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*Before Viney Mittal & H. S. Bhalla, JJ.*

*M/S ARCHITECT ATELIER,—Petitioner*

*versus*

*STATE OF PUNJAB & OTHERS—Respondents*

*C.W.P. No. 10719 of 2003*

*15th May, 2006*

*Constitution of India, 1950—Art.226—Punjab Regional and Town Planning and Development Act, 1995—S.45—Allotment of land to petitioner for construction of Group Housing—Petitioner failing to deposit the amount of 25% of the price of land within the prescribed/extended period—Cancellation of site by PUDA after issuing show cause notice & affording personal hearing to petitioner—Petitioner instead of filing appeal u/s 45(5) invoking the provisions of S.45(7) by filing revision petition—Addl. Chief Administrator rejecting revision petition finding order of PUDA justified and proper—State Government conferring powers of Principal Secretary to hear revision petition upon Special Secretary—Special Secretary dismissing revision petition—Petitioner taking no objection with regard to jurisdiction of Special Secretary of State Government to hear the revision petition—No prejudice caused to petitioner on account of hearing of revision petition by Special Secretary—Action of PUDA to reacquire the plot held to be justified—Petition dismissed.*

*Held*, that a letter of allotment was issued in favour of the petitioner-builder on 12th August, 1998 when the land in question was allotted for a total sale consideration of Rs. 3,23,77,128. In these circumstances, it is not open at all to the petitioner-builder to fall back on the scheme which was originally floated in the year 1993 and try to back out of the various terms and conditions of MOU and the formal agreement. The petitioner is bound by the said terms and conditions. Any protest made by it with regard to any of the conditions or any request made by it for change of any of such conditions could not be entertained by PUDA. Any grievance in this regard cannot be heard by this Court. We find that petitioner is a persistent defaulter. As a matter of fact it is trying to find excuses for condonation of the aforesaid default. The petitioner had merely deposited the application

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money of Rs. 10,000 on September 14, 1993. Not even a semblance of any right in favour of the petitioner-builder with regard to the plot in question.

(Para 25)

*Further held*, that the petitioner has no *locus standi* to challenge the terms and conditions in favour of respondent No. 8. The allotment in favour of the petitioner already stands cancelled. He has failed before the revisional authority also. In these circumstances, PUDA was absolutely justified to auction the land in question to minimise the loss being suffered by it. A long period had elapsed after the allotment in favour of the petitioner. The plot in question had become disputed and under litigation. In these circumstances the anxiety of PUDA to dispose of the said plot in favour of a willing purchaser can be understood. We do not find that there has been any extraneous and irrelevant consideration in finalizing the auction in favour of respondent No. 8. In any case there is no such material placed before us to reach to the aforesaid conclusion.

(Para 31)

Puneet Bali, Advocate, *for the petitioner*.

M. C. Berry, Senior Deputy Advocate General, Punjab.

R. S. Mittal, Senior Advocate with Mr. Sudhir Mittal, Advocate  
for respondent No. 8.

Rupinder Khosla, Advocate, for PUDA.

## JUDGEMENT

### VINEY MITTAL, J. (ORAL)

(1) By merely depositing an amount of Rs. 10,000 as an application money in the year 1993, the petitioner-firm has been able to prolong the controversy and successfully stall the finalisation of the allotment of a plot measuring 2.389 acres in S.A.S. Nagar, Mohali for a period of almost 13 years.

(2) In the year 1993, a scheme was floated by Punjab Housing Development Board for allotment of land to private entrepreneurs/ joint sector entrepreneurs for construction of Group Housing in S.A.S.

