

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

Date of Decision: 12.02.2015

CWP No.14128 of 2012

Tarang Real Estates

...Petitioner

Versus

State of Haryana & others

..Respondents

Present: Mr. Puneet Bali, Senior Advocate, with
Ms. Monika Thakur, Advocate, for the petitioner.

Mr. Lokesh Sinhal, Additional Advocate General, Haryana,
for respondent No.1.

Mr. Raman Gaur, Advocate,
for respondent Nos.2 to 5.

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

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

HEMANT GUPTA, J.

Challenge in the present writ petition is to an order dated 12.07.2011 (Annexure P-13), whereby the Revisional Authority under Section 17(9) of the Haryana Urban Development Authority Act, 1977 (for short 'the Act') declined the prayer of the petitioner for grant of interest on the amount of earnest money deposited by the petitioner and also suitable compensation on account of damages suffered by the petitioner.

The petitioner was successful in the auction in respect of Hotel Site H-2-B(P), Sector 12, Faridabad held on 28.12.2006 having given bid of Rs.68.60 crores. A letter of allotment was issued on 09.01.2007. The

petitioner deposited 25% of the total cost of the site in question i.e. Rs.17.15 crores within time granted.

The possession of the site was delivered to the petitioner on 13.04.2007. However, before that date, the petitioner vide communication dated 13.02.2007 (Annexure P-3) communicated to the Chief Administrator, HUDA, that the area of the Hotel Site is much less than what was published and that no space is left for service road and that pavement, electric transformers, electric poles and other works are in front of the auction site. It is also pointed out that sector road is required to be shifted so is the service road in place of existing green belt with fully grown trees. On the same day i.e. 13.02.2007, the following obstacles were communicated by the petitioner to the Estate Officer, HUDA, Faridabad vide Annexure P-4:

- “1. At the point where the front gate is located, there are some telephone and optical fibre cables lying which will obstruct our boundary wall.
2. Our main approach is through a service road which has also to be laid down by the department and the width of the same should be at least 30 ft. so that the inward and outward flow of material from the site can be conveniently handled.
3. There is a transformer standing on the western side of the site which must be removed for completing the boundary wall. Also alongwith this transformer some electric poles are standing and electrical wiring is also passing through the site.
4. There are some street light poles standing on the northern side of the site, due to which our excavation work cannot be started.
5. One sewerage line is passing and mainholes are also there within boundary of this site, thus creating obstacles in the development of the site.

6. One water line is also passing from this site, which is approximately of 12" diameter."

A show cause notice was issued to the petitioner on 08.08.2007 under Section 17(1) of the Act as the petitioner did not make the payment of arrears of intsllements. An order of resumption of the site in question was passed on 24.12.2008 forfeiting 10% of consideration money, interest and other dues in favour of the authority by virtue of the power conferred under Section 17(4) of the Act. In appeal, the order of resumption was maintained, but forfeiture of 10% of the consideration money, interest and other dues was reduced to 5% vide order dated 27.10.2009.

Aggrieved against the said order passed by the Administrator, HUDA, Faridabad, the petitioner as well as the Haryana Urban Development Authority invoked the jurisdiction of the State Government under Section 17(8) of the Act. The representative of the State Government vide order dated 12.07.2011 set aside the forfeiture of even 5% for the reason that the site was having multiple encumbrances. It was also found that the allottee was equally negligent in not seeking refund of amount deposited with HUDA when encumbrances/impediment over site were noticed by it during the course of delivery of possession. The relevant extract from the order dated 12.07.2011 reads as under:

"After hearing both sides and on perusal of case file, I am of the considered opinion that five star hotel site was put to auction on 28.10.2006 without ensuring that site is free from encumbrances. The submission of allottee are meritorious as site in question remained unuseable from 28.10.2006 (date of auction) to 5/2009 and even thereafter i.e. for a period of almost 2½ years. Hence neither Estate Officer nor Administrator was legally or factually justified in inflicting forfeiture of 10% or even 5%. Since site was having

multiple encumbrances, Estate Officer should not have proceeded under Section 17 of HUDA Act, 1977. It is evident on record that site could not be put to use for construction of a five start hotel in the wake of encumbrances. Though the allottee was equally negligent in not seeking refund of entire forfeited amount/amount deposited with HUDA when encumbrances/impediment over site were noticed by him during the course of delivery of possession yet it gave no right to HUDA to allot a site with such deficiencies. It certainly handicapped the allottee to undertake construction. Hence revision of the allottee is allowed and Estate Officer, HUDA, Faridabad is directed to refund the entire forfeited amount within a period of one month. The allottee shall not be entitled to any interest or compensation. The revision petition filed by Estate Officer is dismissed.”

Initially, the present petition claiming interest on the amount deposited by it as well as compensation on account of damages suffered by the petitioner due to illegal retention of the amount, was dismissed by this Court with liberty to the petitioner to seek remedy before the Civil Court in accordance with law. However, in Special leave Petition (Civil) No.35148 of 2012, the order was set aside in view of the bar of jurisdiction of the Civil Court under Section 50 of the Act. It is, thereafter, the matter has been placed before this Court.

