A.F.R.

Reserved on 21.07.2026
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2026:AHC:164225-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT – C No. - 16049 of 2026

Swastik Ventures Pvt. Ltd …..Petitioners(s)

Versus

State Of U.P. And 3 Others …..Respondents(s)

Counsel for Petitioners(s)	:	Rajeev Upadhyay
Counsel for Respondent(s)	:	Krishna Raj Singh,C.S.C.,Narendra Pratap Singh

Court No. - 21

HON'BLE MAHESH CHANDRA TRIPATHI, J.
HON'BLE KUNAL RAVI SINGH, J.

(Per : Hon'ble Kunal Ravi Singh, J.)

1. We have heard Sri Rahul Mishra, learned Senior Counsel, assisted by Sri Rajeev Upadhyay, learned counsel for the petitioner; Sri Devesh Vikram, learned Additional Chief Standing Counsel for the State-respondent no.1 and Sri K.R.Singh, learned counsel for the respondent nos. 2 to 4 i.e. Gorakhpur Development Authority

2. The present writ petition has been filed for the following reliefs:

"(i) Issue, a writ, order or direction like certiorari quashing the impugned orders dated 02.04.2026 passed by Assistant Estate Officer Gorakhpur Development Authority, Gorakhpur (Respondent No.4) forfeiting the registration money amounting to Rs. 1,02,73,114/- (One Crore Two Lakh, Seventy Three Thousand one hundred and fourteen) deposited by petitioner firm, vide forfeiture order No.94 and 95/10-Estate/Gorakhpur Development Authority/2026-27 (Annexure No.1 to this writ petition)

(II) Issue a suitable writ, order or direction like mandamus commanding the respondent to refund the entire registration amount of Rs. 10273, 114/- to the petitioner, along with interest at a rate deemed just and proper by this Hon'ble Court.

(iii) Issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(iv) Award cost of petition in favour of the petitioner."

FACTS:

3. The present dispute relates to forfeiture of the earnest money/ registration money amounting to ₹1,02,73,114/- deposited by the petitioner regarding the E-auction proceedings conducted by Gorakhpur Development Authority, i.e. respondent No. 2. The respondent 2 forfeited the amount of earnest money/ registration money, i.e. ₹1,02,73,114/- deposited for E-auction conducted by respondent No. 2 for commercial plot No. A admeasuring 829.08 sq. meter and commercial plot No. B admeasuring 128.09 sq. meter in Budh Vihar Part-A project. The present dispute arose when the respondent 2 forfeited the respective amounts deposited against the said plots by means of an order dated 02.04.2026.

4. The respondent No. 2 on 12.09.2025 uploaded on its website and also by means of publication in leading newspapers and E-auction of properties, i.e. commercial plot number A and B situated at Budh Vihar Part-A. However, due to an inadvertent mistake about the specific area of the said plots, a corrigendum was published by respondent No. 2, and accordingly the area of commercial plot number A was fixed at 829.08 sq. meters, and the minimum reserve price of ₹8,89,83,498/- and the registration amount of ₹88,98,350/- was fixed. For commercial plot number B, an area of 128.09 sq. meters was mentioned with the minimum reserve price of ₹1,37,47,645/- and a registration amount of ₹13,74,764/-.

5. The petitioner desirous of setting up a hotel in District Gorakhpur visited the website of respondent No. 2 and participated in the E-auction which was published by respondent No. 2 on its website. The petitioner participated in the E-auction on the premise that the land was situated at Gorakhpur to Deoria bypass road and the hotel would be in clear view and in easy access of the commuters using the highway/Main Road. Resultantly, the petitioner participated in the E-auction process and deposited the minimum registration amount for the respective plots as was stated in the advertisement. The E-auction was conducted on 06.10.2025 for the respective commercial plots on an "*as is where is*" basis. For commercial plot A, the petitioner bid ₹34,45,41,498/- and for Commercial plot B, ₹3,85,18,645/-. The petitioner was declared as the highest bidder for the 2 commercial plots, and allotment letters about the respective plots were issued by respondent No. 2 on 27.10.2025. The respective allotment letters stated that 40% of the bid amount was to be deposited within a period of one month from the date of issuance of the allotment letters and in case the bid amount was not deposited for the allotted commercial plot then the entire amount deposited as registration fees would be forfeited and the registration/ allotment would be cancelled resulting in allotment of the commercial plots to some other person.

