

SUPREME COURT OF INDIA

Surinder Kaur

Vs.

Govt. of Punjab

(S Majmudar and S Kurdukar JJ.)

16.03.1998

ORDER

1. Leave granted. We have heard learned counsel for the parties finally in this appeal.

2. The short question is when the appellate authority by its order dated 22-11-1995 set aside the resumption order and restored the disputed site to the appellant whether it was justified in directing the appellant to pay 7% regular interest for the defaulted payment of instalments of purchase price together with 18% penal interest. So far as the question of penal interest was concerned, the matter was carried by the appellant before the revisional authority which observed in para 6 of its order to the following effect:

"6. I have heard both the parties at length and have also gone through the record placed on file very carefully. Having done so, I am afraid, I am unable to appreciate the arguments put forth by the learned counsel for the petitioner. The only ground put forward for the petitioner's inability is her bad financial position. It is noted that the SCF was allotted in May 1987 and the total money was to be paid by May 1991. The petitioner after paying the initial 25% of the auction-money, failed to pay any amount for a number of years. The ground for bad financial position could be valid for non-payment of one or two instalments and for a short period and could not be a forever consideration for default over a number of years. I feel that since the prices of property have gone up, now the petitioner is taking this ground to get the SCF restored in her favour. I also regret to note that the

Chief Administrator imposed penal interest of 18% without there being any provision in the letter of allotment or in terms and conditions of the allotment. It is really shocking to note that the Chief Administrator has been levying interest at varying rates in different cases according to his whims and fancies. The whole affair smacks of a deal. Moreover, while passing the impugned order, the learned Chief Administrator had clearly stipulated that SCF would be restored in favour of the petitioner only after the payment of full payment, interest and penal interest within 90 days of the impugned order, which the petitioner failed to do so."

3. Having so observed ultimately the revision was dismissed and the order of the appellate authority restoring the site on payment of regular interest at 7% and penal interest at 18% was confirmed. The appellant carried the matter in writ petition before the High Court. The High Court dismissed the writ petition by observing that

"No ground to interfere. Dismissed." That is why the appellant is before us.

4. The contention of the learned counsel for the appellant is that once the resumption order is set aside by the revisional authority and that part of the order has become final as the respondent has not challenged it further and it is only the appellant who challenged the imposition of the penal interest as a condition for recalling the resumption order the short question which survived further was whether penal interest could have been ordered while setting aside the resumption order. Reliance was placed in this connection on a judgment of this Court in CA No. 4272 of 1995 wherein this Court observed:

"As a matter of policy the appellants (present respondent-State) have been imposing 10% penalty and 7% interest on delayed payments. This being the rule position and having agreed with the rule position, the High Court was not justified in interfering with the action taken by the appellants."

Therefore, it becomes clear that according to this Court when the question of regularising the occupation of the allottee comes up and when resumption order is recalled, the question of imposing penal interest would remain confined to 10% only apart from regular interest at 7% for delayed payments. However, in these proceedings by an earlier order dated 21-11-1997 a Bench of this Court has observed as under:

"An affidavit will be filed within a week by the petitioner stating the amount paid pursuant to the order passed by the appellate authority dated 22-11-1995. The petitioner will clearly state whether interest @18%, as directed, was paid and, if so, up to which date. The special leave petition is adjourned for a fortnight."

5. Under these circumstances, therefore, we deem it fit to direct that the appellant shall pay total interest at the rate of 18% on the delayed payments which will consist of 11% penalty interest plus 7% regular interest on defaulted instalments. We are told by learned counsel for the appellant that interest @17% in all has already been deposited with the respondent. If that is so, the appellant will have to deposit an additional amount of interest amounting to 1% more. However, this will be subject to verification by appropriate authority. In short, as a condition for cancellation of resumption order the appellant will be required to pay in all, apart from the defaulted amounts, 18% interest on the delayed payments of instalments. This will be worked out by the appropriate authority and whatever balance is payable by the appellant shall be paid over by her within a period of four weeks from the intimation to him of such calculation and determination of payable amount by the appropriate authority, namely the Estate Officer, Punjab Urban Planning & Development Authority, SAS Nagar (Mohali), District Ropar, Respondent 4, before whom the appellant will produce relevant evidence about the payment of appropriate amounts pursuant to the present order. The shortfall, if any, will be made good by her within a period of four weeks after estimation and intimation by the 4th respondent as aforesaid. On such deposit being made, the allotment of the plot shall stand regularised and resumption order will stand rescinded and the cancellation of resumption order shall stand confirmed.

6. The appeal is allowed to the aforesaid extent. The order of the High Court will stand set aside and the writ petition of the appellant will stand allowed accordingly. No costs.