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Nagar, Mohali. Applications were invited from eligible persons, as detailed in the aforesaid proposal for allotment of the land. The petitioner, M/s. Architect Atelier (hereinafter referred to as the "builder"), a partnership firm, applied through application dated September 14, 1993 along with an application money of Rs. 10,000. Proposal submitted by the petitioner, along with various other proposals, submitted by other eligible persons was examined by a high powered committee constituted for the said purpose and recommended for allotment of 2.389 acres land in Sector-17 for the construction of multi storeyed flats to the petitioner. The aforesaid decision was conveyed to the petitioner-firm on August 24, 1995. The builder was requested to complete the requisite formalities. After the completion of the aforesaid formalities, a memorandum of understanding (MOU) was formally signed between the 'builder' and Punjab Urban Planning and Development Authority (PUDA) on August 2, 1996. It was understood by the aforesaid parties that the said land shall be allotted to the builder at the rate of Rs. 2800 per square yard. Various stipulations, terms and conditions were incorporated in the MOU. A formal agreement dated June 24, 1998 was entered between the builder and PUDA. A copy of the aforesaid agreement has been appended as Annexure P/3 with the present petition. As per the aforesaid agreement, the promoter/builder was required to deposit the amount of Rs. 80,94,282 being 25% of the tentative price of the land on demand within 30 days of the issue of the allotment letter. It was stipulated that the aforesaid period of 30 days could be extended by another 30 days on payment of interest at 18% per annum. It was also agreed between the parties that the remaining 75% of the tentative price would be paid in accordance with the conditions as may be laid in the allotment letter. It was specifically stipulated in the aforesaid agreement that in case payment of 25% of the price is not paid within the period as stipulated in the agreement, the MOU signed between the parties would be treated to be withdrawn and cancelled. The parties also agreed that the price of the land as mentioned in the MOU is merely tentative and any enhancement of compensation on account of acquisition charges would also be payable by the promoter/builder proportionately as determined by the competent authority from time to time within 30 days of the demand. The land was to continue to vest in PUDA until entire price of the land together with the enhanced price, if any and interest and any other amount, if due to the authority, was paid or till the date of completion of the building. The promoter was free

to determine the terms of the sale with the buyers of the flats to be constructed on the land but the number of flats to be built on the allotted land and their sizes were to be as specified by the Chief Administrator, PUDA. A formal allotment letter dated August 12, 1998 (Annexure P/4) was also issued in favour of the petitioner-builder.

(3) It appears that after entering into the aforesaid agreement Annexure P/3 and after receiving the formal letter of allotment Annexure P/4, the petitioner builder, rather than making payment of 25% of the consideration money, as required by MOU, agreement and the allotment letter, started corresponding with PUDA, raising various kinds of disputes. Protests were raised against various clauses in the agreement. Certain clauses in the agreement were sought to be substituted. A plea was raised that the aforesaid agreement and the allotment letter were not in conformity with the original policy of 1993. However, the fact remains that besides raising the aforesaid protests and besides issuing various communications to PUDA, the petitioner-builder did not take any steps whatsoever to deposit the amount of 25% amount either within 30 days of the date of allotment, or within extended period of 30 days along with interest.

(4) Keeping in view the non-payment of the aforesaid 25% amount (which was substantial amount of Rs. 80,94,282), PUDA addressed a show cause notice/communication dated 25th November, 1998 to the petitioner builder. It was brought to the notice of the petitioner that the amount of 25% of the price of the land had not been deposited till date and that the time limit under the allotment letter had expired. PUDA maintained that instead of depositing the amount, the petitioner-builder was making unnecessary correspondence. It was also communicated to the builder that as had already been made clear, all the conditions between the parties would be in accordance with the allotment letter. In this regard, the petitioner builder was required to clear its position by 10th December, 1998 as to why the payment had not been deposited by it within the prescribed period. It was specifically stipulated that in the event of non-receipt of the payment, the process of the cancellation of the site would be initiated, without affording any further opportunity to the petitioner-builder. It was reasserted that the aforesaid communication be treated as a final notice. A copy of the aforesaid show cause notice/communication dated 25th November, 1998 has been appended as annexure P/6 with the present petition.