6. The respondent No. 2 initially sent an allotment letter dated 27.10.2025 for commercial plot number A demanding ₹13,78,16,600/- as the 40% payment to be done after the petitioner was selected as the highest bidder. Similarly, another letter dated 27.10.2025 was sent for commercial plot number B demanding ₹1,50,07,458/- as the 40% payment to be done after the petitioner was selected as the highest bidder for the said plot. Since the requisite amount for the 2 commercial plots was not deposited, respondent No. 2 sent reminder letters dated 18.12.2025, 20.02.2026 and 17.03.2026 for payment of 40% of the bid amount, which was to be deposited in terms of the bidding conditions. The petitioner, in relation to the last demand letter dated 17.03.2026, sent two separate replies dated 20.03.2026 mentioning that the value of the property had diminished due to material alteration after the E-auction was done, which rendered the land in question unviable for commercial use. The petitioner stated that due to the construction of a flyover over the Deoria bypass Road, the front portion of the plot purchased by the petitioner has now been blocked due to the construction of the passage below the flyover. The petitioner submitted that the land lost its commercial potential and the ingress and egress of the vehicles and visitors to the plot is permanently obstructed, thereby changing the geographical matrix of the property and thus rendering it meaningless to carry out any commercial activity. In the said reply, the petitioner had asked for a refund of the registration fees deposited by the petitioner as the commercial value of the plots had diminished significantly in violation of the terms and conditions of the E-auction.

7. Ultimately, by means of letters dated 02.04.2026, the allotment made in favour of the petitioner about commercial plots A and B was cancelled, and the earnest money/ registration amounts respectively deposited by the petitioner were forfeited about the respective plots. Aggrieved by the forfeiture of the earnest money/ registration amounts, the present petition has been filed seeking a writ, order or direction quashing the impugned orders dated 02.04.2026 and further for a direction commanding the respondent to refund the entire registration amount of ₹1,02,73,114/- to the petitioner along with interest at the rate deemed just and proper.

PETITIONER'S SUBMISSIONS:

8. Learned Senior Advocate appearing on behalf of the petitioner made the following submissions to challenge the impugned orders and to seek a refund of the registration amount:

(i) The petitioner’s firm had participated in the E-auction as, according to the advertisement, the commercial plots were commercially viable for construction of a hotel which the petitioner wanted to construct in Gorakhpur. The petitioner, with a view to start the construction activities, participated in the E-auction and made the highest bid, which was nearly double the reserve price.

(ii) At the time the petitioner had participated in the E-auction, the petitioner was not aware that a flyover was to be constructed in front of the said plots, thus resulting in the blockage of the frontage of the plots as well as the main highway which was needed for the commercial activity to be conducted on the respective plots. The highway allowed for ingress and egress of vehicles and visitors to the proposed construction, which would be commercially viable for the petitioner.

(iii) The petitioner had submitted his reply to the last demand letters dated 17.03.2026 in which the petitioner specifically raised the issue of loss of commercial potential of the plots due to construction of the flyover and blockage of the frontage of the respective plots due to passage constructed below the flyover. The petitioner specifically stated that due to the change of the geographical matrix after the construction of the flyover on the main road, it was not feasible to construct the hotel as the ingress and egress of commuters and vehicles to the property is permanently blocked.

(iv) The forfeiture of the registration amount is tantamount to a penalty upon the petitioner and, in terms of section 74 of the Indian Contract Act, 1872 (hereinafter referred to as The Act), the penalty cannot be imposed upon the petitioner as the respondent No. 2 did not suffer any losses. There is no pre-estimate of loss suffered by the respondent 2. As the respondent No. 2 was not at any loss, therefore forfeiture of the registration amount is patently perverse in law and arbitrary and therefore the impugned orders are liable to be set aside. In reliance on the said proposition, learned Senior Advocate for the petitioner relied upon *Kailash Nath Associates versus Delhi Development Authority and another*[1], *Maula Bux versus Union of India*[2]and *Fateh Chand vs. Balkishan Dass*[3].

<u>RESPONDENT'S SUBMISSIONS:</u>

9. The learned advocate on behalf of the respondent 2 to 4 made the following submission to refute the contentions of the petitioner:

(i) The writ petition is not maintainable in light of clause 7.5 of the terms and conditions of the E-auction which stipulate arbitration in case of dispute between the parties. Therefore, the present petition is not maintainable in light of the availability of alternate dispute resolution forum.

