) leading to the filing of the instant writ petition.

8. The case set up by the petitioner is that the resumption of the disputed S.C.O. was erroneous so was the forfeiture of 10% of the total sale consideration. Reliance has been placed upon an order dated 18.10.2018 (Annexure P-19) passed in the case of one Sinderpal Garg and Pardeep Kumar (Annexure P-19), wherein the amount of forfeiture was reduced from 10% to 5%. The case of the petitioner is that the respondents adopt a pick and choose policy not only while resuming properties but also while imposing penalties etc., and forfeiting the deposited amount.

9. The writ petition has been opposed by the respondents. In the written statement preferred by respondents no.2 to 4, the basic stand taken is that after depositing ₹67,99,895/-, which was 25% of the total sale consideration, no further amount was deposited by the petitioner despite repeated notices having been issued nor was construction raised despite the fact that possession has been handed over on 12.09.2007. The stand taken is that many other allottees in the same area had taken possession and had raised construction apart from having paid the entire outstanding amount. The petitioner, however, willfully did not pay the

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outstanding amount nor did it raise construction. The orders passed by the Authorities have, therefore, been supported in the written statement. As regards the case of Sinderpal Garg, it has been averred that the facts in the said case were totally different, because in that case, the area was not fully developed and most of the development works were yet to be carried out on account of which, the allottee surrendered the plot and accordingly 5% of the total sale consideration was forfeited.

10. Learned counsel for the parties were duly heard.

11. Sh. Vijay Lath, learned counsel representing the petitioner strenuously urged that the action of the respondents in forfeiting 10% of the total sale consideration is highly unjust and unfair and the State cannot be permitted to indulge in such practices and the same amounts to unjust enrichment. It would be relevant to mention here that on 03.12.2019, when this writ petition had come up before a Coordinate Bench, learned counsel for petitioner had restricted his arguments to the extent of deduction of 10% of the total sale consideration, wherein, as per the petitioner, in similar cases, deduction of 5% and even 2% had been made. Strenuous efforts were made by learned counsel to submit that the action of forfeiture of 10% of the total sale consideration is illegal and that out of a sum of ₹67,99,895/- deposited by the petitioner, a sum of ₹48,67,141/- was forfeited. Reference was made to the order dated 18.10.2018 (Annexure P-19) passed in the case of Sinderpal Garg and it was contended that the action of the respondents in deducting 10% of the total sale consideration cannot sustain. Reference was also made to judgment dated 05.08.2018 passed by a Coordinate Bench in **CWP No.**

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8825 of 2013, titled as Greater Mohali Area Development Authority (for short GMADA) Vs. Parshotam Lal and others and other connected cases, vide which the reduction in forfeiture from 10% to 5% was upheld and even the SLP against the said judgment was dismissed on 18.04.2016. Reliance was also placed upon the judgment of a Coordinate Bench in the case of **Punjab Urban Planning and Development Authority Vs. Revisional Authority, 2013(4) RCR (Civil) 345** and **Assistant Estate Officer, Chandigarh Admn., Vs. Smt. Anita Arora, 2001(1) RCR (Civil) 8**. It was submitted that at the relevant time i.e., when the resumption order was passed, Section 45(3) of the 1995 Act provided for a maximum forfeiture of 10% which was later amended making the forfeiture to be 10% meaning thereby that forfeiture of less than 10% was not permissible after the amendment. It was submitted that the respondents were not justified in imposing the maximum forfeiture in the case of the petitioner and it is on account of this reason that the Coordinate Bench had remitted the matter to the Revisional Authority.

12. *Per contra*, learned counsel representing the respondents submitted that in the case of the petitioner, there was a willful default of payment of the sale consideration and after payment of 25% of the sale consideration, no further payment was made whereas in other cases which have been relied upon by the petitioner, there was no default and under the circumstances, forfeiture of 5% was made. Learned counsel submitted that each case has to be decided on its own facts and the petitioner cannot be permitted to derive any benefit from some orders having been passed under different circumstances.

