

CWP-2903-2001 (O&M)

KRISHNA KUMAR NANDA AND OTHERS

V/S

**COMMISSIONER, MUNICIPAL CORPORATION, CHANDIGARH
AND OTHERS**

Reserved on 28.02.2025

Pronounced on 12.03.2025

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Arun Bansal, Advocate for the petitioners
(*through video conferencing*)

Mr. Gaurav Mohunta, Advocate,

Mr. Nishant Arora, Advocate and

Mr. Pratyush Sood, Advocate for the respondents

JAGMOHAN BANSAL, J.

1. This matter has come up before us in view of referral order dated 30.01.2015 passed by a Division Bench of this Court. The referral order dated 30.01.2015 reads as: -

“The instant writ petition as well as four other writ petitions i.e. CWP Nos.6136 of 1992; 16629 of 1995; 42 of 1996 & 13543 of 1999 are listed for hearing against the forfeiture of the bid amounts consequent to the alleged surrender of the booth sites purchased by the petitioner(s) in an open auction. Though in two cases, there is dispute, as to whether the petitioner has surrendered the booth sites or the respondents have resumed the sites, but even if the said dispute is ignored, the question raised by the petitioner is that only 10% out of 25% of the amount deposited can be forfeited in terms of Clause 13 of the letter of allotment in case of booth sites and not 10% of the bid amount. The relevant Clause 13 reads as under:

“13. If at any stage the transferee(s) due to certain compelling circumstances, would like to

surrender the site, he/she/they shall be allowed to do so with prior permission from the President of the Committee and the surrender would be subject to forfeiture of 10% of the amount out of 25% of the cost paid at the fall of hammer. The interest amount recovered upto the date of surrender shall not in any case be refunded.”

In support of such argument, reliance is placed upon a Division Bench judgment of this Court in Amarjeet Singh Randhawa & others Vs. Notified Area Committee, Mani Majra 1988 HRR 23.

On the other hand, another Division Bench of this Court, of which one of us (Hemant Gupta, J.) was a Member, considered the similar allotment in CWP No.17900 of 1999 titled 'Yogesh Gupta Vs. The Commissioner, Municipal Corporation, Chandigarh & others' decided on 30.10.2014. The Court has held that the respondents are entitled to forfeit 10% of the total bid money offered. The judgment in Amarjeet Singh Randhawa's case (supra) was not brought to the notice of the Bench, when the matter was decided.

Prima facie, we find that the relevant Clause permits forfeiture of 10% out of 25% of the cost paid at the fall of hammer. The amount of forfeiture is not restricted to 10% of the amount paid, but it is 10% of the total bid offered. Since there is conflicting view of two Division Benches, we deem it appropriate to order that the present writ petition be listed before a Larger Bench to examine the question, as to whether what is the true import of the Clause 13 reproduced above.

Thus, we order that the papers be placed before the Hon'ble the Acting Chief Justice to constitute a Larger Bench to decide the above said question.”

2. A Division Bench of this Court vide judgment dated 01.10.1997 in *Amarjeet Singh Randhawa and others v. Notified Area Committee, (1998) 118 PLR 77*, interpreted Clause 18 of the allotment letter issued by Notified Area Committee. The said clause is *pari materia* with Clause 13 of the allotment letter which is under consideration before this Court. In the said case, Notified Area Committee conducted an open auction of commercial sites on 20.06.1990. The petitioner therein participated in the auction and his bid for ₹41,01,000/- being highest was accepted. He deposited a sum of ₹4,10,100/- on 30.06.1990 representing 10% of the bid amount. He further deposited ₹6,15,000/- on 30.07.1990. He could not construct the site and chose to surrender the site vide letter dated 19.09.1991. He requested for refund of already deposited amount after making deduction of 10%. The respondent refunded a sum of ₹5,92,113/- out of ₹10,25,250/-. He filed writ petition before this Court claiming that respondent could retain 10% of the amount deposited by him and not 10% of the total bid amount. The Division Bench interpreted Clause 18 and 24 of the allotment letter. The Court noticed that post script to Clause 24 though relates to Clause 18 was added vide resolution dated 23.08.1991 whereby it was clarified that forfeiture of 10% of the amount means 10% of total bid money. The property was sold by auction on 20.06.1990 and post script to Clause 24 was added vide resolution dated 23.08.1991, thus, unilateral change made by the Notified Area Committee could not change terms and conditions of the allotment. In the light of the fact that post script was inserted after the date of auction, the Court held that the respondent could not retain beyond 10% of the already deposited amount i.e. 25% of bid amount. Clause 18 of the allotment letter discussed in *Amarjeet Singh Randhawa's case* and findings of the Court read as: -