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[1] *(2015) 4 SCC 136*

[2] *(1969) 2 SCC 554*

[3] *AIR 1963 SC 1405*

(ii) The impugned orders are perfectly justified and as per the terms and conditions of the E-auction. Condition 4.2 specifically stated that in case the highest bidder does not deposit the E-auction bid amount, then the registration amount shall be forfeited. The forfeiture is as per the terms and conditions, and there is no illegality in the same.

(iii) The forfeiture is not a penalty upon the petitioner but rather a condition to enforce the contract. The registration amount is like earnest money, and the purpose of the deposit of earnest money/ registration amount is to ensure that the highest bidder fulfils his part of the obligations.

(iv) Section 74 of the Act is not applicable in the present case, and there is no question of any loss. The forfeiture is based upon the breach of the terms and conditions, and as the deed has not been executed between the parties, there is no application of section 74 of the Act. Learned counsel placed reliance upon *Shree Hanuman Cotton Mills and another vs. Tata Aircraft Limited*[4] to submit that earnest money/ registration amount does not partake the nature of penalty to attract section 74 of the Act.

(v) The flyover was already constructed when the E-auction took place. The process for the flyover started in the year 2022, and when the E-auction was conducted, the flyover was in place. Furthermore, the plot was E-auctioned on an "*as is where is*" basis and therefore it was the responsibility of the petitioner to inspect the site before participating in the E-auction process. Once such a condition exists, then the petitioner cannot take a stand that due to construction of the flyover the commercial viability of the plot diminished as the petitioner did not inspect the site to check the location.

(vi) The contention of the petitioner that the flyover did not exist and was subsequently constructed cannot be believed. It is difficult to reconcile that the petitioner having invested such a huge amount of money would have never inspected the site in question. The averment that the petitioner was not aware of the construction of the flyover is patently false. Furthermore, considering the

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[4] *1970 (3) SCR 127*

"*as is where is*" clause, the principle of "*caveat emptor*" is squarely applicable in the present case and therefore the contention that the construction of the flyover was not in the knowledge of the petitioner cannot be believed.

(vii) The petitioner has not challenged the forfeiture condition in the contract as being arbitrary or unconscionable and therefore the prayer for refund is misconceived.

10. Mr. Devesh Vikram, learned Additional Chief Standing Counsel appearing for respondent no. 1 has adopted the arguments made on behalf of respondent nos. 2 to 4. He has submitted that the impugned orders suffer from no illegality and as such no interference is required in the impugned orders.

11. We have heard the rival submissions and perused the records of the case. Based on the submissions and records annexed, the following points of determination are framed for adjudication of the dispute.

POINTS OF DETERMINATION:

12. The points of determination are as follows:

(I) Whether the writ petition is liable to be dismissed on the ground of alternate remedy of Arbitration as per condition 7.5 of the E-auction conditions?

(II) Whether the forfeiture is justified in the present case?

(III) Whether the petitioner is entitled to any refund of the forfeited amount in light of section 74 of the Act?

(IV) Whether the lack of challenge to the forfeiture clause will render the prayer for refund otiose?

DISCUSSION:

13. Before proceeding into the matter, it is necessary that the question of maintainability of the writ petition be addressed. Condition 7.5 of the E-auction conditions specifies that any dispute arising about registration/ E-auction, possession, cancellation or any dispute which arises at the time of construction shall be referred to arbitration, either to be conducted by the Vice-Chairman, Gorakhpur Development Authority or any person nominated by him. The relevant clause is reproduced below:

> "5. पंजीकरण आवंटन, कब्जा, निरस्तीकरण अथवा निर्माण आदि के समययदि किसी भी विषयक पर विवाद उत्पन्न होने की स्थिति में उपाध्यक्ष, गोरखपुर विकास प्राधिकरण,गोरखपुर या उनके द्वारा नामित अधिकारी बतौर आर्बीट्रेटर मामले को आर्बोट्रेटर एण्ड कान्सिलेशन एक्ट 1996 के अनुसार निस्तारित करेगा, उनके द्वारा दिया गया फैसला अन्तिम एवं मान्य होगा।"

It is an admitted fact that the petitioner never gave any notice for appointment of any arbitrator. Upon cancellation and forfeiture, the present writ petition was filed. Though a preliminary objection was taken in the counter affidavit, the same was never pressed upon during arguments, which leads to the conclusion that the respondents are not relying upon the arbitration clause to challenge the writ petition on the ground of maintainability.

