

that the petitioner was not eligible to contest the election to the office of President on the ground of reservation or that he was illegally elected on any other ground, then his election should have been challenged by filing an election petition, but the State Government has no authority to decline to notify his name on the aforesaid ground.

(20) In view of the above, the impugned order dated 14th August, 2008 (Annexure P-2), passed by the Special Secretary, Local Government Department, Punjab, refusing to notify the name of the petitioner as President of Municipal Council, Sangrur, is set aside and the respondents are directed to notify the name of the petitioner as elected President of Municipal Council, Sangrur. The writ petition is, thus, allowed.

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**R.N.R.**

*Before M. M. Kumar and Jora Singh, JJ.*

**DALJIT SINGH AND OTHERS,—Petitioners**

*versus*

**U.T. CHANDIGARH AND ANOTHER,—Respondents**

C.W.P. No. 2964 of 2008

3rd December, 2008

*Constitution of India, 1950—Art. 226—Chandigarh (Sales of Sites and Building) Rules, 1960—Rl. 7A—Allotment of plot in an open auction—Petitioner failing to deposit 75% amount—Surrender of site—Imposition of penalty @2.5%—After refund of balance amount respondents claiming penalty @ 5%—Whether respondents entitled to charge penalty @5% on surrender of site—Sub rule (2) of Rule 7(A) provides that if a transferee surrender site within two years of date of allotment then penalty @ 5% of premium is charged and interest would also be chargeable from him—Surrender of site within 180 days from date of allotment of letter—Case of petitioner covers by sub rule (2) as he surrendered the site within a period of two years after taking possession—No legal infirmity discernible in initiation of proceedings for charging penalty @ 5%—Petition liable to be dismissed.*

*Held*, that according to sub-rule (2) of Rule 7(A) of the rules if a transferee surrender the site within two years of the date of allotment then penalty @5% of the premium is charged and interest would also be chargeable from him. In the present case, site has been surrendered by submitting an application on 3rd March, 2005 which is within 180 days from the date of allotment of letter which was issued on 3rd January, 2005 and thereafter the process of issuance of notice and personal hearing was initiated by letter dated 24th March, 2005. The case of the petitioner would be covered by sub-rule (2) for the simple reason that he has surrendered the site within a period of two years after taking possession and therefore no legal infirmity is discernible in the initiation of proceedings for charging penalty @ 5% *vide* order dated 5th November, 2007. Therefore, the writ petition does not merit acceptance and is liable to be dismissed.

(Para 4)

Admit Jain Advocate *for the petitioner*.

K.K. Gupta *for the Respondents*.

**M.M. KUMAR, J.**

(1) The petitioner was the highest bidder in respect of Plot No. 1199, Sector 19 B, Chandigarh in the open auction held on 10th December, 2004. He deposited 25 per cent of the price of the site amounting to Rs. 20 lacs and the remaining 75 per cent was to be paid within a period of 90 days from the date of auction. On 3rd January, 2005, allotment letter was issued to him which stipulated that the petitioner was bound by the Chandigarh (Sale of Sites and Building) Rules, 1960 (for brevity 'the Rules'). The petitioner was not able to retain the site as they could not deposit 75 per cent of the amount within 90 days. They surrendered the site on 3rd March, 2005 with a written request. The Assistant Estate Officer,—*vide* notice dated 24th March, 2005 (Annexure P. 2) called upon the petitioners to show cause why penalty @ 2.5 per cent of the premium alongwith interest be not imposed and recovered in respect of surrendered site under rule 7A of the Rules. It is also pertinent to mention that the petitioner was offered possession on 3rd January, 2005 (Annexure R. 1) and they actually took physical possession on 25th January, 2005 (Annexure R. 2). Accordingly a sum

of Rs. 2 lacs was deducted from the earnest money of Rs. 20 lacs deposited by the petitioner and Rs. 18 lacs was refunded to them. Thereafter respondents discovered a mistake and *vide* letter dated 5th November, 2007 issued a show cause notice to the petitioners requiring them to explain as to why penalty by not charged @ 5 per cent as envisaged under Rule 7A(2) of the Rules. The respondents claimed the difference of Rs. 3,38,082. On the amount of Rs. 2 lacs, interest has also been added amounting to Rs. 1,38,082 as provided by the Rule 7A of the Rules. The petitioner contested the claim made by the respondents and also requested for re-allotment of the plot in case they are to charge 5%.

(2) The basic issue which requires determination in the present case is whether respondents were entitled to charge penalty @ 5 per cent on the surrender of the site or penalty @ 2.5 per cent was rightly charged. In that regard it would be necessary to read Rule 7(A) of the rules which read as under :—

“7-A Surrender of site-(1) A transferee who has already paid at least 25% premium of the site, may, before he is offered possession of the site by the Estate Officer, and within 180 days of the allotment of the site, whichever is earlier, surrender the site on payment of 2.5% of the premium as penalty. In this event, interest at the rate prescribed in rule 10 (1) shall be chargeable on the balance premium due from the transferee for the period from the date of allotment up to the date of surrender. The date of surrender under these rules shall be the date when intimation by the transferee to this effect reaches the Estate Officer.

(2) A transferee as mentioned in sub rule (1) above, may surrender the site within two years of the date of the allotment on payment of 5% of the premium as penalty. Interest shall be chargeable from the transferee as provided in sub-rule (1) above. The Estate Officer shall be competent to decide such cases, as also cases under sub rule (1).”

(3) A perusal of sub-rule 1 of Rule 7A of the rules show that if the site is surrendered before the offer of possession and within a period of 180 days of the allotment whichever is earlier then penalty @ 2.5% of the premium is charged. It is thus evident that two conditions are required to be satisfied for application of sub rule (1). Firstly the surrender by the allottee has to be before the offer of possession of site by the Estate Officer. Secondly, the surrender has to be made within 180 days of the allotment of the site. Sub Rule (1) would not be attracted to the facts of the present case because possession to the petitioner was delivered on 22nd February, 2005 (Annexure R/2) and offer of possession was made on 3rd January, 2005.

(4) According to sub-rule (2) of Rule 7(A) of the Rules if a transferee surrender the site within two years of the date of allotment then penalty @ 5% of the premium is charged and interest would also be chargeable from him. In the present case, site has been surrendered by submitting an application on 3rd March, 2005 which is within 180 days from the date of allotment of letter which was issued on 3rd January, 2005 (Annexure P.1) and thereafter the process of issuance of notice and personal hearing was initiated by letter dated 24th March, 2005 (Annexure P.2). The case of the petitioner would be covered by sub-rule (2) for the simple reason that he has surrendered the site within a period of two years after taking possession and therefore no legal infirmity is discernible in the initiation of proceedings for charging penalty @ 5 per cent *vide* order dated 5th November, 2007 (Annexure P.4). Therefore, we find that the writ petition does not merit acceptance and is liable to be dismissed.

(5) The claim of the petitioner for re-allotment is also without any merit because the petitioners were not forced to surrender at any stage. It is their volunteer act. They have undertaken to abide by the Rules and accordingly the penalty on surrender has to be paid by them. Moreover, the period of more than three years have passed and the re-allotment could not be ordered as the situation has completely undergone change. Therefore, we reject the claim made.

(6) For the reasons mentioned above, this petition fails and the same is dismissed.

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**R.N.R.**