

**(2001) 05 P&H CK 0168**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 14647 of 1992**

K.R. Enterprises, Chandigarh

APPELLANT

Vs

Advisor of the Administrator U.T. Chandigarh

RESPONDENT

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**Date of Decision :** 17-05-2001

**Acts Referred:**

Chandigarh Lease Hold of Sites and Buildings Rules, 1973 — Rule 21  
Constitution of India, 1950 — Article 226, 227

**Citation :** (2001) 4 RCR(Civil) 581

**Hon'ble Judges :** Swatanter Kumar, J

**Bench :** Single Bench

**Advocate :** Chetan Mittal, for the Appellant; Nipun Mittal, for the Respondent

**Final Decision :** Allowed

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## Judgement

Swatanter Kumar, J.—In this petition under Articles 226/227 of the Constitution of India the petitioner prays for issuance of appropriate writ or direction quashing the order dated 10.1.1992 and for a further direction that the respondents be directed to restore the plot bearing No. 134, semi- industrial, to the petitioner,

2. The writ is contested by the respondents who submits that the order of cancellation has been passed as per terms and conditions of auction and the rules framed by the Chandigarh Administration, known as Chandigarh Lease holding of Sites and Buildings Rules, 1973, hereinafter referred to as the Rules, and no case was made out by the petitioner for restoration of the plot.

3. The necessary facts are that on 13.3.1988 auction of semi-Industrial plots was held by the Estate Officer, Chandigarh Administration. The petitioner was declared as successful bidder for plot No. 134 for a total price of Rs. 7.35 lacs being the bid money. 25% of this money i.e. Rs. 1,83,750.00 was paid at the time of auction and the balance of Rs. 5,51,250.00 was to be paid in three equal annual instalments of Rs. 2,10,054.00, first instalment was payable on 10.4.1989. The petitioner admittedly failed to pay the instalment in time as per

the terms and conditions of auction/allotment letter. Vide letter dated 30.1.1980 the Estate Officer passed an order of resumption on account of non-payment of instalments. The allotment of plot in favour of the petitioner was cancelled and 10% of the premium of the site i.e. Rs. 73,500/- was ordered to be forfeited. Against this order the petitioner filed an appeal which was also dismissed by the Appellate Authority under the Rules. The matter was placed before the Lok Adalat with the consent of the parties on 6.7.1991. In furtherance to the said terms, a sum of Rs. 3,00,000/- was paid on 8.6.1991 in the Lok Adalat itself. The balance amount was to be paid by 31.7.1991. The order of the Appellate Authority dated 19.8.1991 was communicated to the petitioner vide which the impugned order was set aside and the site in question was restored to the appellant on the condition that the entire outstanding amount was to be paid by them by 31.7.1991. The petitioners paid additional amount of Rs. 2,46,000/- on 28.8.1991 and balance of Rs. 3,00,000/- was also paid by a bank draft on 23.9.1991. According to the petitioners this amount includes the upto-date payment along with interest.

4. The petitioners preferred a revision against the order of the Appellate Authority for extension of time for making the payment, in the year 1991, on the ground that the order of the Appellate Authority was communicated late and stating other circumstances which in the submission of the petitioners would provide a sufficient cause for further extension of time. The revision was dismissed by the competent authority vide order dated 10.1.1992, Annexure P.4 to the writ petition. Vide letter dated 23.6.1992, the Estate Officer returned the bank drafts of the afore-mentioned amounts to the petitioners.

5. The respondents while contesting the writ petition stated that they have neither acted arbitrarily nor discriminatory and their order of cancelling allotment in favour of the petitioners was justified as it was based upon own defaults of the petitioner.

6. During the course of hearing, learned counsel for the respondents filed a statement of accounts stating that as on 30.4.2001 a sum of Rs. 18,99,399/- was due and payable by the petitioner to the authorities even if the cancellation order was to be withdrawn and property restored in favour of the petitioner. This statement charges penal interest even to the extent of 24% per annum. This interest of 24% per annum is in addition to the 15% normal interest payable on delayed payment and for the period when the payment was to be made. It may be noticed that learned counsel for the petitioner in order to show their bonafides had first brought a bank draft for the entire amount and now deposited in Court a draft of Rs. 18,23,491/-.

7. The basic contention on behalf of the petitioners before the Court is that the revisional authority ought to have granted extension of time to the petitioners for payment of the defaulted amount. The order passed by the appellate authority was communicated late to the petitioners and they had certain financial constraints at the relevant time and their revision petition contained sufficient

grounds for grant of extension of reasonable period, which in any case, was nearly two weeks. According to the counsel for the petitioner the concerned authorities failed to exercise the jurisdiction vested in them. Further it is contended that the authorities have acted arbitrarily and discriminately as in an identical case relating to plot No. 132, the same revisional authority had granted extension of time for making the payment. The facts of that case were identical to the present case and even some direction was passed by the Lok Adalat has had been passed in the present case. Thus, the revisional authorities could not have passed different orders in similar situations. The authorities have erred in granting compensation to the owners of plot No. 132 while denying the same to the petitioner.

8. Having granted extension in an identical case, it is beyond reason why extension of time even of 15 days was declined by the authorities especially when the petitioners had paid a sum of Rs. 2,46,000/- and 3,00,000/- by way of bank drafts including the interest due on that date. An administrative authority while determining rights of the parties has to act in a fair and just manner. Its reasoning must not be apparently hit by the plea of discrimination and arbitrariness. There is no justification on record to show as to why the amounts paid by the petitioner were not refunded to them as the order of cancellation directed forfeiture of only Rs. 73,500/-.

