

CASE NO.:
Appeal (civil) 3044 of 2008

PETITIONER:
Jagmohan Singh

RESPONDENT:
State of Punjab & Ors

DATE OF JUDGMENT: 29/04/2008

BENCH:
S.B. Sinha & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 3044 OF 2008
(Arising out of SLP (C) No.8590 of 2007)

S.B. Sinha, J.

1. Leave granted.
2. First respondent invited applications for allotment of 3950 free hold residential plots in Sector 76-80, SAS Nagar, Mohali. Appellant applied for allotment of a plot measuring 500 sq. yards on 13.1.2001. He deposited the requisite earnest money therefor being a sum of Rs.1,87,500/-. He was successful at the draw of lots for allotment of a plot which was held on 30.3.2001. A letter of intent was issued on the same day. Before the said draw of lots, a brochure was issued which, inter alia, contained the following clauses :

"2.REFUND OF EARNEST MONEY

In case applicants asks for refund before draw of lots for issuance of letter of intent, refund shall be allowed after deducting the processing fee of Rs.500/-.

Unsuccessful applicants shall be refunded their earnest money after 90 days from date of draw.

However, interest @ 10% per annum shall be allowed for the period beyond 181st day in case refund is made after 180 days.

In case, the successful applicant refuses to accept the offer of allotment and his refusal is received after the draw of lots and within 90 days of issue of letter of intent 10% of earnest money deposited shall be forfeited and balance will be refunded to him without interest. In case refusal is received after 90 days, the entire money deposited shall be forfeited."

The letter of intent contained the following terms and conditions :

"You are requested to deposit 15% amount i.e. Rs.2,81,250.00 of the above price within 60 days of the date of issue of this letter. This period of 60 days can be further extended by 30 days by the undersigned on your request. This extension will be subject to payment of interest @ 2% per month (calculated on daily basis for the period of delay

beyond 60 days) on the amount due. All payments should be made in the shape of crossed bank draft in favour of "Estate Officer, PUDA, SAS Nagar", payable at SAS Nagar/Chandigarh.

5. You are also requested to submit an affidavit (specimen provided along with the application form) attested by a Magistrate that you or your spouse or any minor child do not own any residential plot/house/flat (except ancestral property) in Urban Estate, SAS Nagar (Mohali).

6. In case your application is as a member of any reserved category, you will also have to submit the proof (as per brochure) of belonging to that category.

7. Further, if you, including your family members, have got more than one plot at SAS Nagar (Mohali) through this scheme, you will be allowed to retain only one plot and you will have to surrender extra plot(s) within 60 days of issue of Letters of Intent. In case this intimation is received by undersigned within the specified period, the earnest money of plot surrendered shall be refunded after deducting processing fee of Rs.500/-. If you fail to inform the undersigned in this regard and the fact of multiple allotments is detected at a later stage, all Letters of Intent/Allocation Letters/Allotment Letters will be deemed to have been cancelled and the amount deposited with PUDA shall be forfeited.

8. In case you are not interested in accepting this offer of allotment, you may send your refusal to undersigned within 90 days of issue of this letter. In this case, 10% of Earnest Money deposited shall be forfeited and the balance shall be refunded to you without interest.

9. In case you neither deposit money within 90 days as per Point No.4 above nor give your refusal to accept this offer within 9 days, the entire earnest money deposited by you shall be forfeited."

3. The matter relating to allotment of plots admittedly is governed by Punjab Regional and Town Planning and Development Authority Act, 1995 (The Act).

Section 2(m) of the Act defines "transferee" to mean 'a person including a firm or other body of individuals, whether incorporated or not, to whom a site or building is sold, leased or transferred under this Act and includes his successors and assignees'.

4. Sub-sections (3) and (4) of Section 45 of the Act reads thus :

"(3) 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.

(4) After considering the cause, if any, shown by the transferee in pursuance of a notice under

sub-section (3), and any evidence that he may produce in respect of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded, in writing, make an order resuming the land or building or both, as the case may be and direct the forfeiture as provided in sub-section (3) of the whole or any part of the money paid in respect of such transfer."