14. Furthermore, in ***Surendra Pal Singh vs. State of U.P. and Others***[5], while relying upon **L. *Hirday Narain Vs. Income-Tax Officer, Bareilly***[6], ***Durga Enterprises (P) Ltd. & Anr. Vs. Principal Secretary, Govt. of U.P. & Ors***[7] *and* ***Roshan Lal Vs. State of Uttar Pradesh& Others***[8], while dealing with the issue of maintainability of writ petition in light of alternate remedy held that once pleadings have been exchanged then the writ petition should not be dismissed on the ground of alternate remedy. Furthermore, the learned senior advocate appearing on behalf the petitioner submitted that the *lis* should be decided once the pleadings have been exchanged. Hence, considering the settled principles, we are of the considered view that the writ petition is entertainable and cannot be dismissed on the ground of alternative remedy.

15. Now coming to the issue as to whether the cancellation and forfeiture were correct or not, it would be useful to reproduce the relevant clauses of the condition as enumerated in the E-auction conditions:

> *"1.* व्यवसायिक भूखण्ड का आवंटन "जहां है जैसे है' के आधार पर ई-नीलामी के माध्यम से किया जायेगा।

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[5] *MANU/UP/1331/2026*

[6] *AIR 1971 SC 33*

[7] *(2004)13 SCC 665*

[8] *2009(9) ADJ 670 (DB)*

> *2.* पंजीकरण के समय सम्पत्ति मूल्य का *10* प्रतिशत *(*सामान्यवर्ग*)* व *5* प्रतिशत *(*आरक्षितवर्ग*)* के आवेदको को पंजीकरण शुल्क प्राधिकरण निधि में ऑनलाइन जमा करना होगा।
>
> *3.* आवंटन पत्र निर्गत होने की तिथि के एकमाह के अन्दर उच्चतम ई-नीलामी के मूल्य का *40* प्रतिशत आवंटन धनराशि जमा करनाहोगा।
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> *4.*भू-मूल्यका *12* प्रतिशतफी-होल्ड शुल्क एवंअन्यनिर्धारित शुल्क आवंटन धनराशि के साथदेय होगा।
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> *5.*अवशेष धनराशि को *02* वर्ष में *12* प्रतिशत ब्याज सहित *08* त्रैमासिक किश्तों में जमा करना होगा।किश्त की धनराशि को अथवा किसी भी धनराशि को वांछित तिथि विलम्ब से जमा करने पर *15* प्रतिशत दण्डात्मक ब्याज पृथक से देयहोगा.*"*

Thus, the above conditions make it clear that the plots were sold on an *"as is where is"* basis with the registration cost of the plots being 10% of the cost of the plots as mentioned in the advertisement. Furthermore, upon issuance of allotment letter, the highest bidder would have to deposit 40% of the highest bid within a period of one month. The rest of the amount would be deposited within a period of two years in 8 quarterly installments with 15% penal interest on late payment.

As regards forfeiture, condition 4.2 states as follows:

> *"2.* उच्चतम बोली दाता. द्वारा बोली की धनराशि जमा न करने पर पंजीकरण की समस्त जमा धनराशि जब्त कर लिया जायेगा.*"*

The forfeiture was allowed of the registration amount in case the highest bidder did not deposit the bid amount.

16. Learned Counsel for respondent 2 has stressed upon the fact that the E-auction was conducted on "*as is where is*" basis and therefore the contention that the commercial value and viability of the plots diminished due to construction of the flyover is incorrect. In the counter affidavit, Respondent 2 took a specific stand about the construction of the flyover when the E-auction was conducted. In the rejoinder affidavit, the same has been denied, but the petitioner has failed to bring on record any document evidencing the fact that the petitioner had inspected the site and found that the flyover was not under construction. Once the condition is "*as is where is*" basis, then it would be deemed that by submitting the bid request the bidder has made a complete and careful examination of the property and has satisfied himself/itself of all the relevant and material information in relation to the property. Furthermore, once the above condition is stated in the E-auction, then there is no question of non-disclosure of vital information *vide Jayshree Kailash Wani vs. Official Liquidator*[9], *Punjab Urban Planning and Dev. Authority and others. vs. Raghu Nath Gupta and others*[10].