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(5) The petitioner this time as well, rather than making the payment, addressed another communication 9th December, 1998 whereby again the same old excuse was repeated with regard to variation of the various clauses of the agreement/allotment letter from the original policy.

(6) Left with no other alternative, Estate Officer PUDA passed an order 12th February, 1999 whereby, noticing the fact that the amount of Rs. 80,94,282 being 25% of the price of the plot had not been paid, within 30 days of the allotment as per agreement 24th June, 1998 and also noticing the fact that a personal hearing was even afforded to the petitioner-builder on 10th December, 1998, allotment of the site in favour of the petitioner-builder was ordered to be cancelled. A copy of the aforesaid cancellation order is appended as Annexure P/8 with the present petition.

(7) At this stage, it may be relevant to notice here that the aforesaid order of cancellation was apparently passed by Estate Officer in terms of section 45(4) of Punjab Regional and Town Planning and Development Act, 1995 (hereinafter referred to as the 'Act'). Under sub section 5 of section 45, any person aggrieved by an order of the Estate Officer was required to file within 30 days of the communication to him of the aforesaid order, an appeal to the Chief Administrator in such form and manner as may be prescribed. However, it appears that the petitioner-builder never chose to file any appeal under the aforesaid provision. However, a representation was addressed to the department. The petitioner was communicated that the order of the Estate Officer was required to be challenged, if at all, by way of an appeal which was maintainable under the delegated powers before Additional Chief Administrator, PUDA.

(8) Rather than filing any appeal under section 45(5) of the Act, the petitioner seems to have invoked the provisions of section 45(7) of the Act, which vested revisional powers in the Additional Chief Administrator. The aforesaid revision petition filed by the petitioner-builder was duly considered by the Additional Chief Administrator and noticing the fact that not only the builder had failed to make the payment of 25% of the cost within 30 days of the date of allotment, it had also defaulted in the payment of first instalment of Rs. 76,89, 568 which had fallen due on 12th August, 1999. It was noticed that second instalment was also becoming due on 12th August,

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2000. On account of the aforesaid persistent default of the petitioner-builder and also keeping in view the fact that the allottee had shown no interest for depositing the aforesaid amounts, the revisional authority found that the order dated 12th February, 1999 passed by the Estate Officer was absolutely justified and proper. Consequently, the revision petition filed by the builder was rejected. The Estate Officer was also directed to immediately take back the possession of the land in case the same was delivered to the allottee so that the valuable land could be utilised for some other purpose. A copy of the aforesaid order dated 12th July, 2000 passed by the Additional Chief Administrator, PUDA is appended as Annexure P/11 with the present petition.

(9) The petitioner persisted in its efforts. It filed a further petition under section 45(8) of the Act to the State Government. It appears that the aforesaid revision petition was filed before the Principal Secretary, Housing and Urban Development Punjab, who was the then competent authority to entertain the said petition. It also emerges from the record that the aforesaid revision petition was not decided for some period. Consequently, the petitioner-builder approached this court through Civil Writ Petition No. 9005 of 2001. The aforesaid writ petition also remained pending before this Court for a period of approximately two years. Ultimately,—*vide* an order dated February 17, 2003, the said writ petition was disposed of by a Division Bench of this Court, whereby directions were issued to the revisional authority (at that point of time Principal Secretary, Housing and Urban Development) to decide the aforesaid petition within a period of two months of the receipt of the copy of the order.

(10) It further appears from the record that,—*vide* office order dated January 17, 2003, powers to hear the aforesaid revision under section 45(8) of the Act, exercisable by the State Government, were conferred upon Special Secretary, Housing and Urban Development. In view of the aforesaid allocation of powers, the revision petition filed by the petitioner was heard by the Special Secretary to Government, Punjab. The petitioner builder was duly represented by its counsel, whereas the PUDA was represented by its Senior Law Officer. After hearing the detailed arguments of the parties and taking into consideration the facts and circumstances of the case, Special Secretary, Housing and Urban Development,—*vide* an order dated April 4, 2003, dismissed the aforesaid revision petition filed by the petitioner builder under section 45(8) of the Act. This time also the aforesaid revisional authority noticed the fact that the petitioner had not honoured the

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agreement and the allotment letter and, therefore, the Estate Officer was justified in cancelling the allotment as per the condition of the MOU and the agreement. A copy of order dated April 4, 2003 passed by the Special Secretary, Housing and Urban Development has been appended as Annexure P/7 with the present petition.

