

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**C.W.P NO. 5022 OF 2007
DECIDED ON : 24.02.2009**

Mannat Bir Singh Mann

...Petitioner

versus

Municipal Commissioner and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SURYA KANT

Present : Mr. Akshay Bhan, Advocate,
for the petitioner.

Mr. D. V. Sharma, Senior Advocate with
Ms. Mamta Rana, Advocate,
for the respondents.

SURYA KANT, J. (ORAL)

The petitioner seeks a direction to accept his application dated 28.02.2006 (Annexure P-5), seeking surrender of Booth Site No. 18 in Sector - 39/D, Chandigarh and for the refund of Rs.4,11,301/- deposited by him towards the allotment price of the said booth site.

The petitioner was allotted the booth site in an open auction held on 21.01.2004 and the allotment letter dated 16.03.2004 (Annexure P-2) was issued in his favour. The

petitioner deposited 25% of the sale consideration, as well as, the first installment within time. The second installment was required to be deposited by the petitioner on 10.02.2006. On account of the family circumstances, the petitioner could not arrange the funds for the second installment, he accordingly vide his application dated 28.02.2006 (Annexure P-5), surrendered the allotment and sought refund of the amount already deposited by him towards 25% of the sale consideration of the first installment.

It is not in dispute that in terms of Rule 7-A (2) of the Chandigarh (Sale of Sites and Buildings) Rules, 1960, an allottee "may surrender the site within two years of the date of allotment on payment of 5% of the premium as penalty." Since the allotment letter in favour of the petitioner was issued on 16.03.2004, he could have surrendered the site before 15.03.2006. The petitioner actually surrendered the site on 28.02.2006 i.e within two years stipulated under the above mentioned Rule. Meanwhile, proceedings were initiated against the petitioner for cancellation of the allotment on the ground that he had failed to deposit the second installment. In those proceedings, the petitioner appears to have requested the authorities on 22.03.2006 to grant him one month's more time to arrange the funds for payment of second installment. His request was acceded to by the Estate Officer, Chandigarh. The petitioner was accordingly permitted to deposit the second installment by

24.04.2006 but he could not do so. The petitioner accordingly requested the respondents to accept his request dated 28.02.2006 and permit him to surrender the site. The petitioner's request having been declined, that he has approached this Court.

Notice of motion was issued and in response thereto, counter-affidavit was filed on behalf of the respondents.

Having heard learned counsel for the parties and on perusal of the record, I am of the considered view that this writ petition deserves to succeed. There is no denial to the fact that in terms of Rule 7-A (2) of the Rules, *ibid* the petitioner surrendered the subject site within two years of the issuance of allotment letter on payment of 5% of the premium as penalty. It was the absolute discretion of the respondents to refuse or grant extension in time to the petitioner for deposit of the second installment. The respondents having exercised that option in favour of the petitioner on 22.03.2006, cannot over took the fact that even if the petitioner failed to arrange funds for the second installment within the extended period, it had no legal effect on the validity of the surrender of the plot, admittedly made on 28.02.2006.

Consequently and for the reasons noticed above, the writ petition is allowed. The respondents are directed to accept the petitioner's request dated 28.02.2006 and treat the allotted site to have been surrendered by him on that very date. The amount deposited by the petitioner towards 25% of the

allotment price or the first installment, shall accordingly be refunded to him after deducting the necessary penalty charges in accordance with Rules, within a period of one month from the date of receipt of certified copy of this order.

Disposed of.

FEBRUARY 24, 2009
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(SURYA KANT)
JUDGE