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13. Having duly considered the submissions made by the learned counsel for the parties and having perused the paper-book, the relevant provisions and having gone through the law on the subject, we proceed to examine the issue.

14. The disputed S.C.O measuring 355.55 sq. yards was allotted to the petitioner vide letter of allotment dated 05.12.2006. The total sale consideration as indicated in the letter of allotment was ₹2,71,99,580/- (Two Crores Seventy One Lakhs Ninety Nine Thousand Five Hundred and Eighty). A sum of ₹67,99,895/- had been deposited by the petitioner, being 25% of the total sale consideration. The balance sale consideration was to be paid in terms of Clause 3.2 of the Allotment Letter. The said provision is not being reproduced because the dispute has narrowed down only to the imposition of forfeiture and the issue of resumption has become final, for learned counsel representing the petitioner had restricted his claim only to the quantum of forfeiture which is reflected in the order dated 03.12.2019 passed by the Coordinate Bench in the present writ petition.

15. The possession of the disputed S.C.O. was handed over on 12.09.2007. There were provisions with regard to raising of construction within a period of three years. As has been noticed while detailing the facts of the case also, the site was resumed on account of non-payment of outstanding amount of ₹2,65,19,590/-. 10% of the total sale consideration was also forfeited. The subsequent chain of events i.e., dismissal of appeal, filing of a petition before this Court, remand of the matter to the Revisional Authority and ultimately the passing of the impugned order

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has already been mentioned while detailing the facts and, therefore, do not warrant repetition.

16. We would now straightway examine the issue of forfeiture. Admittedly, at the time of passing of the resumption order, Section 45(3) of the 1995 Act provided for forfeiture of upto 10% of the total sale consideration, which was subsequently amended to 10% meaning thereby that after amendment, forfeiture of less than 10% could not be imposed. The Revisional Authority on both occasions forfeited 10% of the amount only on account of the alleged willful default in making the payments. At the first blush, the reasoning seems to be correct. However, if one examines the issue closely, it emerges that in many matters Courts have taken a view that imposition of 10% forfeiture of the total sale consideration is on the higher side. In the case of **GMADA Vs. Parshotam Lal and others (supra)**, the facts were identical. 75% of the amount had not been paid against some SCO's situated in Sector 69 Mohali. On 29.05.2012, 10% of the total sale consideration was ordered to be forfeited which was upheld in appeal, but the Revisional Authority, vide order dated 23.11.2012, reduced the forfeiture amount from 10% to 5%. This reduction in the forfeiture was challenged by GMADA before this Court, but this Court dismissed the writ petitions on 05.08.2013. The Supreme Court in-fact, in an SLP filed by the allottees reduced the forfeiture to 2% vide order dated 18.04.2016. The operative of the order passed by the Coordinate Bench reads as under:-

> ***"From a perusal of the order dated 23.11.2012 (Annexure P- 6), it is found that the revisional authority***

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afforded an opportunity of hearing to both the parties and came to the conclusion that the GMADA has not suffered any loss on account of surrender of the SCO sites and the amounts deposited by the allottees remained deposited with it and at the same time the revisional authority did not find any substance in the submissions put up on behalf of the allottees but still, to keep a balance reduced amount of forfeiture from 10% to 5%.

On examination of the order dated 23.11.2012 (Annexure P-6), we find that the revisional authority has taken into consideration the submissions put up for and against the order of forfeiture and has recorded its conclusion keeping ends of justice in view. That being so, we are not inclined to interfere with the order dated 23.11.2012 (Annexure P-6) in exercise of extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

As a consequence, all the above four writ petitions fail and are dismissed, leaving the parties to bear their own costs."

The order passed by the Supreme Court of India states as under:-

"2. The issue raised in these appeals pertains to the discretion exercised by the Revisional/Appellate Authority with regard to the percentage of forfeiture on surrender of plots.

3. Having noticed that there is no uniform approach, this Court, by order dated 01.04.2016, directed the respondents to get instruction as to why a similar treatment, as in Annexure P6, be not granted to the appellants as well.

