

**SUPREME COURT OF INDIA**

Daljit Singh

Vs.

U.T.Chandigarh

C.A.No.1640 of 2010

(G.S. Singhvi and Asok Kumar Ganguly JJ.)

09.02.2010

**JUDGEMENT**

**G.S. Singhvi, J.**

1. Leave granted.

2. Feeling aggrieved by order dated 3.12.2008 passed by the Division Bench of Punjab and Haryana High Court refusing to quash the proceedings initiated by the Chandigarh Administration under Rule 7-A(2) of the Chandigarh (Sale of Sites and Buildings) Rules, 1960 (for short, 'the Rules') for recovery of Rs.3,38,082/- in lieu of the surrender of residential plot sold to them, the appellants have preferred this appeal.

3. On the basis of highest bid of Rs.80 lacs given by them in the open auction conducted by the Chandigarh Administration, residential site No.1199, Sector 19-B was sold to the appellants subject to the conditions enumerated in letter dated 3.1.2005 issued by the Estate Officer, Union Territory, Chandigarh (respondent No.2). The appellants deposited Rs.20 lacs representing 25% of the bid money. They took physical possession of the site on 25.1.2005 (in the impugned order, the date of delivery of possession has been mentioned as 22.2.2005) but surrendered the same on 3.3.2005 by stating that due to unavoidable reasons they were not in a position to retain the site. Upon receipt of the appellants' request for surrender, respondent No.2 issued letter dated 24.3.2005 and called upon them to show cause as to why penalty @ 2.5% of premium may not be imposed and recovered under Rule 7-A of the Rules. The appellants did not contest the notice. Rather, appellant No.1 appeared before respondent No.2 and pleaded that the request for surrender be accepted subject to the condition specified in the notice. Thereupon, respondent No.2 passed order dated 20.4.2005 whereby he accepted the surrender of the site and imposed penalty in terms of the show cause notice.

4. After 2 years and 6 months, respondent No.2 issued notice dated 5.11.2007 to the appellants requiring them to deposit Rs.3,38,082/-. This was done on the premise that inadvertently penalty @ 2% of the premium had been imposed at the time of acceptance of surrender of the site, though in terms of Rule 7-A(2) of the Rules, penalty @ 5% of the

premium ought to have been imposed. Appellant No.1 submitted reply dated 16.11.2007 and contested the demand by asserting that notice had been issued by the concerned officer without taking cognizance of the fact that surrender had already been accepted. Simultaneously, he prayed for withdrawal of the request of surrender by stating that he was ready to deposit 25% premium.

“The relevant portions of the reply submitted by appellant No.1 are extracted below:

"That the said memo has wrongly been sent to me as I had surrendered the plot well within 90 days of the issuance of allotment letter and had been charged penalty at the rate of 2.5% of the premium as per the relevant rule in this regard. The present recovery notice has been sent to me without any relevant rule and application of mind as a penalty of 2.5% had already been charged and stands deposited from me as per the orders passed by the Estate Officer, U.T. Chandigarh in this regard.

That in view of the memo dated 5.11.2007 calling upon me to deposit 3,38,082/-, I hereby withdraw my letter for surrender of the said residential plot and I am ready to deposit the initial 25% premium as per the auction held in my favour on 10.12.2004 and also ready to pay any other charges with regard to the same.

That I may kindly be allowed to take back the surrendered residential plot 1199, Sector 19-B, Chandigarh which is still vacant and has not been allotted till date to anybody.

Moreover, the penalty already paid by me at the rate of 2.5% may also be adjusted against the said 25% premium. That in view of the submissions made above it is requested that the above memo No.34422 dated 5.11.2007 be withdrawn immediately and I may be intimated with regard to the amount which I am required to deposit on withdrawal of my surrender application with regard to the plot No.1199, Sector 19-B, Chandigarh.”

5. Respondent No.2 declined to accept the aforementioned request made by appellant No.1 and again called upon him to deposit penalty amount mentioned in letter dated 5.11.2007.

6. The appellants challenged the demand of additional penalty and rejection of their prayer for withdrawal of the request for surrender of the site by filing writ petition under Article 226 of the Constitution. The Division Bench of the High Court opined that the appellants' case is covered by Rule 7-A(2) of the Rules which provides for imposition of penalty @ 5% of the premium and Rule 7-A(1) is not attracted in their case because they had applied for surrender of the site after physical possession thereof had been delivered to them.