Firstly, we shall deal with Section 50 of the Act, which deals in respect of finality of orders and bar of jurisdiction of civil courts. The said Section reads as under:

“**50.** Finality of orders and bar of jurisdiction of civil courts – (1) Save as otherwise expressly provided in the Act, every order passed or direction issued by the State Government or order passed or notice issued by the Authority or its officer under this Act shall be final and shall not be questioned in any suit or other legal proceedings.

(2) No civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter the cognizance of which can be taken and disposed of by any authority empowered by this Act or the rules or regulation made thereunder.”

Section 50 of the Act, as reproduced above, bars the jurisdiction of the Civil Court in respect of proceedings under the Act such as resumption of the property or of eviction under Section 18 or direction issued of the Act. Section 50 will not bar the jurisdiction of the Civil Court in respect of the claim of an allottee which is not contemplated under the Act. The order of resumption and the order of forfeiture are the orders passed under the Act. But concededly, the Act does not deal with the grant of interest to an allottee claimed on the amount deposited. Therefore, the bar of jurisdiction under Section 50 of the Act may not be the bar in respect of the claim of the petitioner to claim of interest from the Civil Court. Though the direction to avail remedy of the Civil Court rather than of the writ court is more in discretion rather than an absolute bar of jurisdiction, therefore, we have examined the contentions raised by the petitioner in respect of its claim regarding interest on the amount deposited in the present writ petition itself.

Learned counsel for the petitioner relies upon the judgments of the Hon’ble Supreme Court in Ghaziabad Development Authority Vs. Balbir Singh AIR 2004 SC 2141 and Haryana Urban Development Authority Vs. Anil Kumar (2010) 14 SCC 778 to assert that the petitioner is entitled to interest on the amount deposited as the petitioner could not use the land on account of encumbrances over the land purchased by petitioner.

On the other hand, Mr. Gaur supported the order passed by the representative of the State Government to contend that the petitioner has

taken possession on 13.04.2007 with the so-called encumbrances. He has not surrendered the possession soon thereafter the auction and permitted the respondents to initiate proceedings for resumption of the site in question. It was on 24.12.2008, the site in question was resumed. Therefore, the petitioner cannot claim any interest on the amount deposited. It is also argued that since the petitioner is purchaser of site in an open auction, the petitioner is presumed to have inspected the site before participating in auction, therefore, cannot raise grievance in respect of so-called encumbrances, which were visible to the naked eye. It is further contended that the judgments referred to by the learned counsel for the petitioner are the judgments arising out of sale of residential plots and grant of interest by the Consumer Forums under the Consumer Protection Act, 1986, wherein the Consumer Forum is empowered to grant interest for the deficiency in services.

After hearing learned counsel for the parties, we do not find any merit in the present writ petition. The first grievance of the petitioner is that size of the plot was much less than the size mentioned in the auction notice i.e. 9093.77 sq. meters. But the petitioner has not pointed out that how much was the size of the plot, the possession of which was delivered on 13.04.2007. The order of the Revisional Authority though refers the contention of the petitioner that the site was firstly developed by treating area of the Hotel Site as 7828 sq. meters and water line, sewerage, electricity transformer, electric poles were laid accordingly, but subsequently the area was revised to 9053.77 sq. meters and the site was auctioned without caring that planning of site was done on the basis of area of 7828 sq. meters.

The earliest grievance of the petitioner in respect of the encumbrances was on 13.02.2007 pointing out six obstacles reproduced above, but had taken possession on 13.04.2007 in spite of such encumbrances. The action of the petitioner to take possession shows its willingness to continue with the project. It appears that so-called obstacles or encumbrances are sought to be made to shield for avoiding the obligations being the successful allottee of the hotel site.

In Anil Kumar's case (supra), the District Forum has returned a finding that there was no breach on the part of the allottee and delay in delivery of possession of a residential site was on account of the authority. In the present case, the possession was taken by the petitioner even though the petitioner has noticed the so-called obstacles. Once the possession was delivered, the petitioner has been rightly found to be negligent by the Revisional Authority of the State Government.

In Ghaziabad Development Authority's case (supra), it has been found that the consumer protection has a wide reach and has jurisdiction even in cases of service rendered by statutory or public authorities. The authorities become liable to compensate for misfeasance in public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. However, in the present case, firstly; the petitioner participated in an open auction knowing well the nature of the land including the standing trees & electric poles etc., and secondly; even after pointing out the encumbrances on 13.02.2007, it proceeded to take possession on 13.04.2007. Therefore, the petitioner having taken possession of the site in question, in the face of the encumbrances, is estopped to

dispute the existence of encumbrances so to claim interest on the deposit made by it.

In view of the above, we do not find that the order passed by the representative of the State Government suffers from any illegality or irregularity, which may warrants any interference by this Court in exercise of its writ jurisdiction.

Consequently, the present writ petition is dismissed.

(HEMANT GUPTA)
JUDGE

12.02.2015
Vimal

(HARI PAL VERMA)
JUDGE