IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.10284 of 2013 (O&M)
Date of decision: 8.1.2015

Rajinder Gautam

-----Petitioner

V/s

Haryana Urban Development Authority & others

-----Respondents

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. Sanjeev Sharma, Sr. Advocate with
Mr. Shekhar Verma, Advocate
for the petitioner.

Mr. Munish Bansal, Advocate
for respondents.

HARI PAL VERMA, J.

The petitioner has filed the present writ petition challenging the order dated 7.9.2002 (Annexure P-10), whereby the respondent no.1 has passed the order of resumption of residential plot No.1288, Sector 45, Gurgaon. Challenge has also been made to order dated 17.2.2004 (Annexure P-15) and order dated 25.4.2008 (Annexure P-17), whereby the appeal as well as revision petition respectively against the order of resumption dated 7.9.2002 have been dismissed.

Briefly stated, the facts of the case are that residential plot No.1288, Sector 45, Gurgaon measuring 171 square meters (200 sq.yds.) approximately was allotted to the petitioner for a sum of Rs.4,80,680/- vide allotment letter dated 24.2.1998. As per the terms and conditions laid down in the allotment letter, the petitioner deposited 25% of the total allotment/sale price within 30 days from the date of allotment. For payment of the remaining 75% of the amount, two options were provided to the petitioner namely:-

"i. Firstly, the entire balance amount could have been deposited within 60 days from the date of issuance of allotment letter without interest and/or;

ii. Secondly, in six annual instalments along with 15% simple interest per annum. "

Petitioner opted for the second mode of payment. The repayment schedule in terms of the allotment letter is reproduced as under:-

"Sr. No.	***Installment***	***Due Date***	***Paid on***
1.	*60,083/-*	*24.03.1999*	*12.09.2000*
2.	*60,083/-*	*24.03.2000*	*12.09.2000*
3.	*60,083/-*	*24.03.2001*	

4.	*60,083/-*	*24.03.2002*	
		07.09.2002	***Plot resumed***
5.	*60,083/-*	*24.03.2003*	
6.	*60,083/-*	*24.03.2004"*	

As per clause 6 of the allotment letter, each instalment was recoverable together with interest on the balance price. The interest shall, however, accrue from the date of possession. Clause 7 of the allotment letter further made it clear that the possession of the site will be offered to the allottee on completion of the development work in the area. Thus, as on the date of issuance of the allotment letter, the plot was not fully developed.

On account of enhancement of land compensation for the acquired land, respondent no.1 issued a demand notice to the petitioner for the enhanced sale price vide letter dated 10.3.1999. While issuing the notice for payment of additional price on account of enhanced compensation, an amount of Rs.2,15,192/- was shown recoverable from the petitioner with separate payment schedule which is notified as under:-

S.N.	*Amount*	*Time Period*	*Due Date*	*Paid on*
1.	*43,038/-*	*First 20% within 30 days of*	*10.04.1999*	*12.09.2000*

		issue of notice		
2.	*43,038/-*	*Second 20% within 6 months of issue of notice.*	*10.09.1999*	
3.	*43,038/-*	*Third 20% within 1 year of issue of notice*	*10.03.2000*	
4.	*43,038/-*	*Fourth 20% within 1½ years of issue of notice.*	*10.09.2000*	
5.	*43,038/-*	*Balance payment within 2 years of issue of notice.*	*10.03.2001*	