(11) It is, in these circumstances, that the petitioner has approached this court through the present petition, challenging the cancellation order passed by the Estate Officer, Annexure P/8, order of the dismissal of the revision petition passed by the Additional Chief Administrator Annexure P/11 and the order of the dismissal of the revision petition filed under section 45(8) of the Act passed by the Special Secretary, Annexure P/17.

(12) At this stage, it may be relevant to notice here that after dismissal of the revision petition by the Additional Chief Administrator on July 12, 2000, Annexure P/11, the plot in question was put to re-auction. In the aforesaid auction conducted on July 29, 2001, respondent No. 8, M/s. Trimurti Colonisers and Construction (P) Limited was declared as the successful bidder for an amount of approximately Rs. 3,30,00,000. An amount of Rs. 33,00,000 approximately was deposited by respondent No. 8, at that point of time. However, since an interim order dated July 22, 2003 was passed by this Court, requiring the parties to maintain status *qua* regarding the possession of the property in question, no further proceedings could be taken by the respondents with regard to the aforesaid re-auction. It appears that the aforesaid amount of Rs. 33,00,000 approximately deposited by respondent No. 8 is still lying deposited with PUDA and the possession of the site in question has not been delivered to respondent No. 8, so far.

(13) The claim of the petitioner has been contested by the respondents. A written statement had been filed on behalf of respondent No. 2, 4, 5, 6 and 7. A separate short reply has been filed on behalf of respondent No. 8.

(14) In the written statement filed by the official respondents, various facts as noticed in the above portion of the judgment have been reiterated. It has been maintained by the said respondents that the petitioner builder was bound by the terms of the MOU and the agreement, Annexure P/3, entered between the parties. It has been specifically maintained that the petitioner builder having failed

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to deposit 25% of the tentative price of the plot, within 30 days of the letter of allotment or within the extended period of 30 days, was not entitled to claim any right in the plot and that in terms of the aforesaid MOU/agreement and the letter of allotment, the Estate Officer had rightly and justifiably cancelled the allotment in favour of the petitioner builder. Various other pleas raised by the petitioner have also been contested. The respondents have maintained that the terms of the agreement Annexure P/3 had been entered between the parties after due discussion and understanding and, therefore, the petitioner builder could not be heard to claim that the aforesaid stipulations contained in the MOU and the agreement were contrary to the original scheme floated in the year 1993. The dismissal of the first revision and of the second revision by the Additional Chief Administrator and by the Special Secretary, respectively, have been defended by the respondents.

(15) We have heard Shri Puneet Bali, learned counsel for the petitioner builder Shri Rupinder Khosla, learned counsel appearing for the official respondents and Shri R.S. Mittal, learned Senior counsel appearing for respondent No. 8 at some length and with their assistance have also gone through the record of the case.

(16) Shri Puneet Bali, learned counsel appearing for the petitioner at the outset has raised a vehement contention that the order dated April 4, 2003 passed by the Special Secretary, Housing and Urban Development Annexure P/17, was wholly without jurisdiction, inasmuch as, the aforesaid Special Secretary was also the Additional Chief Administrator, PUDA and as such was incompetent to hear the revision petition against the order dated July 12, 2000 (Annexure P/11), which was also an order passed by the Additional Chief Administrator, PUDA under section 45(7) of the Act. Shri Bali has also argued that the orders Annexures P/11 and P/12 were violative of principles of natural justice, inasmuch as, no opportunity of hearing was afforded to the petitioner builder by the aforesaid two authorities. Shri Bali has also addressed arguments on merits of the controversy.

