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STATE OF PUNJAB AND ANR.

SMT. SIMLA RANI W/O SHRI BHAGWAN DASS

MARCH 27, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

C

Punjab Urban Estate (Sales of Sites) Rules, 1965: Rule 13—Allotment of booth—Agreement for—Payment of initial amount by allottee—Balance to be paid in instalments with interest@7%—Default in instalments—Power of Estate Officer to impose penalty—Levy of 10% penalty and 7% Interest—Held valid—Section 10 of the Punjab Urban Estates (Development and Regulation) Act, 1964 held inapplicable.

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The respondent was allotted a booth by the appellant-State. In terms of the agreement he paid 1/4th amount, namely, Rs. 29,125, while the balance of Rs. 87,373 was to be paid in instalments with interest @7% p.a. As default was committed in payment of instalments, the Appellant-State exercised the option provided in Rule 13 of the Punjab Urban Estate (Sales of Sites) Rules, 1965, instead of proceeding under section 10 of the Punjab Urban Estate (Development and Regulation) Act, 1964 and issued notice calling upon the respondent to pay Rs. 1,63,456 inclusive of interest and penalty. The respondent challenged the notice before the High Court which directed the appellant to adjust the amount of Rs. 75,000 deposited from time to time as per the orders of Court and to receive the balance amount of Rs. 26,000.

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In appeals to this Court by the State it was contended that as a matter of policy 10% penalty and 7% interest on delayed payments was being imposed: and that the respondent-allottee having agreed to this, the High Court was not justified in interfering with the action taken.

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For the respondent it was contended that the levy of 17% interest by way of interest amounts to penalty and therefore sustainable because under the rules the appellant has discretion to levy penalty upto a maximum of 10%.

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Allowing the State's appeal, this Court

HELD : 1. The High Court was not justified in interfering with the contractual relations entered by the purchasers with the appellant to reduce the amounts payable in terms of the contract read with the Punjab Urban Estates (Development and Regulation) Act, 1964 and Punjab Urban Estate (Sales of Sites) Rules, 1965. [1153-E]

2. An exercise of power under section 10 of the 1964 Act, while resuming the property for the default committed, certain consequences ensue. One of the consequences is forfeiture of the amount already deposited. While exercising that power, rule prescribed forfeiture of 10% of the total amount deposited by the defaulter. The said condition is inapplicable to the factual situation as the appellants have not exercised the option given by section 10. Instead they exercised the option provided in Rule 13 of the Rules which empowered the Estate Officer to impose penalty for the default committed as stipulated thereunder. The respondent misconstrued the scope of the action on the part of the appellant in this behalf. 17% is not the rate of interest. It is 10% penalty for non-payment of instalments and 7% interest on terms of the contract, which put together becomes 17%. [1153-B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4272 of 1995.

From the Judgment and Order dated 26.4.94 of the Punjab & Haryana High Court in C.W.P. No. 2950 of 1994.

Sarup Singh and Satish Vig for the Appellants.

Hardeep Singh, N.M. Popli and R.C. Kaushik for the Respondents.

The following Order of the Court was delivered :

Leave granted.

This appeal by special leave arises from the order of the High Court of Punjab & Haryana dated 26.4.1994 made in C.W.P. No. 2950/94. At an open auction conducted by the appellant the respondents, admittedly, became higher bidder for a sum of Rs. 1,16,000. He entered into an agreement on November 24, 1981 and got allotment of booth No. 28 situated in Phase I, Urban Estate, Sahibjada, Ajit Singh Nagar (Mohali). He paid the initial 1/4th amount, namely, Rs. 29,125 and he had to pay

A balance of Rs. 87,373 in instalments with interest at 7% p.a. Admittedly, he committed default in payment of instalments till notice was issued on November 25, 1993. Therein it was specifically stated that the balance due with interest and penalty was Rs. 1,63,456. By his letter dated December 1, 1993 the respondent admitted the liability and asked 20 days time for payment and also sought for reduction of rate of interest and penalty. Yet
B he did not pay even the principal amount. Instead he went to the High Court and filed the Writ Petition challenging the notice. The High Court in the impugned order while holding that appellant has discretion, directed to adjust the amount of Rs. 75,000 deposited from time to time as per the orders of the Court and the balance of Rs. 26,000 was directed to be
C received. Feeling aggrieved, against that order this appeal has been filed.

It is contended by the learned counsel for the appellant that under rule 13 of the Punjab Urban Estate (Sales of Sites) Rules, 1965 made pursuant to the Punjab Urban Estates (Development and Regulation) Act, 1964, for short the Act, the Estate officer has been given discretion. It reads
D thus:

"13. Procedure in the case of default

(Section 23(3) (a) and 3(2). In case an instalment is not paid by the transferee by the 10th of the month following the month in which it falls due, a notice shall be served on the transferee calling upon him to pay the instalment within a month together with a sum not exceeding such amount as may be determined by the Estate Officer, by way of penalty. If the payment is not made within the said period or such extended period as may be allowed by the Estate Officer, not exceeding three months in all from the date on which the instalment was originally due, the Estate Officer may proceed to have the same recovered as an arrear of land revenue or to take action under section 10."
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G As a matter of policy the appellants 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 case not justified in interfering with the action taken by the appellants. We find force in his contention.

H It is contended for the respondent that under the rules the appellant

have discretion only upto the maximum of 10% penalty. They have no right to impose more than 10% and that imposition of 17% by way of interest is a penalty and it cannot be sustained. We find no force in the contention.

Exercising the power under section 10 of the Act, while resuming the property for the default committed, certain consequences were to ensue. One of the consequence is forfeiture of the amount already deposited. While exercising that power, rule prescribed forfeiture of 10% of the total amount deposited by the defaulter. The said condition is inapplicable to the factual situation. In this case, admittedly, the appellant have not exercised the option given by s.10. Instead they had exercised and offer option provided in Rule 13 of the Rules. As seen, Rule 13 gives power to the Estate Officer to impose penalty for the default committed as stipulated thereunder. It is now stated and not disputed by the other side that as a matter of policy, the appellant adopted that 10% would be levied as penalty and 7% as interest on delayed payments in terms of the contract. In other words, the total liability is 17%. The respondent misconstrued the scope of the action on the part of the respondent in this behalf. 17% is not the rate of interest. It is 10% penalty for non-payment of instalments and 7% interest on terms of the contract which put together becomes 17%.

Under these circumstances, we find that the High Court was not justified in interfering with the contractual relations entered by the purchasers with the appellant to reduce the amounts payable in terms of the contract read with the Act and the Rules.

The appeal is accordingly allowed. No costs.

Three months' time is sought for and is granted for payment of the entire amount either in lump-sum or in instalments. In case of default, it is open to the appellant to take such appropriate action as is available under law which will not be again challengeable. The Writ Petition stands dismissed.

T.N.A.

Petition dismissed.