On September 01, 2000, respondent no.1 served a demand notice under Section 17(1) as well as Section 17(2) of the Haryana Urban Development Authority Act, 1977 (for short, the HUDA Act") raising a demand of Rs.3,35,361/- from the petitioner on account of original sale price as well as additional enhanced price of the plot. The petitioner disputed the said figure and insisted that only Rs.2,40,280/- was outstanding. However, as against the demand notice dated 1.9.2000, the petitioner deposited an amount of Rs.1,70,000/- on 12.9.2000 by way of bank draft and in this manner, the proceedings initiated under Section 17(1) and 17(2) of the HUDA Act were dropped. Again, on 1.10.2001, the petitioner was served with another notice under Section 17(1) as well as 17(2) of the HUDA Act, raising a demand of Rs.3,21,345/- on account of original sale price as well as additional enhanced price and the petitioner was directed to deposit the said amount within 30 days from the date of issuance of the notice. Even the demand raised vide notice dated 1.10.2001 (Annexure P8) was disputed and the petitioner submitted that only an amount of Rs.2,32,241/- was actually due. It has been reiterated that in absence of possession, no interest was payable by the petitioner. The petitioner has pleaded that he could not clear the outstanding dues on account of the fact that he was surrounded by ailments of his father, mother and wife. The father of the petitioner was diagnosed with cancer and for this purpose, a huge amount was spent on his treatment. Similarly, the mother and wife of the petitioner were also hospitalized for various ailments, which drained not only his physical energy but also exhausted almost all of his monetary resources. In response to the demand notice (Annexure P-8), the petitioner visited the office of respondent no.1 and apprised him about his personal difficulties and also produced the medical record of his father and in response thereto, the petitioner was assured of lenient view by respondent no.1 provided the petitioner pays interest for the delayed period within the time/repayment schedule which was valid upto 24.3.2004. The petitioner agreed to pay the entire amount but without interest, as his request was in consonance with the terms and conditions of the allotment letter. Accordingly, respondent no.1 was apprised that since possession has not been offered by the HUDA, the petitioner cannot be subjected to payment of interest. In this manner, respondent no.1 assured the petitioner that a revised demand would be made after reconciling the accounts and no further action was taken in pursuance to the demand notice dated 1.10.2001. Thereafter, another notice dated 7.5.2002 (Annexure P9) under Section 17(4) of the HUDA Act was served upon the petitioner, as the petitioner failed to respond to the notice dated 1.4.2002 and an opportunity was given to the petitioner to represent his case on 16.5.2002 before respondent no.1. Pursuant to the said notice (Annexure P9), the petitioner appeared before respondent no.1 and pleaded that he was never served with any notice dated 7.5.2002 under Section 17(3) of the Act. The petitioner also apprised the respondent no.1 about his family circumstances. Not satisfied with the pleas of the petitioner, respondent no.1 passed an order dated 7.9.2002 (Annexure P-10), resuming the plot and further forfeited 10% of the total cost of the plot paid to the HUDA.

The order dated 7.9.2002 (Annexure P10) was challenged by way of appeal but the said appeal was dismissed by respondent no.2 vide order dated 17.2.2004 (Annexure P15), as the petitioner had not deposited the outstanding amount despite issuing the show cause notice. The petitioner filed revision against order dated 17.2.2004, however, the said revision petition was also dismissed vide order dated 23.4.2008 (Annexure P16).

It is in the aforesaid circumstances that the petitioner has filed the present writ petition challenging various orders i.e. order of resumption dated 7.9.2002 (Annexure P-10), order passed in appeal dated 17.2.2004 (Annexure P-15) and order passed on revision petition datd 23.4.2008 (Annexure P-16).

On notice having been issued, respondents no.1 and 2 have filed their written statement, wherein it has been stated that the petitioner had opted to pay the balance 75% of the amount of the plot in question in six yearly instalments but he willfully failed to deposit the third instalment and the balance amount arising out of on account of enhancement of compensation, for which, notice under Sections 17(1), 17(2), 17(3) and 17(4) of the HUDA Act were served upon the petitioner, but despite that he failed to deposit the overdue/delayed instalments. Hence, the plot was resumed on 7.9.2002 under Section 17(4) of the HUDA Act by adhering to condition No.10 of the allotment letter. It has been pleaded that the development work is very much connected with the recovery of the due instalments and in case the allottee has failed to pay the overdue instalment and the enhanced compensation, the development work is bound to affect adversely.

We have heard learned counsel for the parties.

Mr. Sanjeev Sharma, learned senior counsel for the petitioner has argued that in view of Clauses 6 and 7 of the allotment letter, the component of interest shall accrue from the date of possession and as per Clause 7 of the allotment letter, the possession of the site will be offered to an allottee only on completion of development work in the area. Since the area was not developed, therefore, no interest was payable by the petitioner and in this manner, the demand raised by HUDA is arbitrary.

