

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

Date of decision:21.1.2015

1.

CWP No.14566 of 2013

Mohinder Singh and others

....Petitioners

VERSUS

State of Haryana and others

.....Respondents

2.

CWP No.14599 of 2013

Kuldeep Singh

....Petitioner

VERSUS

State of Haryana and others

.....Respondents

3.

CWP No.14600 of 2013

Pardeep Singh

....Petitioner

VERSUS

State of Haryana and others

.....Respondents

4.

CWP No.14611 of 2013

Kuldeep Singh

....Petitioner

VERSUS

State of Haryana and others

.....Respondents

5.

CWP No.14613 of 2013

Mohinder Singh and others

....Petitioners

VERSUS

State of Haryana and others

.....Respondents

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?

Present: Mr. Keshav Partap Singh, Advocate for the petitioners.

Mr. P.K. Jangra, Additional Advocate General, Punjab
for respondent No.1.

Mr. Ajay Kansal, Advocate for respondents No.2 and 3.

HEMANT GUPTA, J.(Oral)

This order shall dispose of five writ petitions bearing CWP Nos.14566, 14699, 14600, 14611 and 14613 of 2013 filed by the members of family of Smt. Manbhari Devi wife of Jaggar Singh whereby she purchased two shop-cum-office sites No.24 and 25 whereas her son Kuldeep Singh purchased site No.18 and 19 and her grandson Pardeep Singh purchased site No.57 in an open auction in respect of which letters of allotment were issued on 11.05.2001 on deposit of 10% amount of the total price.

The petitioners were required to deposit 15% amount of the price of the site within 30 days and had the option to pay balance 75% in lump sum without interest within 60 days or in 8 half yearly installments. The petitioners opted to make the payment of balance 75% in installments after making 15% deposit. However, after deposit of two installments, the petitioners did not deposit the remaining installments nor raised the construction within two years in terms of clause 16 of the letter of allotment which led to issuance of a show cause notice for resumption for the reason that the petitioners

have defaulted in payment of the balance sale consideration and not raised construction. After the show-cause notice was issued, the Estate Officer passed an order of resumption on 15.06.2004.

An appeal against the said order was accepted by Administrator on 07.06.2007 and the petitioners were granted time to deposit all the pending dues with delay interest and penalty within one month and also imposed fine of Rs.5000/-. The petitioners have deposited the amount within the time granted but, thereafter, a revision was filed before the State Government against the order of Administrator which was allowed on 18.08.2010 and the matter was remitted back to the Administrator. It is, thereafter, Administrator dismissed the appeal on 01.06.2011.

The further revision before the State Government was dismissed by the Principal Secretary to Government Haryana, Town and Country Planning and Urban Estates Departments on 18.06.2013 on the ground that the appeal before the Administrator was preferred after one and a half year and that there was no reason to entertain the appeal after such delay. It is thereafter, the present writ petition has been filed to challenge the order of the authorities of resumption of plots.

It is not disputed that there is no bar for the member of the same family to purchase multiple plots in the same auction. The letter of allotment was issued on 11.05.2001 whereas the order of resumption was passed on 15.06.2004 i.e. after three years and one month. The petitioners had two years' period to complete the construction. The petitioners have deposited two half-yearly

installments as well. The order of resumption was not delivered to the petitioners since the petitioners shifted their residence. Therefore, the appeal filed by the petitioners before the Administrator could be entertained as there was sufficient cause for condonation of delay by the Administrator.

Still further, we find that the conduct of the petitioners was not contumacious or that of gross negligence which disentitles them from invoking the equitable jurisdiction of this Court against the order of resumption. The power of resumption of plot is a last resort and more to ensure compliance of the terms of allotment rather than to penalize the allottees. The default of not raising construction and of not paying balance installments was not such when the order of resumption was passed on 15.06.2004.

We find that the order of resumption passed on 15.06.2004 and that the order passed by the Administrator on 01.06.2011 and the State Government dated 18.06.2013 cannot be sustained in law, it being against the doctrine of proportionality as laid down by Hon'ble Supreme Court in Teri Oat Estates (P) Ltd. v. U.T. Chandigarh & Ors, 2004 (2) SCC 130.

Consequently, the present writ petition is allowed and the orders dated 15.06.2004 by Estate Officer and 18.06.2013 by State Government is set aside.

Mr. Kansal states that petitioners have not accepted the amount deposited by the petitioners pursuant to the earlier order of the Administrator. In view thereof, the respondents shall communicate if any other amount is due and payable by the petitioners within a period

of one month. The petitioners shall deposit the same within one month thereafter.

All the writ petitions are disposed of accordingly.

(HEMANT GUPTA)
JUDGE

JANUARY 21, 2015
‘D. Gulati’

(HARI PAL VERMA)
JUDGE