(17) Before dealing with the arguments addressed on merits of the controversy, it would be appropriate for us to deal with the question of jurisdiction of Special Secretary to Government, Punjab who has passed the order Annexure P/17.



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(18) We have already noticed in the above portion of the judgment that an order of cancellation was passed by the Estate Officer on February 12, 1999 (Annexure P/8). The aforesaid order was apparently passed by the Estate Officer under section 45(4) of the Act. An appeal against the aforesaid order passed by the Estate Officer, is maintainable under section 45(5) of the Act before the Chief Administrator. The said appeal is required to be filed within a period of 30 days from the date of communication of the order of the Estate Officer in such form and manner as may be prescribed. The appellate authority can entertain the appeal even after the expiry of period of 30 days, if it is satisfied that the appellant was prevented by a sufficient cause from filing the appeal within time. Additionally, the Chief Administrator has been provided revisional powers under sub section 7 of section 45 of the Act. In the exercise of the aforesaid revisional powers, Chief Administrator may call for the record of any proceedings in which the Estate Officer has passed an order for the purpose of specifying himself as to the legality or propriety of such order. An order passed by the Chief Administrator under sub section 7 of Section 45 of the Act could be challenged by an aggrieved person by filing a revision petition section 45 (8) of the Act before the State Government. The State Government may confirm, alter or rescind the order of the Chief Administrator.

(19) The scheme of section 45 of the Act shows that an aggrieved person was required to file an appeal against the order of the Estate Officer. In these circumstances, it is apparent that if an appeal is not filed by the aforesaid aggrieved person, then power of revision under sub section 7 of section 45 of the Act cannot be directly invoked by a person for challenging the order of the Estate Officer. The petitioner has not filed any appeal under section 45(5) of the Act. He chose to file directly a revision petition before the Chief Administrator. As per the delegation of powers, the aforesaid powers were exercised by the Additional Chief Administrator, controversy and after calling for the comments of the department and after taking into consideration the facts and circumstances of the case and noticing that petitioner builder is a persistent defaulter, dismissed the aforesaid revision petition filed by the petitioner,—*vide* order dated July 12, 2000 (Annexure P 11). It was specifically noticed that the petitioner besides not making any payment of the 25% amount by way of initial deposit, within 30 days of the letter of allotment, had not even paid the first instalment which had fallen due on August 12, 1999. A second instalment was also becoming due on August 12, 2000.

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(20) After having failed before the Additional Chief Administrator under section 45(7) of the Act, the petitioner chose to invoke the powers of the State Government under section 45(8) of the Act. The aforesaid powers at the time of the filing of the revision petition, were being exercised by the Principal Secretary, Housing and Urban Development Punjab. However, later on,—*vide* office order dated January 17, 2003, the aforesaid powers under section 45(8) of the Act were conferred upon the Special Secretary, Housing and Urban Development of the Government of Punjab. Consequently, the revision petition filed by the petitioner was placed before the Special Secretary, Housing and Urban Development, Government of Punjab. It may be noticed here that the aforesaid Special Secretary, Housing and Development Punjab was also additionally delegated the powers of Additional Chief Administrator, PUDA. In any case, the aforesaid Special Secretary, Department of Housing and Urban Development of Government of Punjab is a senior functionary of the State Government. The aforesaid officer heard the detailed arguments of the counsel for the petitioner builder and also of the senior Law Officer of PUDA and dismissed the revision petition filed by the petitioner builder,—*vide* order Annexure P/17. From the perusal of order Annexure P/17, we find that no objection whatsoever was ever taken on behalf of the petitioner builder with regard to the jurisdiction of the aforesaid officer to hear the said revision petition. As a matter of fact detailed arguments were addressed by the learned counsel for the petitioner builder before the aforesaid revisional authority. After duly considering the aforesaid arguments which were duly controverted by the senior Law Officer, PUDA, the revisional authority rejected the revision petition filed by the petitioner builder in view of the fact and circumstances of the case. In this view of the matter when no objection whatsoever was ever raised by the petitioner builder at any point of time, then having failed before the aforesaid authority, the petitioner builder cannot be heard to challenge the jurisdiction of the aforesaid Special Secretary in any manner, before this court. It is apparent that the challenge to the jurisdiction of the Special Secretary of the State Government is merely an after thought and device adopted by the petitioner builder to get order Annexure P/17 set aside so that the proceedings could linger on further. In any case, no prejudice whatsoever is shown to have been caused to the petitioner

