

Before S. J. Vazifdar, CJ & Harinder Singh Sidhu, J.

RAMESH KUMAR AND OTHERS—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No.6690 of 2017

December 12, 2017

Punjab Regional Town Planning and Development Act, 1995—S. 45(3) as amended by Act, 2013—Petitioner surrendered plot—10% forfeited under amended provisions—Allotment letter prior to amendment—S.45(3) substantive rights—Amendment can operate prospectively—Forfeiture set aside—Matter remanded to determine quantum of forfeiture.

Held that Section 45(3) prior to the amendment was not a procedural provision for enforcing a substantive right. It provides for the consequence of the failure of an allottee to pay the amount due together with penalty in accordance with an order made under sub section (2) or committing a breach of any other condition of transfer. The consequence is the forfeiture of an amount not exceeding 10% of the total amount of the consideration money.

Such a provision cannot be said to be procedural. It is substantive. It has financial implications. The amount that a party bids for a plot would undoubtedly be after taking such a provision into consideration as it has financial implications. The quantum of the financial implication being only to the extent of 10% of the total amount of consideration is not relevant while deciding whether it is a substantive provision or not. In the absence of such a provision, a bidder could well factor the amount of forfeiture into the bid. A bidder would structure the financial bid dependent upon not merely the extent of the forfeiture but the circumstances in which the forfeiture is to be made.

(Para 9)

Further held that Section 45(3) being a substantive provision, absent anything else, the amendment thereto can operate only prospectively and not retrospectively. There is no express stipulation making the amended section 45(3) of the Act retrospective. Nor do we find it to be retrospective by necessary intendment.

(Para 11)

Further held that contention that in any event clause 4 (ix) mandated a forfeiture of 10% of the total price is also not well founded. Our judgment in *Puneet Singh's case* (supra) covers this issue as well.

(Para 13)

Hitesh Verma, Advocate
for the petitioners.

P.P.S Thethi, Addl. A.G., Punjab.

Akshay Jain, Advocate
for respondent Nos.3 and 4.

S. J. VAZIFDAR, C. J.

(1) The petitioners have challenged orders dated 15.05.2015, 10.08.2015 and 06.12.2016 passed by respondent Nos. 4, 3 and 2 respectively forfeiting 10% of the amount deposited by them in respect of the allotment of a plot of land and have sought the refund thereof.

(2) The petitioners were successful at an auction held on 26.04.2013. The respondents accordingly issued an allotment letter dated 07.06.2013. The total consideration for the plot was Rs.47,01,600/-. The petitioners paid Rs.11,75,400/- being 25% of the total consideration. Clauses 4(ix) and 6(i) of the LoA read as under:-

“4. Usage and Period for consideration:-

ix) In case of breach of any condition(s) of allotment or of regulations or non-payment of any amount due together with the penalty, the plot or building, as the case may be, shall be liable to be resumed and in that case 10% of the total price plus interest till that date shall be forfeited.”

“6. GENERAL

i) This allotment shall be governed by the provisions of the Punjab Regional and Town Planning and Development Act, 1995, Rules and Regulations framed there under, as amended from time to time.”

(3) The petitioner was unable to pay the balance amount and accordingly by a letter dated 06.05.2015 made an application to respondent No.4 to surrender the plot. The Additional Chief Administrator-respondent No.3 by the impugned order dated

10.08.2015 upheld the order of the Estate Officer-respondent No.4 dated 15.05.2015 returning the amount deposited by the petitioner but only after forfeiting 10% of the consideration. The forfeiture is challenged.

(4) The Estate Officer-respondent No.4 apparently proceeded on the basis that it was mandatory for the authorities to forfeit 10% of the total sale consideration in view of section 45(3) of the Punjab Regional Town Planning and Development Act, 1995 (for short 'the Act') as amended w.e.f. 05.12.2013. Section 45(3) of the Act, as it stood prior to the amendment and as amended, reads as under:-

“Un-amended Section 45(3) prior to 05.12.2013:-

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 then 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.

(emphasis supplied)

Amended Section 45(3) after 05.12.2013:-

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 shall be equivalent to 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.

Provided that in genuine cases of hardship of a class of person(s), the authority may, by general or specific order,

reduce the amount of forfeiture for any person(s) for the reasons to be recorded in writing.

(emphasis supplied).

(5) The first question that arises is whether Section 45(3) of the Act as it stood prior to the amendment applies to the case or whether the amended Section 45(3) applies to the petitioners' case. The letter of allotment is dated 07.06.2013 i.e. prior to the amendment whereas the application for surrender was made after the amendment on 06.05.2015.

(6) The second question that arises is whether it was mandatory on the part of the respondents to forfeit 10% of the total costs of the allotment or whether it was permissible for the authorities to forfeit an amount less than 10% of the total costs of allotment.

(7) The impugned order does not address these issues.

(8) The first question is whether section 45(3) as it stood prior to its amendment or as it was amended applies to this case. Section 45(3) confers a substantial right on a party.

(9) Section 45(3) prior to the amendment was not a procedural provision for enforcing a substantive right. It provides for consequence of the failure of an allottee to pay the amount due together with penalty in accordance with an order made under sub section (2) or committing a breach of any other condition of transfer. The consequence is the forfeiture of an amount not exceeding 10% of the total amount of the consideration money.

(10) Such a provision cannot be said to be procedural. It is substantive. It has financial implications. The amount that a party bids for a plot would undoubtedly be after taking such a provision into consideration as it has financial implications. The quantum of the financial implication being only to the extent of 10% of the total amount of consideration is not relevant while deciding whether it is a substantive provision or not. In the absence of such a provision, a bidder could well factor the amount of forfeiture into the bid. A bidder would structure the financial bid dependent upon not merely the extent of the forfeiture but the circumstances in which the forfeiture is to be made.

