IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.10383 of 2001
Date of decision: 05.02.2015

Jatinder Sood

-----Petitioner (s)

V/s

Commissioner and Secretary, Govt. of Haryana & others.

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Puneet Jindal, Sr. Advocate with
Mr. Parambir Singh, Advocate
for the petitioner.

Mr. P.K. Jangra, Addl.A.G., Haryana.

Mr. Raman Gaur, Advocate
for respondents no.2 and 3.

<u>HARI PAL VERMA, J.</u>

The petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India challenging the order of resumption dated 20.1.1998 (Annexure R/1) conveyed through letter dated 21.8.1998

(Annexure P-5), whereby booth No.26/19 II, Faridabad has been ordered to be resumed. Challenge has also been raised to the order dated 15.6.2000 (Annexure P11) and order dated 18.12.2000 (Annexure P12) whereby appeal and revision petition, respectively, against the order of resumption have also been dismissed.

Briefly stated, the facts of the case are that on 10.7.1989, the petitioner participated in a bid for allotment of two booths sites Nos.26 and 27 situated in Sector 19-II, Faridabad in the auction conducted by respondent no.2 and deposited 10% of the bid money i.e. Rs.20,100/- vide receipt dated 10.7.1989, as the total offer of the petitioner for the booth was accepted at Rs.2,01,000/-. Necessary letter of allotment was issued to the petitioner on 17.8.1989 (Annexure P1). Accordingly, the petitioner deposited the required 15% of the sale consideration so as to make total 25% of the price of the plot and on 18.9.1989, a sum of Rs.30,150/- was deposited by the petitioner, entitling him to get the possession of the plot, as provided under Clause 6 of the Allotment Letter. However, respondent no.3 failed to offer the possession of the site in question, for which, the petitioner wrote a letter dated 16.1.1990 for handing over the possession. As per Clause 5 of the Allotment Letter, the respondents were entitled to charge interest @ 10% on instalments provided the possession is offered to the allottee. Since the respondents failed to offer the possession, they were not entitled to charge interest on the instalments. On account of certain financial stringencies and in view of the fact that there was large scale violation of bye-laws in Faridabad town, as the residential premises were allowed to be used for commercial activities as a result of which the rents of the shops were very low and there was hardly any demand for commercial sites/booths, the petitioner could not make payment of the instalments regularly on the due dates. Petitioner deposited Rs.44,471.25 on 28.1.1992 and thereafter, made a lump sum payment of Rs.1,47,732/- on 23.5.1996 and in this manner, the petitioner made entire payment of Rs.2,42,453.25 including interest @ 10% as on 23.5.1996, despite the fact that possession was not offered. After making the entire payment, vide letter dated 23.5.1996, the petitioner requested the respondents to give the possession of the site and also to allow sanction of the plans so that the petitioner could start construction thereon. It was also requested to defer the levy of interest/penalties till the decision of various SLPs which were pending before the Hon'ble Apex Court. It has been submitted that because of pending litigation in the Hon'ble Supreme Court, no site plan was sanctioned by the respondent no.2 in the town of Faridabad for two years i.e.

from May, 1996 to June, 1998 within the 5 kms. radius of Suraj Kund and Badhkal Lake Resorts. The Sector 19-II, Faridabad, where the booth in question is situated, falls within that area. The respondents failed to develop the area roads, parking area, street lights and toilets of the said market in Sector 19-II, Faridabad, resultantly, no development was carried out in said area. Since the petitioner retired from Government service in November, 1995, he invested all his retiral benefits for making payment to respondent no.3 as after his retirement, he decided to start a small venture to keep himself busy. Thus, he was in dire need of possession of the booth in question. Therefore, vide letter dated 18.8.1998, the petitioner requested the respondent no.3 to inform him about additional interest, if any, due towards him along with the statement of accounts.

It is in response to letter dated 18.8.1998, the petitioner was informed by respondent no.3, vide letter dated 21.8.1998 (Annexure P5), that booth No.26 of the petitioner stands resumed and therefore, the statement of accounts cannot be given to him. In response to the letter of resumption dated 20.1.1998, which was informed to the petitioner vide letter dated 21.8.1998, the petitioner wrote another letter dated 14.9.1998 stating therein that he has paid full auction price along with 10% interest and no instalment is outstanding towards him and that no procedure, as required under Section 17 of the Haryana Urban Development Authority Act, 1977 (for short, "the HUDA Act"), has been followed by the respondent no.3 while passing the order of resumption. Accordingly, the order of resumption was pleaded to be illegal. Against the order of resumption dated 20.1.1998, which was conveyed to the petitioner vide letter dated 21.8.1998, the petitioner filed an appeal. The said appeal was dismissed vide order dated 15.6.2000 (Annexure P11) being time-barred and not-maintainable. The petitioner filed further revision petition against the order dated 15.6.2000, but the said revision petition was also dismissed vide order dated 18.12.2000 (Annexure P12) with the observation that notices were given to the allottees at the given addresses, but the allottee did not turn up for hearing of the case and he also failed to explain the reasons for late filing of the appeal.