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> ***4.*** ***The learned counsel appearing for the respondents rightly submits that there cannot be a uniform standard because the factual position may vary from case to case and that has a bearing on the percentage of the forfeiture. It is also pointed out that the entire exercise is carried out only as per the provisions under the Statue.***
>
> ***5.*** ***We have no quarrel with the submissions. However, having regard to the peculiar facts and circumstances of these cases, we are of the view that the interest of justice would be met if a direction is issued to have a similar treatment, as in Annexure P6, to the appellants herein as well. Ordered accordingly.***
>
> ***6*** ***The appeals are, accordingly, allowed with a direction that the percentage of forfeiture in the case of the appellants herein shall be reduced to 2%."***

17. Similarly, in the case of **PUDA Vs. Revisional Authority (supra),** also, the amount of forfeiture had been reduced from 10% to 5% which was again challenged by PUDA. While rejecting the claim of PUDA, the Coordinate Bench held as under:-

> ***"8.*** ***Having heard learned counsel for the petitioner we do not find any ground to interfere with the impugned order. We say so for the reason that under Section 45(3) of the Punjab Regional and Town Planning and Development Act, 1995, wherever applicable, no forfeiture exceeding 10% of the total sale consideration, interest and other dues payable by an allottee, is permissible. In the instant case, the Estate Officer has imposed penalty of forfeiture to the maximum, namely, 10% despite the fact that the delay in surrendering two plots by respondent No. 2 did not cause any severe prejudice like financial loss to PUDA as the earnest money deposited by him for those two plots was***

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retained by PUDA till the refund was made after surrender of those plots. Similarly, the allottees in waiting list also did not suffer as their liability to pay the due installments commenced only after the formal allotment. Be that as it may, the forfeiture of 5% amount is sufficient to compensate PUDA if at all any loss was caused to it. That apart, the Revisional Authority has acted within the ambit of its statutory powers under Section 45(8) of the Punjab Regional and Town Planning and Development Act, 1995, hence no case to interfere with the aforesaid order in exercise of our writ jurisdiction is made out."

A similar view was taken by a Coordinate Bench in case of **Assistant Estate Officer, Chandigarh Admn Vs. Smt. Anita Arora (supra).** In-fact when the petitioner had approached this Court by way of CWP No.6316 of 2016, which was decided on 18.07.2018, the Co-ordinate Bench had found merit in the contention raised on behalf of the petitioner that the authorities could consider reducing the amount of forfeiture. The authorities, however, were bent upon to forfeit not less than 10% of the total sale consideration.

18. Having gone through the orders, we are of the considered opinion that despite the fact that the petitioner had defaulted in payment of the balance amount of 75%, the imposition of forfeiture at the rate of 10% thereby forfeiting ₹48,67,141/- out of the total amount deposited which was ₹67,99,895/- is unjustified and is not called for. It has to be borne in mind that the petitioner is engaged in imparting education and for certain unforeseen circumstances which are not being gone into on account of the matter having attained finality, the amount was not paid

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and the site was ultimately resumed. Admittedly, the provision at the relevant time provided for forfeiture of upto 10% of the total sale consideration. Further admittedly, no further financial loss was suffered by the respondents on account of resumption of the site. At-least, nothing of the kind has been brought on record. We therefore, do not find it justified to forfeit a sum of nearly ₹50 Lakhs out of a sum of ₹68 (approximately) deposited by the petitioner. The forfeiture, at best could be 5% if not 2%. We were inclined to reduce the forfeiture to 2%, but keeping in view the fact that there was a default on the part of the petitioner and the balance 75% was not deposited, we are not inclined to reduce the forfeiture beyond 5%.

Accordingly, the writ petition is partly allowed. The forfeiture amount is reduced to 5%. A direction is issued to the respondents to refund the balance amount to the petitioner within a period of 4 weeks from today along with admissible interest as per policy.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 27.08.2024
Rekha

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

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