“Clause 18.

If at any stage the transferee(s) due to certain compelling circumstances, would like to surrender the site, he/she/they will be allowed to do so with prior permission from the President of the Committee and the surrender would be subject to forfeiture of 10% of the amount out of 25% of the cost paid at the fall of the hammer. The interest amount recovered upto the date of surrender shall not in any case be refunded.

Clause-24.

The right or display of advertisement and use of end wall of end sites and the benefit derived from shall vest in the committee.

P.S. Forfeiture of 10% of the amount means 10% of total bid money."

It is admitted that the property had been auctioned on 20.06.1990 at the time Clause 18 of Annexure P.1 clearly spelt out that the forfeiture could be made of 10 per cent of the 25 per cent deposited at the fall of the hammer. It appears that the Notified Area Committee thereafter experienced some difficulties and vide resolution dated 23.08.1991 added two posts scripts to Clause 24 though related to Clause 18 and also passed resolution Annexure Rule 2 further clarifying that the forfeiture was to be with regard to 10 per cent of the total bid money. In our opinion the said post script or the clarificatory resolution made after the date of the auction cannot operate retrospectively.”

3. A Division bench of this Court in *Yogesh Gupta v. The Commissioner, Municipal Corporation, Chandigarh, CWP No.17900 of 1999*, had occasion to interpret Clause 14 of the terms and conditions of the allotment letter. Clause 14 of the allotment letter is reproduced as below: -

“14. “If at any stage the transferee (s) due to certain compelling circumstances, would like to surrender the site he/she/they shall be allowed to do so with the prior permission from the President of the Committee and the surrender would be subject to the forfeiture of 10% of the amount of 25% of the cost paid at the fall of the hammer. The interest amount recovered upto the date of surrender shall not in any case be refunded.”

“Note : Forfeiture of 10% of the amount means 10% of the Total bid Money”.

4. In the said case, auction was held on 25.03.1990. The petitioner therein deposited 25% as earnest money. He could not deposit balance amount and requested the Estate Officer to accept his request for surrendering the site. The Estate Officer passed resumption order dated 08.07.1992 whereby he forfeited whole amount i.e. 25% of the bid money. He preferred petition before this Court. The Division Bench interpreting afore-stated Clause 14 of the allotment letter concluded that the Estate Officer could forfeit 10% of total bid money offered. The Court held that forfeiture of entire 25% was in violation of terms and conditions of the allotment letter. The respondent could forfeit 10% of the total bid money.

5. In the backdrop, we find that facts of *Amarjeet Singh Randhawa* and *Yogesh Gupta's cases* are different. The date of surrender and provisions which are mentioned in the allotment letter would be material. In *Amarjeet Singh Randhawa's case (supra)*, there was no note in the original clause. The post script note was added later on, while in the case of *Yogesh Gupta's case (supra)*, the post script note was part of the allotment letter. In *Yogesh Gupta's case (supra)*, it was clarified that the amount means 10% of the total

bid money. Thus, both the cases have their own facts and there cannot be any conflict.