17. There is nothing on record to show that the petitioner inspected the property to ascertain its location or the impediments to construction activity. As per respondent 2, the construction for the flyover started much before the E-auction took place in 2025, as is evidenced from the notification dated 18.11.2022 about grant of financial sanction for construction of flyover. Thus, in our considered view, the condition as enumerated in the E-auction conditions would render any objection about decrease in commercial viability and value superfluous. The petitioner entered the E-auction with open eyes and conscious mind, and it was upon the petitioner to ascertain the location and the impediments to utilization of the plots. When the commercial plots are sold on "*as is where is*" basis, the investor i.e. the petitioner must be more conscious of the entire transaction. Any reasonable and prudent person would ensure that before entering the commercial transaction of auction, the site would be inspected. It is only after satisfaction regarding the site has been done that any person would dare venture into the auction process. It is difficult to reconcile the fact that the geographical matrix of the plot changed after auction when the matrix could be readily seen by a simple inspection of the site.

18. The petitioner was to deposit 40% of the bid amount within a period of one month from the date of allotment letter. The said letter was issued on 27.10.2025, and the last date of deposit was 26.11.2025. The petitioner did not deposit the said amount within the time period as stated in the allotment letter. The respondent 2 sent three reminders to the petitioner to deposit the amount, but the said amount was not deposited. In fact, upon the receipt of the last demand letter dated 17.03.2026, the petitioner sent his replies stating that due to

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[9] *(2025) 1 ADJ 808*

[10] *AIR 2012 SC 3194*

construction of the flyover, the commercial value and the viability of the project had diminished and therefore due to a material change in the geographical matrix it is not at all feasible to construct a hotel or to carry out any commercial activity. The petitioner also demanded refund of the registration amount due to breach in the terms of the E-auction at the behest of respondent 2.

19. The core issue that arises now is who violated the terms and conditions of the E-auction? As per the conditions enumerated above, the petitioner was to deposit 40% of the bid amount within a period of one month from the date of allotment letter. This amount was admittedly not deposited by the petitioner within the stipulated time period. Upon two reminders being sent, the said amount remained undeposited. Apparently, no replies were sent to the said notices or any time extension sought for deposit of 40% of the bid amount. It is only when the last demand notice dated 17.03.2026 was sent that the petitioner submitted his reply foisting the breach of terms of the E-auction on respondent 2. It is patently clear that the breach of terms of the E-auction occurred on 27.11.2025 when the time period to deposit 40% of the bid amount expired. Till this time, the petitioner did not raise any objections about the construction of the flyover. It is also clear that the foisting of the breach upon the respondent 2 by the petitioner in his reply dated 20.03.2026 is incorrect. The reason for the same is two-fold. Firstly, the plot was sold on an "*as is where is*" basis, and therefore it was the responsibility of the petitioner to ascertain the location of the plot and the impediments to construction. This having not been done, no breach could be attributed to Respondent 2 about the construction of the flyover, as a simple inspection of the plots would have revealed the same. Secondly, the petitioner never replied to the first two notices and only when the third notice was sent did the petitioner reply, attributing breach to Respondent 2. As we have held above, the "*as is where is*" condition would render any objection about decrease in commercial value superfluous, and therefore any alleged breach of withholding of material information, i.e. the construction of flyover, cannot be attributed to Respondent 2. In our considered view, the breach occurred due to the actions of the petitioner, and the Respondent 2 cannot be faulted for any breach, as the onus to verify the location of the plot was on the petitioner, which the petitioner clearly failed to do so.

20. Once the breach of terms of the E-auction is attributed to the petitioner, the next question would be whether Respondent 2 was justified in forfeiting the registration amount? Respondent 2 has relied upon condition 4.2 to forfeit the registration amount as the non-deposit of 40% of the bid amount led to cancellation and refund was rejected on the ground of condition 4.2 of the E-Auction.

21. Before we examine the impugned orders for any alleged illegality, it would be useful to keep in mind that "*it is a well-recognised principle of construction of a contract that it must be read as a whole to ascertain the true meaning of its several clauses and the words of each clause should be interpreted to bring them into harmony with the other provisions if that interpretation does no violence to the meaning of which they are naturally susceptible" {vide BPL Limited vs. Morgan Securities and Credits Private Limited*[11]*}*. Keeping in light the above principle, the power to forfeit must be examined considering other clauses, especially those which put a condition of deposit on the petitioner. The forfeiture condition is condition 4.2, which refers to the registration amount being forfeited in case the bid amount is not deposited. The onus of deposit is condition 2.2, 2.3 and 2.5. A combined reading of the same would show that the bidder must deposit 10% of the value of the plot as registration amount. Upon being declared as the highest bidder, 40% of the bid amount must be deposited within one month from the date of issuance of the allotment letter. The balance of the amount is to be deposited for 2 years at 12% interest in 8 quarterly instalments. Thus, the petitioner had to deposit the entire bid amount within a period of 2 years and 1 month from the date of issuance of the allotment letter (assuming that time extension did not apply). Condition 4.2 states that if the highest bidder does not deposit the entire bid amount, then the registration amount would be forfeited. If we consider the import of the above-mentioned principle and its application to the present facts, it is apparent that the non-deposit of 40% of the bid amount is not a condition to forfeit the registration amount but rather the non-deposit of the entire bid amount within the time period specified in the E-auction condition would lead to forfeiture of the registration amount. This reasoning can also be tested on the condition mentioned in the allotment letter, which is reproduced below:

[11] *(2026) 3 SCC 1*

> *"3)* यदि आवंटित व्यवसायिक भूखण्ड के लिए बोली की धनराशि जमा न करने पर पंजीकरण की समस्त धनराशि जब्त करली जायेगी तथा पंजीकरण / प्रदेशन पत्र निरस्त कर सम्पत्ति किसीअन्यको नियमानुसार आवंटित कर दी जायेगी।"

The condition in the allotment letter also mentions the phrase "बोली की धनराशि" {bid amount (*translation by Court*)} and states that in case the bid amount is not deposited, then the registration amount would be forfeited. Thus, in both the documents, i.e. the conditions of E-auction and the allotment letter, the reason for forfeiting is the non-deposit of the bid amount. The condition to forfeit the registration amount on non-deposit of 40% of the bid amount cannot be read into the conditions as, upon plain and simple interpretation of both the documents, no such forfeiture can be inferred. Therefore, in our considered view, the forfeiture of the registration amount on the ground of non-deposit of 40% of the bid amount is illegal and against the terms of the E-auction and the allotment letter.

22. Ordinarily, when the action of the State or any one of its instrumentalities is held to be illegal, arbitrary or perverse in law, the result is an issuance of writ of certiorari by setting aside the order and remanding the same for fresh consideration. However, in the present case there are certain admitted/ undisputed facts which need to be considered before the writ of certiorari can be granted to the petitioner. They are as follows:

(i) The petitioner has not sought to challenge condition 4.2 of the terms of the E-auction as being arbitrary or unconscionable.

(ii) The petitioner has not sought time extension or restoration of his allotment pursuant to the petitioner being the highest bidder.

(iii) The prayer is to quash the forfeiture order and to refund the registration amount forfeited on the ground that due to changed geographical matrix, the petitioner is no longer interested in pursuing his development plans.

(iv) The replies of the petitioner dated 20.03.2026 are consistent with the stand that the petitioner is no longer interested in pursuing his development plans and only prays for refund of registration amount.

Thus, what is clear from the above is that the petitioner has no intention to abide by the terms of the E-auction or to honour the commitment of development pursuant to the allotment of the commercial plots. Once the undisputed position is that there is no intention to pay the bid amount, then the forfeiture as per condition 4.2 of the terms of the E-auction is attracted, and to that extent the order impugned is correct.

23. What has persuaded this Court to reach this conclusion is the undisputed fact that there will be no payment of bid amount at any point of time. The learned Senior Advocate for the petitioner never once submitted that the petitioner is interested in restoration of the allotment nor is there any pleading set up in the writ petition to support such a claim. In fact, the prayer for restoration of the allotment is conspicuously absent in the prayer clause. Thus, even if a writ of certiorari is issued for reconsideration, the only conclusion that the Authority will again reach is forfeiture of the registration amount due to withdrawal from the allotment and subsequent prayer for refund of registration money. The exercise of issuance of the writ would be futile.

24. Therefore, in the considered view of this Court, even if the forfeiture of the registration amount on the ground of non-deposit of 40% of the bid amount was not correct even then the invocation of condition 4.2 to forfeit the registration amount is correct as the petitioner has clearly stated that he does not wish to continue with the allotment and develop the plots but rather wishes for refund of the registration amount only. Therefore, the impugned orders need no interference from this Court.

25. The learned senior advocate on behalf of the petitioner has argued with some vehemence that the forfeiture of the registration amount is like a penalty and in violation of section 74 of the Act. He has relied upon ***Kailash Nath Associates versus Delhi Development Authority and another***;[12]***Maula Bux versus Union of India***[13]and ***Fateh Chand vs. Balkishan Dass***[14]to buttress his argument about section 74 and to the fact that being no pre-estimate of loss therefore the forfeiture is like a penalty and thus liable to be stuck down as arbitrary or unconscionable. Before we examine the argument, it would be beneficial to understand the precedents relied upon by the senior advocate.