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builder on account of the hearing of the revision petition filed by it under section 45(8) of the Act before the State Government and which powers were duly exercised by the Special Secretary, Housing and Urban Development, Government of Punjab, in view of the allocation of powers to him. Since no objection was raised by the petitioner to the jurisdiction of the Special Secretary at any point of time, therefore, we do not find that petitioner can be permitted to raise the aforesaid objection, at this stage, during the course of the present writ petition, for the first time.

(21) At this stage, we may also notice certain observations made by the Apex Court in the case of **H.C. Narayanappa and others versus State of Mysore and others** (1) as follows :

“It is also true that the Government on whom the duty to decide the dispute rests, is substantially a party to the dispute but if the Government or the authority to whom the power is delegated acts judicially in approving or modifying the scheme, the approval or modifications not open to challenge on a presumption of bias.

The Minister or the officer of the Government who is invested with the power to hear objections to the scheme is acting in his official capacity and unless there is reliable evidence to show he is biased, his decision will not be liable to be called in question, merely because he is limb of the Government.”

(22) As noticed above, nothing has been shown at all by the petitioner builder as to how and in what manner any prejudice has been caused to the petitioner on account of powers under section 45(8) of the Act having been exercised by the Special Secretary. In the absence of the aforesaid prejudice and on account of no objection having been raised by the petitioner builder, the aforesaid order Annexure P/17 is not open to challenge on a presumption of bias.

(23) As a result of the aforesaid conclusion, we reject the argument raised by Shri Bali with regard to any error of jurisdiction in passing order Annexure P/17.

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(1) AIR 1960 S.C. 1073

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(24) On merits of the controversy, Shri Bali has argued that the cancellation order Annexure P/8 passed by the Estate Officer, on account of non-deposit of 25% of the consideration amount, was not sustainable in law, inasmuch as, the Estate Officer has failed to take note of the fact that the petitioner builder had a legitimate grievance against various stipulations/terms and conditions contained in MOU and the agreement. According to Shri Bali, the original scheme floated in the year 1993 contained various clauses which were suitable to the petitioner builder and it was on account of the aforesaid fact that it had applied,—*vide* application dated September 14, 1993. However later on, the aforesaid terms and conditions were substantially changed when MOU was signed on August 2, 1996 and the agreement was entered into on June 24, 1998. On the basis aforesaid plea, it has been maintained by the learned counsel that the petitioner builder could not be insisted to make the payment of 25% of the consideration price, until and unless the aforesaid terms and conditions were changed.

(25) We fail to find any merit in the aforesaid contention of the learned counsel. The scheme in question was floated in the year 1993. The petitioner had filed an application on September 14, 1993 when he deposited the application money of Rs. 10,000. His application was processed by a high powered committee and a recommendation was made in favour of the petitioner on August 24, 1995. Thereafter negotiations and discussions took place between the petitioner builder and the officers of the Department. After detailed discussion and finalisation of terms and conditions, an MOU was entered into and signed by the parties on 2nd August, 1996. The MOU contained the detailed stipulation and other terms and conditions with regard to the payment by the petitioner-builder and the execution of the project of the Group Housing by it. The rate of the land was fixed at Rs. 2800 per square yard. The payment of 25% of the price of the land was to be made within 30 days of the formal allotment letter. Even a formal agreement dated 24th June, 1998 was signed by the parties. In the aforesaid agreement also, a specific stipulation was with regard to payment of Rs. 80,94,282 being 25 % of the total consideration within 30 days or within extended period of 30 days, along with interest at 18% per annum. A letter of allotment was also issued in favour of the petitioner-builder on 12th August, 1998 when the land in question was allotted for a total sale consideration of Rs. 3,23,77,128. In these circumstances, it is not open at all to the petitioner-builder, to fall back on the scheme which was originally floated in the year 1993 and try to back out of the various terms and conditions of MOU,