5. Appellant allegedly sought for permission to mortgage the plot as per prescribed Form No.VI along with letter of approval dated 19.10.2001. No permission, however, was granted. Again, an application for grant of permission to mortgage the said plot was filed on 5.2.2002. He was not communicated with the result of the said application. Admittedly, the appellant did not deposit the balance amount. The Estate Officer, by reason of a letter dated 13.1.2002, cancelled the letter of intent and forfeited the earnest money.

A revision application was filed thereagainst before the Secretary to the Government of Punjab which, by reason of an order dated 5.3.2004 was dismissed, simply stating :

"I have heard both the parties, and also perused the record of the case placed before me during the course of hearing. I am in agreement with the Sr. Law Officer, PUDA, Mohali that the petitioner has failed to avail all the opportunities offered by PUDA to deposit the initial 15% price of the said plot even within the extended period of 60 days. He should have arranged sufficient amount in advance to deposit after draw of lots and all his pleas for failing to do so seems to be lame excuses. After going through all the facts, I find no merit in this case and, accordingly, the revision petition is rejected."

6. An application for review was filed but according to the appellant, no order has been passed thereupon. He thereafter filed a writ petition before the High Court which by reason of a judgment dated 11.12.2006 has been dismissed. He filed a review petition, inter alia, on the premise that other instances had come to his knowledge where the first respondent had granted opportunity to a large number of people to deposit the balance 15% of the amount even after the period of 60 days elapsed, by a long margin. However, the High Court opined that the review application was not maintainable as the said documents had come to knowledge of the appellant only after the decision in the writ petition.

7. Appellant is, thus, before us.

8. Mr. Mahajan, learned counsel appearing on behalf of the appellant, would contend that in view of the fact that by reason of forfeiture of the earnest money deposited by him, the appellant suffered civil consequences, the respondents were bound to comply with the principles of natural justice particularly when in almost similar situation not only possession had been granted upon condoning delay but also permission had been granted to mortgage the properties to others who were similarly situated. Our attention in this behalf has been drawn to the case of Shri Gulshan Kumar, wherein the Revisional Authority directed :

"In view of the above circumstances, I deem it fair, just and reasonable to direct the Estate Officer, PUDA to accept the 15% instalment along with compound interest @ 15% per annum, along with the surcharge/penal interest in accordance with the terms and conditions of the prospectus and policy decisions of PUDA but also along with a penalty equivalent to 10% of the total tentative allotment

plot pircce, which would otherwise have been liable to forfeiture, in accordance with the stipulation of Section 45(3) of the Punjab Regional & Town Planning and Development Act, 1995.

With the above stipulation the revision petition is partly accepted and the impugned orders are set aside subject, however, to the following conditions, that the 15% amount along with interest, penal interest, surcharge, etc. and in addition a penalty equivalent to 10% of the total allotment price shall be deposited within 30 days of the communication of this order."

9. It was furthermore contended that no distinction can be made between a person in whose favour a letter of intent has been issued and the one in whose favour a transfer has been made. Our attention has further been drawn to another order of the High Court Baldev Singh Jhajj v. The Secretary to the Government of Punjab & Ors. [Civil Writ Petition No.15845 of 2006 decided on 29.9.2006], wherein it was opined :

"Without going into the detailed facts pleaded in the present petition, we take note of a contention raised by Shri A.R. Takkar, learned counsel for the petitioner. It has been argued by the learned counsel that in identical circumstances of same allottees, as is the controversy in the case of the petitioner, the requisite relief had been granted to the aforesaid allottees by the authorities but the claim of the petitioner was rejected by the appellate authority as well as the Revisional Authority. As a matter of fact when the factum of the grant of relief to the similarly situated persons came to the notice of the petitioner, he filed a review application before the revisional authority bringing to its notice all such orders in which relief had been granted to the allottees. However, the review petition filed by the petitioner has been rejected by the revisional authority vide order dated May 23, 2006 (Annexure P-17) by holding that there was no power of review.

After taking into consideration the plea raised by the petitioner, but without commenting on the merits of the claim raised on his behalf, we find that if persons similarly situated had already been granted relief which has been claimed by the petitioner also, then it is only appropriate that the claim of the petitioner be reconsidered by the revisional authority."