7. Shri P.S. Patwalia, learned senior counsel submitted that the appellants' case falls within the ambit of Section 7-A(1) because they had surrendered the site within 180 days of the allotment and the High Court committed serious error by refusing to quash the demand of

additional 5 penalty. Learned senior counsel then argued that even if Rule 7-A(2) is held applicable to the appellants' case, the High Court should have quashed the demand because the same was raised after more than 2 years and 6 months of the acceptance of the request for surrender of the site. Shri Patwalia emphasized that if the appellants had been told that penalty @ 5% of the premium would be imposed then they may not have pressed for acceptance of their request for surrender of the site. He finally submitted that if the respondents want to invoke Rule 7-A(2) of the Rules then they should be directed to accept the appellants' prayer for permission to withdraw the request for surrender of the site.

8. Ms. Kamini Jaiswal, learned counsel for the respondents supported the impugned order and argued that respondent No.2 did not commit any illegality by requiring the appellants to pay penalty @ 5% of the premium because they had surrendered the site after taking physical possession thereof and, as such, their case is governed by Rule 7-A(2) of the Rules. Ms. Jaiswal submitted that the benefit of sub-rule (1) of Rule 7-A can be availed within 180 days of allotment of site and that too before the offer of possession of the site is made. She pointed out that the appellants had not only been offered but they had taken physical possession of the site on 6 25.1.2005 and argued that the High Court rightly refused to quash the demand for the remaining amount of penalty.

9. We have considered the respective submissions. Rule 7-A of the Rules which has bearing on the decision of this appeal reads as under:

“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 upto 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) The Chief Administrator, may, in exceptional circumstances for reasons to be recorded in writing, accept the surrender of site from the transferee as prescribed in sub-rule (1) above, at anytime after two years from the date of allotment on payment penalty which shall not be less than 5% of the premium.

Interest shall be chargeable from the transferee as prescribed in sub-rule (1) above.

(4) The Chief Administrator may, on compassionate grounds, in case of extreme hardships, for reasons to be recorded in writing, reduce or waive off the amount of penalty in any case of surrender.”

10. A reading of the plain language of Rule 7-A makes it clear that sub- rule (1) thereof is attracted if the transferee who has paid 25% of the premium of the site, surrenders the same within 180 days of the allotment and that too before possession of the site is offered by the competent authority. In such a case, the surrender can be accepted by the competent authority subject to deduction of penalty @ 2.5% of the premium. If the surrender is made after the possession is offered by the competent authority, penalty @ 5% of the premium is leviable in terms of sub-rule (2) of Rule 7- A irrespective of the fact that the surrender is made within 180 days. To put it differently, if a transferee who has paid 25% of the premium and to whom possession is offered by the competent authority, surrenders the site then penalty @ 5% of the premium is leviable and he cannot avoid this consequence only on the premise that the surrender was made within 180 days of the allotment. Only in exceptional cases the Chief Administrator can accept surrender after expiry of the period of 2 years subject, of course, to the payment of penalty @ 5% of the premium [Rule 7-A(3)]. Under sub- rule (4) of Rule 7- A, the Chief Administrator can, for reasons to be recorded in writing, reduce or waive off the penalty leviable in terms of sub-rules (1) and (2).

11. It is not in dispute that the appellants' had surrendered the site after taking possession thereof. Therefore, in principle we agree with the High Court that sub-rule (2) of Rule 7-A was applicable to their case and respondent No.2 did not commit any illegality when he called upon them to pay balance penalty @ 2.5% of the premium. However, keeping in view the fact that the demand for the balance penalty was made after more than 2 years and 6 months of the acceptance of surrender of the site and the appellants' legitimate prayer for withdrawal of the letter of surrender was rejected without any tangible reason, we feel that the High Court should have quashed the demand raised by respondent No.2 on the ground of arbitrary exercise of power and violation of the doctrine of fairness in state action.

12. In the result, the appeal is allowed. While approving the view taken by the High Court on the interpretation of Rule 7-A (1) and (2) of the Rules, we accept the prayer made by the appellants and quash the demand raised by respondent No.2 vide notices dated 5.11.2007 and 26.12.2007. The parties are left to bear their own costs.