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Annexure P/2 and the formal agreement Annexure P/3. The petitioner is bound by the said terms and conditions. Any protest made by it with regard to any of the conditions or any request made by it for change of any of such conditions could not be entertained by PUDA. Any grievance in this regard cannot be heard by this court. We find that petitioner is a persistent defaulter. As a matter of fact it is trying to find that petitioner is a persistent defaulter. As a matter of fact it is trying to find excuses for condonation of the aforesaid default. The petitioner had merely deposited the application money of Rs. 10,000 on 14th September, 1993. Not even a penny was paid thereafter. In these, circumstances, we do not find even a semblance of any light in favour of the petitioner-builder with regard to the plot in question.

(26) We further find from the record that the auction of the plot in question had taken place on 29th June, 2001. Respondent No. 8 was declared a successful bidder in the aforesaid auction. 10% of the bid price, approximately Rs. 33,00,000 has been deposited by respondent No. 8. Because of the present litigation, respondent No. 8 has not been able to take the possession of the said plot so far. Respondent No. 8 seems to be suffering for no fault of it. In these circumstances, besides the fact that the petitioner is a defaulter and there is absolutely no equity in its favour, we find that the rights of respondent No. 8 have also accrued in the meantime.

(27) At this stage, we also notice an argument raised by Shri Bali in challenging the orders Annexure P/17 passed by the Special Secretary, through a Civil Misc. application, another order dated 10th November, 2003, passed by the Special Secretary in the case of M/s Gee City Builders (Private) Limited has been placed on record as Annexure P/21 with the present petition. Shri Bali has taken us through the aforesaid order and has argued that the facts in the aforesaid case were identical to the facts of the present case and in the revision petition filed by the aforesaid builder, Special Secretary had exercised the revisional powers and had accepted the offer of the aforesaid builder granting them an opportunity to pay prevailing rate of Rs. 2800 per square yard for the whole and measuring 2.389 acres along with 10 % per annum interest on the outstanding dues. It has, thus, been argued by Shri Bali that there was an apparent inconsistency in the two orders passed by the Special

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Secretary. Whereas in the case of the petitioner-builder the revision petition filed by it, has been dismissed, in the case of the aforesaid M/s Gee City Builders, the said revision petition has been allowed and the plot in question had been restored to the aforesaid builders.

(28) We have duly considered the aforesaid argument of the learned counsel also but find that even the aforesaid argument cannot be accepted by us. From the perusal of the order Annexure P/21 we find that during the course of the proceedings in the said revision petition, the Special Secretary had noticed a report submitted by the Estate Officer, Mohali that the said site originally allotted to M/s Gee City Builders Private Limited had been put to reauction on 4th September, 2001 and no bidder had come forward beyond Rs. 2800 per square yard. It was in view of the aforesaid fact that the said site was ordered to be reallocated to the aforesaid builders at the rate of Rs. 2800 per square yard and the aforesaid builder was also burdened with interest payable at the rate of 10% per annum from the date when the outstanding was due. However, in the present case as noticed above, the site in question has already been auctioned on 29th June, 2001 in favour of respondent No. 8. 10% of the aforesaid bid amount being approximately Rs. 33,000,000 has already been deposited by respondent No. 8. Thus the facts and circumstances of the present case are totally different and distinguishable from the facts in the case of M/s Gee City Builders. We may also take note of the fact that while passing the order in the case of M/s Gee City Builders, the Revisional authority had taken note of the fact that it would be in the interest of the department to re-allot the plot to the aforesaid builder on account of the fact that a period of eight years had elapsed and the plot could not be reauctioned. In the present case the situation is totally different.