It is in the aforesaid circumstances the petitioner has filed the present writ petition challenging the order of resumption dated 20.1.1998 as well as orders dated 15.6.2000 and 18.12.2000 passed in appeal and revision petition respectively.

On notice having been issued, written statement has been filed on behalf of respondents no.2 and 3, wherein while admitting issuance of the allotment letter (Annexure P1), it has been submitted that the letter of allotment (Annexure P1) has to be read as whole and not in part. It has been further averred that mentioning of note at the bottom of the allotment letter has been admitted by the petitioner, as the said note was there at the time of issuance of the allotment letter, as such, the same was in the knowledge of the petitioner. The terms and conditions of the allotment letter as well as note regarding charging of 18% interest on delayed payments have also been accepted by the petitioner. Thus, the note having been there at the time of issuance of the allotment letter, was binding upon the petitioner and makes no difference as to whether the same bear the signatures of the officers of the respondent-authorities or not. Similarly, it has also been pleaded that it is wrong that the possession of the booth in question was never issued to the petitioner. Rather, Clause 6 of the allotment letter clearly stipulates that the possession may be taken immediately after making the payment of balance 15%, as demanded in Clause 4 of the allotment letter. Since the possession stood already offered, it was incumbent upon the petitioner to take delivery of the booth in question, which he failed to do. Since the petitioner did not deposit the due instalments within the prescribed period, he was liable to pay interest @ 18% on delayed payments, as mentioned in the note given on the allotment letter. At the time of passing the order of resumption dated 20.1.1998 (Annexure R/1), an amount of Rs.5,87,570/- was due from the petitioner which he failed to deposit despite issuance of various notices under Sections 17(1)(2)(3) and (4) of the HUDA Act prior to the passing of the order of resumption. It has been further pleaded that full opportunity was granted to the petitioner as required under the law before passing of the resumption order.

We have heard learned counsel for the parties.

Learned counsel for the petitioner has argued that the petitioner was not issued any notices as provided under Section 17 of the HUDA Act and therefore, he could not prefer any appeal within time. Despite the constraints of not receiving the relevant documents, the petitioner preferred an appeal before respondent no.2 on 20.1.1999 and appended the statements of accounts on the basis of which the petitioner had deposited all the instalments along with 10% interest. Since the petitioner was not handed over the possession of the plot, there was no occasion for the respondents to charge interest. The respondents are bound by the terms and conditions of the allotment letter, as per which, the booth was required to be delivered to the petitioner the moment 25% of the sale consideration was deposited by the petitioner.

On the other hand, learned counsel for the respondents has argued that the petitioner was provided ample opportunities, but he failed to deposit the outstanding amount and on account of non-depositing the amount, the order of resumption was passed after complying with the provisions of Sections 17(1)(2)(3) and (4) of the HUDA Act. Since the petitioner did not deposit the due instalments within the prescribed period, he was liable to pay interest @ 18% on the delayed payments, as mentioned in the note given in the allotment letter.

Considering the rival contentions of the parties, we feel that the present writ petition deserves to be accepted provided the petitioner deposits the outstanding amount within the time frame directed.

Accordingly, we allow the present writ petition and quash the order of resumption dated 20.1.1998 (Annexure R/1) , conveyed through letter dated 21.8.1998 (Annexure P5) as well as orders dated 15.6.2000 (Annexure P11) and 18.12.2000 (Annexure P12) passed in appeal and revision respectively. The respondents are directed to calculate and communicate to the petitioner about the total outstanding amount along with interest etc. within one month from today. After communicating such total outstanding amount, the petitioner shall deposit the calculated outstanding amount within two months thereafter and in case the petitioner fails to deposit such calculated amount, the order of resumption shall be revived.

(HEMANT GUPTA)	**(HARI PAL VERMA)**
JUDGE	**JUDGE**

February 05, 2015
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