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12 *(2015) 4 SCC 136,*

13 *(1969) 2 SCC 554*

14 *AIR 1963 SC 1405*

26. In ***Fateh Chand*** *(supra)*, the Supreme Court examined a deed of sale which provided that if the purchaser could not register the deed by the stipulated date, the earnest money and the sale price ₹1,000/- and ₹24,000/- respectively, paid by the purchaser would be forfeited. The Court applied the Dunlop test (**Dunlop *Pneumatic Tyre Co Ltd. v. New Garage and Motor Co Ltd*** [15]observed that the ₹24,000/- stipulation was not a "genuine pre-estimate of loss" and was manifestly a stipulation like a penalty.

27. In ***Maula Bux*** *(supra),* it was held by the Supreme Court that in cases where the parties are unable to determine the reasonable compensation, if the amount decided by the party is a "genuine pre-estimate of damages" it should be considered a reasonable compensation. The Court further held that in case the forfeiture amounted to a penalty, then section 74 would be applicable.

28. In ***Kailash Nath Associates*** *(supra)*, the Supreme Court held that only those liquidated damages clauses which are "a genuine pre-estimate of damages" can be enforced as "reasonable compensation. The Court further held that section 74 will apply to cases of forfeiture of earnest money, but where forfeiture takes place under the conditions of the auction before agreement is reached, then section 74 would have no application.

29. Learned counsel for respondent 2, in reply to the above precedents, has relied upon ***Shree Hanuman Cotton Mills*** *(supra)* to contend that forfeiture is not like a penalty. In the said case, the Supreme Court laid down 5 conditions to hold the above. The five conditions are as follows:

> *"From a review of the decisions cited above, the following principles emerge regarding "earnest":*
>
> *(1) It must be given at the moment at which the contract is concluded.*
>
> *(2) It represents a guarantee that the contract will be fulfilled or, in other words, 'earnest' is given to bind the contract.*
>
> *(3) It is part of the purchase price when the transaction is carried out.*

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[15] *(1915) AC 79*

> *(4) It is forfeited when the transaction falls through by reason of the default or failure of the purchaser.*
> *(5) Unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest"*

Learned Counsel for the Authority submitted that on application of the five conditions as stated above, it is clear that section 74 has no application as the forfeiture is not like a penalty.

30. To see whether the precedents cited by learned Senior Advocate are applicable in the present case, it must be seen in what context the said decisions were given. ***Fateh Chand*** *(supra)* was a decision on the point as to whether the part of sale price of ₹24,000/- could be forfeited when the earnest money of ₹1,000/- was forfeited and for which no challenge was raised. In this context, the Court held that ₹24,000 was like a penalty upon the agreement not being fulfilled, i.e. the sale deed not being executed. Thus, the precedent has no bearing in deciding the present dispute or the registration amount being forfeited. In ***Maula Bux*** *(supra),* the ratio laid down by the Supreme Court was not based upon the factum of forfeiture of earnest money but on forfeiture of security deposit to ensure that the contract was fulfilled. The Supreme Court held that forfeiture of the security amount was a reasonable pre-estimate of loss.

31. In ***Kailash Nath Associates*** *(supra),* the Supreme Court held that the appellant, i.e. Kailash Nath Associates, was not guilty of any breach of the terms of the Auction. Furthermore, the applicability of the section was made applicable only in cases where a suit was filed. It is worthwhile to mention that all the above three cases arose out of suit proceedings and not writ proceedings. In *Kailash Nath Associates (supra),* the plaintiff lost in the High Court as well as the Supreme Court in writ proceedings and Special Leave to Appeal respectively. Thereafter, the suit for specific performance was filed, which was decided in favour of the plaintiff.

32. Thus, all the precedents cited by the learned senior advocate for the petitioner, though they appeared to be attractive for consideration, fall short on the basic premise that "*it is also well-settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a* *decision.” {Vide* ***Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd***[16], ***Smt. Ram Rakhi v. Union of India & Ors***[17], ***Delhi Administration (NCT of Delhi) v. Manoharlal***[18], ***Haryana Financial Corporation and Anr. v. M/s Jagdamba Oil Mills & Anr***[19]*and* ***Dr. Nalini Mahajan etc. v. Director of Income Tax (Investigation) & Ors***[20] and thus have no applicability in the present case.