(29) To be fair to Mr. Bali, we must also take note of the last argument raised by him. Shri Bali has challenged the auction dated 29th June, 2001 in favour of respondent No. 1. It has been argued by the Learned counsel that the terms and conditions of the aforesaid auction are much more favourable to respondent No. 8, than those were contained in the MOU and the agreement between the petitioner-builder and PUDA. It is, thus, argued that the aforesaid auction was clearly liable to be set aside being an exercise by the official respondents to favour respondent No. 8.

(30) We have taken due note of the aforesaid argument but find that even the aforesaid argument is without any merit.

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(31) Firstly the petitioner has no *locus standi* to challenge the terms and conditions in favour of respondent No. 8. The allotment in favour of the petitioner already stands cancelled. He has failed before the revisional authority also. In these circumstances, PUDA was absolutely justified to auction the land in question to minimise the loss being suffered by it. A long period had elapsed after the allotment in favour of the petitioner. The plot in question had become disputed and under litigation. In these circumstances the anxiety of PUDA to dispose of the said plot in favour of a willing purchaser can be understood. We do not find that there has been any extraneous and irrelevant consideration in finalising the auction in favour of respondent No. 8. In any case there is no such material placed before us to reach to the aforesaid conclusion.

(32) At this stage we may notice certain observations made by the Hon'ble Supreme Court of India in the case of **State of Maharashtra and others versus Prabhu (2)** as under :

“There is distinction between writs issued as a matter of right such as habeas corpus and those issued in exercise of discretion such as certiorari and mandamus. The High Courts exercise control over Government functioning and ensure obedience of rules and law by enforcing proper, fair and just performance of duty. Where the Government or any authority passes an order which is contrary to rules or law it becomes amenable to correction by the courts in exercise of writ jurisdiction. But one of the principle inherent in it is that the exercise of power should be for the sake of justice. One of the yardstick for it is if the quashing of the order results in greater harm to the society then the court may restrain from exercising the power.”  
(Emphasis supplied)

(33) Again in the case of **A.P. Financial Corporation versus M/s Gar Re-rolling Mills and another (3)**, the Apex Court again observed as follows :

“18. There is no equity in favour of defaulting party which may justify interference by the courts in exercise of its equitable extraordinary jurisdiction under Article 226 of the Constitution of India to assist it in not repaying its

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(2) (1994) 2 S.C.C. 481

(3) (1994) 2 S.C.C. 647

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debts. The aim of equity is to promote honesty and not to frustrate the legitimate rights of the Corporation which after advancing the loan takes steps to recover its dues from the defaulting party....”

“.....A court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law.”

(34) A learned Single Judge of this court in the case of **Jodh Singh versus Registrar (Deputy Commissioner), Ambala (4)** observed as follows :

“14. In the light of the judgments referred to above, order dated 20th March, 1991 of the Registrar cancelling the sale-deed cannot be sustained. However, taking that the Registrar had acted without jurisdiction in cancelling sale-deed, I do not think that in the facts and circumstances of this case I would be justified in issuing a writ of Certiorari quashing the order of the Registrar. A writ of Certiorari being a writ of discretion is issued only in cases where the order sought to be quashed has occasioned a failure of justice. It is not every error of law that would induce this Court to exercise extra-ordinary jurisdiction under Article 226 of the Constitution of India. In this case, I am satisfied that nothing has been done by the Registrar which could be said to have caused any injustice to the petitioners. Challenge to the order of Registrar thus fails.” (Emphasis supplied)

(35) As a result of the aforesaid discussion, we find absolutely no merit in the present petition. The same is consequently dismissed.

(36) Copy of the order be given dasti on payment of the fee chargeable for urgent copy.

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**R.N.R.**