6. In the case in hand, the petitioners were allotted commercial site by Notified Area Committee, Manimajra vide allotment letter dated 03.09.1990 (Annexure P-1). Clause 13 of the allotment letter provides that if site is surrendered, the surrender would be subject to forfeiture of 10% of the amount out of 25% of the cost paid at the fall of hammer. Clause 13 of the allotment letter is reproduced as below: -

“13. If at any stage the transferee(s) due to certain compelling circumstances, would like to surrender the site, he/she/they shall be allowed to do so with prior permission from the President of the Committee and the surrender would be subject to forfeiture of 10% of the amount out of 25% of the cost paid at the fall of hammer. The interest amount recovered upto the date of surrender shall not in any case be refunded.”

7. From the perusal of above quoted Clause 13 of the allotment letter, it is evident that there is no note annexed to said clause. In *Yogesh Gupta's case (supra)*, the Division Bench considered Clause 14 of the allotment letter which comprised of 'Note' making it clear that 10% of the amount means 10% of the total bid money. In *Amarjeet Singh Randhawa's case (supra)*, the Division Bench considered Clause 18 and 24 of the allotment letter. Note to Clause 24 was added vide resolution dated 23.08.1991 whereas auction was conducted on 20.06.1990. The Court held that post script or clarificatory resolution made after the date of auction cannot operate retrospectively, meaning thereby, the Court held that resolution dated 23.08.1991 whereby it was clarified that 10% of the amount means 10% of the total bid money was inapplicable to auction conducted on

20.06.1990. In the absence of note, the respondent cannot retain 10% of the bid money. The respondent can retain 10% of the amount deposited i.e. 25% of the bid money.

8. As there is no clarificatory note to Clause 13 of the allotment letter, this Court would not add or subtract words to a provision in a contract and would go with the golden principle of interpretation. Thus, each case has to be decided on its own facts and strictly in accordance with the provisions contained in the allotment letter. However, if there is a post script note, the respondents would be entitled to forfeit 10% of the bid money. Theory of golden principle of interpretation has been examined by Supreme Court in ***Illachi Devi (D) by LRs. and others v. Jain Society, Protection of Orphans India and others, (2003) 8 SCC 413*** and ***Dr. Jaishri Laxmanrao Patil v. Chief Minister and others, (2021) 8 SCC 1***. In ***Dr. Jaishri Laxmanrao Patil's case (supra)***, the Supreme Court held as under: -

“208. It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature [New India Sugar Mills Ltd. v. CST, 1963 Supp (2) SCR 459: AIR 1963 SC 1207]. However, the object-oriented approach cannot be carried to the extent of doing violence to the plain language used by rewriting the section or structure words in place of the actual words used by the legislature. [CIT v. N.C. Budharaja & Co., 1994 Supp (1) SCC 280].

209. The logical corollary that flows from the judicial pronouncements and opinion of reputed authors is that the primary rule of construction is literal construction. If there is no ambiguity in the provision which is being

construed there is no need to look beyond. Legislative intent which is crucial for understanding the object and purpose of a provision should be gathered from the language. The purpose can be gathered from external sources but any meaning inconsistent with the explicit or implicit language cannot be given.”

9. In the wake of above discussion and findings, we are of the considered opinion that there is no conflict or dichotomy between opinions expressed by two different Benches of this Court in *Amarjeet Singh Randhawa* and *Yogesh Gupta*’s cases. Both the cases have been decided in the light of facts obtained. The question raised by Division Bench vide order dated 30.01.2015 is answered as below: -

The respondent has authority to forfeit 10% of the amount deposited i.e. 25% of the bid money. The respondent cannot forfeit 10% of bid money.

10. Let the matter be put up before Division Bench for further orders after obtaining approval from Hon’ble the Chief Justice.

(SANJEEV PRAKASH SHARMA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

12.03.2025
Mohit Kumar

Whether speaking/reasoned	Yes
Whether reportable	Yes