10. The learned counsel urged that PUDA itself was not in a position to hand over possession as a larger number of litigations were pending and in that view of the matter, it shall not suffer any loss, as particularly in view of the fact that pursuant to this Court's order dated 10.10.2007 the requisite amount has not only been deposited, the appellant ready and willing to deposit the balance amount in time.

11. Ms. Sucharita, learned counsel appearing on behalf of the respondent, on the other hand, would contend :

(i) In view of the clear stipulation contained in the brochure as also the letter of intent, the principles of natural justice were not required to be complied with.

(ii) Appellant being not a transferee within the meaning of Section 2(m) of the Act, the provisions of sub-sections (3) and (4) of Section 45 would not apply.

(iii) The orders of the Revisional Authority relied upon by the appellant

stand completely on different footings as in those cases, no letter of intent had been delivered.

12. Indisputably, the appellant has not deposited the 15% of the amount of tentative price of the plot within 60 days from the issuance of letter of intent. It may further be true that in terms of clause (9) of the letter of intent, failure on his part would entail forfeiture of the earnest money.

13. Sub-sections (3) and (4) of Section 45 of the Act again may not be *stricto sensu* applicable as the principles of natural justice, as envisaged therein, were required to be complied with only in the cases of transferees.

14. It, however, appears that in terms of the office order dated 13.11.2002, the earnest money was directed to be forfeited only on the premise that he did not comply with the terms of the letters of intent. The Estate Officer did not take into consideration the fact that the appellant had applied for transfer. He had also sought for extension of time to deposit the amount. Extension was granted upto 8.6.2001. By a letter dated 9.10. 2001, however, it appears that further extension was granted upto 31.10.2001. No order, however, has been passed on his application for transfer. Admittedly, no show cause notice was issued. The order passed by the Estate Officer was a revisable one. The Revisional Authority had rejected the revision application, *inter alia*, upon taking into consideration a purported order of ban issued by PUDA to receive any payment with regard to the allotment of plots in Sectors 76-80 from the defaulters by an order dated 3.1.2003. The said order dated 3.1.2003 has not been brought on record by the respondents. It now transpires that almost in a similar situation which may not be absolutely identical, the Revisional Authority itself in exercise of its statutory power has granted extension.

Forfeiture of earnest money, therefore, had not been adhered to in a large number of cases. In *Teri Oat Estates (P) Ltd. v. U.T., Chandigarh & Ors.* [(2004) 2 SCC 130], this Court has taken notice of the fact that different orders were being passed by the High Court from time to time. The orders passed by the High Court have been upheld therein upon applying the doctrine of proportionality as contradistinguished from *Wednesbury Unreasonableness* principle. [(See also *Jintendra Kumar & Ors. v. State of Haryana & Anr.* [(2008) 2 SCC 161].

15. In *Teri Oat* (*supra*), it was opined that the power of forfeiture should be taken recourse to as a last resort and the action of the statutory authority is required to be judged on the touchstone of Article 14 of the Constitution of India. The High Court in its judgment failed to consider this aspect of the matter.

It is furthermore evident that order 47 Rule 1 of the Code of Civil Procedure does not preclude the High Court or a court to take into consideration any subsequent event. If imparting of justice in a given situation is the goal of the judiciary, the court may take into consideration (of course on rare occasions) the subsequent events.

This Court, in *Board of Control for Cricket in India & Anr. v. Netaji Cricket Club & Ors.* [(2005) 4 SCC 741], held as under :

"89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order.

An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be

necessitated by way of invoking the doctrine
"actus curiae neminem gravabit".

It was furthermore observed :

"93. It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29-9-2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake.

16. It has been stated before us that in terms of this Court's order dated 10.10.2007, the entire amount has been deposited. Appellant has, as noticed hereinbefore, undertaken to deposit the amount as and when directed to do so by the authorities. It may be true that his name has not appeared in the draw of lots but it has not been denied or disputed that if his revision application was allowed, a plot of land may be assigned in his favour.

17. We do not intend to enter into the merit of the matter as we are of the opinion that in the peculiar facts and circumstances of this case, the interest shall be subserved if the impugned judgments are set aside and the matter is remitted to the Revisional Authority for consideration of the appellant's case afresh in the light of various orders passed by the said Authority as also the High Courts.

18. The Appeal is disposed of accordingly. In the facts and circumstances of the case, there shall be no order as to costs.