Learned counsel for the petitioner has further argued that the petitioner was surrounded by ailments of his father, mother and wife in the month of March, 2001 and therefore, on account of financial constraints, the outstanding amount could not be deposited. In support of the ailment of his father, mother and wife, he has drawn out attention towards their medical record attached with this writ petition as Annexure P3, P4 and P5 (Colly). He has further drawn our attention to the guidelines Annexure P-19 issued for consideration for the appellate and revisional authority by the Chief Administrator, HUDA while deciding the appeals/revisions under Section 17 of the HUDA Act. The said guidelines provide that the appellate and revisional authorities shall keep in mind the guidelines while deciding the appeals/revision petitions as per the provisions of the HUDA Act. The same are reproduced as under:-

> *"1. The Authorities shall not give relief to the allottees on arbitrary grounds by using expressions like financial hardship, unavoidable circumstances, routine health problems, illness or relatives, long period of absence from the Country/place of residence, ignorance of payment schedule, technical infirmities in the letter of allotment like condition of payment of interest in hand written form instead of typed form etc. However, in the following circumstances, the Authorities may consider providing relief:-*
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> > *i) If, allottees goes in coma and remains under coma for the period when the payments were due and recovers subsequently.*

> ii) *If, allottee has to incur major financial expenditure on treatment of serious diseases like cancer, major surgeries, accident traumas rendering him unable to discharge the liabilities of such due payments. In such cases, the allottee will have to submit complete proof of his treatment duly authenticated."*

The above parameters will also apply in case the allottee's spouse or children suffers from such kind of eventualities."

Invoking strength on the basis of guidelines (Annexure P19), learned counsel further argued that the case of the petitioner is covered by the aforesaid guidelines, as the petitioner had to incur major financial expenditure on the treatment of serious diseases of his father, mother and wife. He further argued that father, mother and wife of the petitioner have died within a short span of five months. His father died on 25.2.2004 and his wife also died immediately after two days i.e. on 27.2.2004, whereas his mother died on 23.7.2004. He submitted that these are very peculiar circumstances and the respondents should appreciate the financial crisis of the petitioner. Learned counsel further submitted that though the petitioner deposited a major part of the demand raised by the respondents yet he is ready to deposit the balance outstanding amount including the interest, as calculated by the respondents.

On the other hand, learned counsel for the respondents has reiterated his arguments raised in the written statement that the petitioner has willfully failed to pay the outstanding dues and inspite of demand notices issued to him, he has failed to deposit the overdue/delayed instalments and hence, the plot was rightly resumed on 7.9.2002 while invoking Section 17(4) of the HUDA Act which is in consonance with condition No.10 of the allotment letter.

Having heard the rival contentions of the parties, we are of the considered view that the present writ petition deserves to be allowed. The circumstances, as narrated by the petitioner for not depositing the overdue/delayed instalments seems to be quite genuine, as he was surrounded by the ailments of his father, mother and wife who, ultimately, died within a short span of five months during the year 2004. The father of the petitioner was consistently ill since March, 2001. He was diagonised with cancer and thus, the petitioner had to spend huge amount of money on his treatment. Sufficient amount of finance is required for treatment of cancer.

Moreover, to meet out such like circumstances, the respondents have issued guidelines to the appellate as well as revisional authorities to decide such appeals in the light of such guidelines. As per guideline No.1(ii), if the allottee has to incur major financial expenditure on treatment of serious diseases like cancer, major surgeries etc. rendering him unable to discharge the liabilities of such due payments, in such cases, the allottee shall submit the proof of the treatment and the authority shall consider such record and provide relief. By placing on record the treatment record, it is sufficiently established that the petitioner was surrounded by the serious ailments of his father, mother and wife and therefore, was not able to deposit the outstanding amount well in time. Therefore, the petitioner deserves to be given the benefit of these guidelines. We may refer to a judgment of the Hon'ble Supreme Court in ***Teri Oat Estates (P) Ltd. Vs. U.T. Chandigarh & others*** **(2004) 2 SCC 130**, wherein it has been held that resumption or a cancellation of lease should be resorted to as a last resort.

Finding support from the guidelines and more particularly on the basis of undertaking of the petitioner that he is ready and willing to deposit the outstanding amount, we allow the present writ petition and quash the order of resumption Annexure P10 as well as order Annexure P15 and P16 passed in appeal and revision.

Accordingly, the plot in question is restored to the petitioner. Respondent no.1 is directed to communicate to the petitioner about the total outstanding amount along with penalty and interest within one month. 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 the amount, the order of resumption shall be revived.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

January 08, 2015
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