9. The learned counsel for the respondents relied upon Rule 21 of the Rules to contend that the money could be refunded only after the possession was restored. If the respondents intended to implement the said rule in its true spirit and substance there was no occasion for the respondents to refund the two bank drafts as admittedly possession, even as on today, of the property in dispute is with the petitioner. If in one case, in relation to similar property and on identical, facts, extension was granted by the revisional authority, vide its order dated 1.11.1991, there could be no justification for declining the 15 days extension to the petitioners in the present case. It is very difficult to doubt the bonafides of the petitioners because they had paid the amount due as per afore-referred two bank drafts.

10. It may be noticed at this stage that in the statement of accounts filed by the respondents as on 10.4.1991 a sum of Rs. 6,85,287/- was stated to be due and payable by the petitioners and the petitioners had submitted, again admittedly, a sum of Rs. 5,46,000/- in August/September, 1991 even before passing of the order by the revisional authority.

11. The learned counsel for the petitioner heavily relied upon the judgment of the Hon''ble Apex Court in a case titled as Jasbir Kaur v. V.T. Chandigarh and Ors. 1999(2) RCR 255 (SC): 1999(1) P.L.J. 530, where the Hon''ble Apex Court while dealing with somewhat similar situation disturbed the judgment of a Division Bench of this Court, while leaving the question of law open in that case, and held as under :-

"Leave granted.

2. The controversy in this appeal centres around cancellation of lease relating to Booth Site No. 407, Sector 44 C&D by the Estate Officer vide order dated 8th May, 1992, for default in payment of a part of the third instalment of the lease amount. On 29th May, 1997, the writ petition filed by the appellant against the dismissal of his appeal by the Chief Administrator was dismissed by the High Court (reported as 1999 (1) PLJ 417). The order of the High Court has been put in issue through this appeal.

3. At the stage when notice was issued in this appeal a direction was given on 8th May, 1998 restraining the re-auction of the site in question and the appellant herein was permitted to deposit the balance amount along with interest, penalty etc. without prejudice to the rights of the parties. Six weeks' time was granted to the appellant to do the needful. Learned counsel for the appellants submits that the total amount of the instalment as due together with interest, penalty etc. as per the statement of account furnished by the Estate Department to the appellant as on 30th June, 1998, was Rs. 3,45,185/- (along with the amount which was required to be paid within three weeks on 15th December, 1992 was only Rs. 1,28,000/-). It is submitted by learned counsel for the appellant that the amount of Rs. 3,45,185/- has since been paid to the Estate Officer. The payment of Rs. 3,45,185/- in accordance with the statement of account furnished by the Chandigarh Administration, by the appellant to the respondent, is not disputed by learned counsel for the respondents.

4. After hearing learned counsel for the parties but without expressing any opinion on the question of law as raised in this appeal, it appears appropriate to us now to direct the regularisation of the allotment of the site in favour of the appellant. Let the needful be done by the Chandigarh Administration within four weeks. The order of cancellation of lease is, as a consequence, set aside.

5. The impugned order is, therefore, set aside and this appeal is allowed. No costs."

12. Another factor which this Court has to keep in mind is that in the case of *Jasbir Kaur v. Union Territory of Chandigarh and Ors.* 1999 (1) P.L.J. 417, the Division Bench categorically held that there was unreasonable delay on the part of the petitioner in approaching the Court which certainly is not the case here. The petitioner had been pursuing his remedies before various authorities and had offered payments by bank drafts at different stages. In these circumstances and more particularly keeping in view the decision of the Hon'ble Apex court, the petitioner is entitled to get an opportunity to deposit the amounts and for the relief of setting aside the order of cancellation.

13. But, the petitioner cannot be permitted to take advantage of his own wrong. It is even admitted before this Court that the petitioner had failed to make the payments of the amounts on the due dates. Resultantly, under the terms and conditions of auction/letter of allotment, the petitioner is liable to pay the

interest/penal interest, which has been claimed by the respondents in their statement of accounts. Liability to pay interest is inevitable and even in the order of the Hon''ble Apex Court afore-referred, the petitioner had deposited the entire amount claimed by the Administration. In the statement of accounts the amount claimed is Rs. 18,13,399.00 as on 30.4.2001.

14. Reliance was also placed upon order of Division Bench passed in the case of K.K. Enterprise v. The Advisor to Administration, U.T. Chandigarh and Ors. CWP No. 15696 of 1992 on 13.5.1993. The order reads as under :-

" Learned counsel for the respondents states that only the forfeiture amount has not been deposited. Rest of the amount has already been deposited. If the forfeiture amount is deposited within two months from today, the site in dispute shall stand restored to the petitioner. In case of failure to deposit the requisite amount of forfeiture, the writ petition shall be deemed to have been dismissed. However, the petitioner will be at liberty to apply to the authorities to claim refund later, if he is not liable to pay any amount."

15. Cumulative effect of the above discussion is that the order of cancellation and the subsequent orders passed by the revisional authority are hereby set aside. The petitioner is granted seven days time to deposit the entire amount due as per calculation of the respondents, with the respondents. The bank draft for Rs. 18,23,491/- which was produced before this Court and was ordered to be retained till further orders, be returned to the petitioner forthwith. In the event of default, the petitioner would not be entitled to any benefit accruing to them under this judgment and the respondents shall be at liberty to take possession of the property in accordance with law and forfeit the amount as directed under the impugned order.

16. For the reasons afore-stated the writ petition is allowed to the above extent, however, leaving the parties to bear their own costs.

17. Petition allowed.