33. In ***Shree Hanuman Cottom Mills*** *(supra),* the Supreme Court held that earnest money can be forfeited. In ***K.R. Suresh vs. R. Poornima and others***[21], while also considering the import of ***Shree Hanuman Cottom Mills*** *(supra),* the Supreme Court has elaborately dealt with the concept of “earnest money” which need not be reproduced. Suffice it to say the principles stated in the said judgments about the definition of earnest money apply in the present case as well. In the present case, the 10% deposit at the time of registration is nothing but earnest money to be deposited with respondent 2 as per the reasoning laid down in the above judgments. The Supreme Court further upheld that in case there are no pleadings about forfeiture being regarded as a penalty, thereby attracting section 74 of the Act, then it could not be considered. In the present case also, there is no foundation to raise the issue of applicability of section 74 of the Act as the same is absent in the writ petition. A ground in the absence of pleading in the writ petition cannot be seen or even adjudicated upon *(vide* ***Rikhab Chand Jain vs. Union of India and others***[22]*).* Thus, in our considered view, the ratio laid down in ***Shree Hanuman Cottom Mills*** *(supra)* about forfeiture of earnest money is fully applicable in the present case.

34. In ***BPL Limited vs. Morgan Securities and Credit Pvt. Ltd***[23], the Supreme Court had the occasion to see the import of the three judgments cited

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[16] *(2003) 2 SCC 111*

[17] *AIR 2002 Delhi 458,*

[18] *AIR 2002 SC 3088*,

[19] *JT 2002 (1) SC 482*

[20] *(2002) 257 ITR 123*

[21] *2025 INSC 617*

[22] *2025 INSC 1337*

[23] *(2026) 3 SCC 1*

by the learned senior advocate for the petitioner. The Supreme Court in the above judgment has taken a different view from what had been laid down in the three judgments cited for the petitioner about pre-estimate of loss and has approved the test laid down in ***Cavendish Square Holding BV v. Talal El Makdessi***[24]. Taking note of the three judgments cited on behalf of the petitioner, the Supreme Court has approved the *Cavendish Test* as a test keeping in line with modern realities of commercial transactions and thereby diluting the ratio of *Fateh Chand, Maula Bux and Kailash Nath Associates*. Suffice to say that the issue of pre-estimate of loss under section 74 of the Act cannot now be seen to be a good yardstick to adjudicate the present case.

35. Thus, in our considered view, the forfeiture of earnest money of 10% of the bid amount is not penal in the ordinary sense, thus rendering section 74 of the Act inapplicable *(vide* ***K. Suresh vs. r Poornima and others***[25]***)***.

36. Furthermore, the Supreme Court in ***BPL Limited*** *(supra)* also held that if a party has enjoyed some benefit under a commercial transaction, then it cannot turn back and say that the benefit was unconscionable, arbitrary or opposed to public policy. It held that *"the fact of the matter is that the Appellant had signed the agreement with open eyes and agreed to abide by the terms on which the Bill discounting facility was offered by the Respondent. In such circumstances, the doctrine of unconscionable contract cannot be invoked for frustrating the action initiated by the Respondent for recovery of its dues."*

37. The absence of challenge to the forfeiture is also fatal to the case of the petitioner about refund of the amount forfeited. Suffice it to say that the said issue is no longer *res integra* in light of the judgment of *BPL Limited (supra).*

<u>ANSWERS TO THE POINTS OF DETERMINATION:</u>

38. Regarding issue no. 1 as to whether the writ petition is liable to be dismissed on the ground of alternate remedy, the issue is answered in the negative, holding that the writ petition is maintainable.

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[24] *[2015] UKSC 67*

[25] *2026 INSC 617*

39. Regarding Issue no. 2 as to whether the forfeiture is justified in the present case, the issue is answered in the affirmative, holding that the forfeiture is justified in the light of facts and circumstances of the case.

40. Regarding issue no. 3 as to whether the petitioner is entitled to any refund of the forfeited amount in light of section 74 of the Act, it is answered in the negative by holding that section 74 of the Act has no applicability as the forfeiture is not like a penalty which would attract section 74.

41. Regarding issue no. 4 as to whether the lack of challenge to the forfeiture clause will render the prayer for refund otiose, the issue is answered in the affirmative in light of the judgment given in *BPL Limited (supra)*.

CONCLUSIONS:

42. In light of the findings and the observations given above, the writ petition is without merit and is **dismissed**. There shall be no order as to cost.

(Kunal Ravi Singh, J.) **(Mahesh Chandra Tripathi, J.)**

6 August, 2026
Sumit S