(11) Section 45(3) being a substantive provision, absent anything else, the amendment thereto can operate only prospectively and not retrospectively. There is no express stipulation making the

amended section 45(3) of the Act retrospective. Nor do we find it to be retrospective by necessary intendment.

(12) The petitioners' case pertains to the period prior to the amendment and is therefore, governed by unamended clause 45(3) of the Act. That being so the second question is whether the respondents were bound to forfeit 10% of the total amount of the consideration money. This question is answered by our order and judgment in *Puneet Singh v. Special Secretary, Department of Housing and Urban Development Government of Punjab*, Civil Writ Petition No. 17392 of 2015. In that case the respondents resumed the plot and refunded the amount deposited by the petitioner after forfeiting 10 per cent of the consideration. The petitioner ultimately did not challenge the order of resumption but only sought the refund of the amount forfeited by the respondents which constituted 10 per cent of the total value. The petitioner sought the refund of the same together with interest. Paragraphs 10 to 12 of our judgment read as under:-

“10. Under Section 45(3), as it originally stood, the authorities are entitled to forfeit the whole or any part of the money paid “which in no case shall exceed ten per cent of the total amount of the consideration money.....”. Thus, the forfeiture was not to exceed 10 per cent of the total amount of the consideration. The authorities are entitled to deduct an amount upto 10 per cent. It is axiomatic that they are entitled to deduct an amount less than 10 per cent of the amount of consideration, if a case for the same is made out. As per the provisions of Section 45(3), an amount less than 10 per cent can also be forfeited. This is clear from the words “which in no case shall exceed ten per cent of the total amount of the consideration money”. If the intention was to forfeit an amount of 10 per cent and no less, Section 45(3) would have been worded entirely differently as indeed it has been by the amendment with the words “which shall be equivalent to ten per cent of the total amount of the consideration money”. The petitioner is entitled to seek a deduction of an amount less than 10 per cent. Reasons for the quantum of deduction must in that case be furnished by the authority.

11. The impugned orders have forfeited 10 per cent of the total amount of consideration without considering

whether the facts and circumstances of the case justify deducting an amount less than the maximum amount of 10 per cent of the consideration amount.

12. We hasten to add that the authorities are bound to take into consideration all the facts and circumstances of the case which affect not merely the allottee i.e. the petitioner in this case, but also the revenue. There may be circumstances in which the surrender of the plot prejudicially affects the respondents especially financially. Such factors must also be taken into consideration by the authority. There may be cases where the authority is not in any manner prejudiced but the allottee is. In that event, the authority would be justified in forfeiting an amount less than 10 per cent.”

(13) The contention that in any event clause 4(ix) mandated a forfeiture of 10% of the total price is also not well founded. Our judgment in *Puneet Singh's case (supra)* covers this issue as well.

(14) Clauses 6(i) and 4(ix) in the allotment letter referred to earlier are similar to clauses 7(i) and 7(vi) of the agreement in *Puneet Singh's case*. Clauses 7(i) and (vi) in *Puneet Singh's case* and our findings on the issue in that case are as under:-

“7. *General*

(i) This allotment shall be governed by the provision of Punjab Regional and Town Planning and Development Act, 1995, Rules and Regulations framed thereunder, as amended from time to time.

(vi) In case of breach of any conditions of allotment or of regulations or non-payment of any amount due together with the penalty, the plot or building, as the case may be, shall be liable to be resumed and in that case 10% of the total price plus interest due till that date shall be forfeited.”

13. Faced with this, it was contended that under clause 7(vi) of the allotment letter, the parties had agreed to 10 per cent of the total price being forfeited in the event of the property being resumed. It was further contended that the parties having agreed to the same, the Estate Officer would

not have the discretion to forfeit an amount less than 10 per cent of the total consideration.

14. The submission is not well founded. Section 45(3) itself confers the discretion upon the Estate Officer to forfeit an amount less than 10 per cent. We will presume that the parties are entitled to contract out of the statutory provisions. In the facts of the present case, it would make no difference. Clause 7(i) of the allotment letter specifies that the allotment would be governed by the provisions of the 1995 Act and the Rules and Regulations framed thereunder, as amended from time to time. Clauses 7(i) and 7(vi), therefore, provide for different consequences. Under sub clause (i), the authority was entitled to forfeit less than 10 per cent, if the facts and circumstances so warranted and under sub clause (vi), the respondents were entitled to deduct 10 per cent of the total price. The respondents having prepared the document following the rule of *contra proferentem* the terms and conditions must be read in favour of the petitioner.

15. It was then contended that the discretion conferred by section 45(3) as it originally stood was in fact exercised by stipulating the quantum of 10 per cent in clause 7(vi) of the Letter of Allotment.

16. This submission is not well founded either. As Mr. Bunger rightly submitted clause 7(vi) is not an exercise of discretion at all. It is a predetermined amount which cannot by any stretch of imagination be an exercise of discretion dependent upon the facts of the case which were yet to unfold. The discretion is to be exercised based on the facts of each case. This would include post contractual facts which obviously could not have been considered on the date of the Letter of Allotment.”

(emphasis supplied)

(15) The contention is, therefore, rejected.

(16) In the circumstances, the petition is disposed of by setting aside the impugned orders and remanding the matter to the Revisional Authority to decide the quantum of forfeiture after affording the petitioners an opportunity of being heard.