

**(2001) 05 P&H CK 0200**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CWP No. 7698 of 2001

Phoenix Properties Pvt. Ltd.

APPELLANT

Vs

Haryana Urban Development  
Authority and others

RESPONDENT

---

**Date of Decision:** May 28, 2001

**Hon'ble Judges:** Jawahar Lal Gupta, J; Bakhshish Kaur, J

**Bench:** Division Bench

**Advocate:** Hemant Gupta and Pritam Saini, for the Appellant;

**Final Decision:** Dismissed

---

### **Judgement**

Jawahar Lal Gupta, J.

Should the Petitioner who has not paid the amount of Rs. 4,87,734/- levied by way of penalty be held entitled to the refund of this amount despite the fact that the payment was actually made by the subsequent transferee viz. Respondent No. 4? This is the short question that arises for consideration in this case. A few facts as relevant for the decision of this petition may be briefly noticed.

2. The Haryana Urban Development Authority issued an advertisement for the auction of plots at Gurgaon. This auction was actually held on May 30, 1995. The Petitioner was the highest bidder for the Shop-Cum-Office Site No. 33, Sector 14, Gurgaon. Its bid of Rs. 52.56 lacs was accepted. The Petitioner had to make a deposit of 25% of the amount within a period of 30 days. There was default in the making of this deposit. Ultimately, the Petitioner made the deposit of a total amount of Rs. 18,67,311.20.

3. On June 12, 1995, the Petitioner was served with a notice to show cause as to why it be not directed to pay the balance amount of Rs. 48,77,342/- alongwith interest etc. within 30 days. The Petitioner submitted no reply. Ultimately, vide order dated September 29, 1998, a copy of which has been produced as Annexure P. 13 with the writ petition, the Estate Officer directed that the amount alongwith a penalty of Rs.

4,87,734/- shall be paid within 20 days. However, it did not make the deposit. On the contrary, it entered into an agreement with Respondent No. 4 for the sale of the site. Respondent No. 4 got permission from the Haryana Urban Development Authority for purchase of the site. In pursuance to the decision of the Authority, the fourth Respondent paid an amount of Rs. 56,06,776.35 to the Authority. It also paid to the Petitioner the total amount of Rs. 18,67,311.20 deposited by it. It is the admitted position that the amount which had to be paid by the Petitioner by way of penalty viz. Rs. 4,87,734/- had in fact been paid by the fourth Respondent.

4. The Petitioner's appeal against the order dated September 29, 1998 was accepted by the Administration vide order dated nil. A copy of this order has, however, been produced as Annexure P. 15 with the writ petition. Aggrieved by this order, the Authority filed a revision before the Secretary to Government Haryana, Town and Country Planning Department. This appeal was accepted vide order dated August 30, 1999. It was held that "since the ownership of the plot was changed during the pendency of the appeal before the Administrator, the subsequent owner should have been substituted for the original owner and, therefore, the impugned order is not in order and it deserves to be struck down..." Aggrieved by this order, the Petitioner has approached this Court through the present writ petition.

5. Counsel for the Petitioner has been heard. Mr. Hemant Gupta contends that the penalty had been wrongly imposed. Thus, the Petitioner is entitled to the refund of the amount of Rs. 4,87,734/-. Is it so?

6. Admittedly, the amount of penalty has not been paid by the Petitioner. In fact, this amount, on the Petitioner's own showing, has been paid by the fourth Respondent. It is also not disputed that the fourth Respondent has not challenged the order by which the penalty was imposed. Should the Petitioner be still held entitled to recover this amount? We think not. In the exercise of equitable jurisdiction under Article 226 of the Constitution, we find that public interest would over-ride an individual's interest. The Petitioner having not paid the amount cannot be held entitled to recover it from the Respondent Authority.

7. Mr. Hemant Gupta points out that under the supplementary agreement dated November 11, 1998, a copy of which has been produced as Annexure P. 16 with the writ petition, the Petitioner is entitled to the receipt of any amount which may be recovered on account of any pending appeal etc.

8. It may be so. Yet. the fact that stare us in the face is that so far the Petitioner is concerned, it had recovered the full amount of Rs. 18,67,311.20 paid by it. The amount of Rs. 4,87,734/- was never paid by the Petitioner. We find no equity in its favour so as to hold that the amount should be paid to it despite the fact that it had not made the payment.

9. No other point has been raised.

10. In view of the above, we find no merit in this writ petition. It is, consequently, dismissed in limine.

Sd/- Bakshish Kaur, J.