

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

C.W.P. No.15795 of 2014 (O&M)

Date of decision: 09.02.2015

Vandana Kohli & another

-----Petitioner (s)

V/s

State 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. Arvind Singh, Advocate
for petitioner(s).

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

Mr. Raman Gaur, Advocate
for respondent-HUDA.

HARI PAL VERMA, J.

Petitioners have filed the present writ petition under Articles 226/227 of the Constitution of India, challenging the order dated 14.8.2003 (Annexure P6), whereby the respondent no.3 has resumed the site i.e. Booth No.40, Sector 21-C, Faridabad along with forfeiture of 10% of consideration money by virtue of powers vested in

him under Section 17(4) of the Haryana Urban Development Authority Act, 1977 (for short, “the HUDA Act”). Challenge has also been raised to orders dated 27.8.2007 (Annexure P9) and 6.6.2014 (Annexure P11), whereby appeal and revision petition respectively against the order of resumption have been dismissed.

Briefly stated, the facts of the case are that the petitioners are the successful auction purchasers of double storey shop No.40, Sector 21-C, Faridabad, vide allotment letter dated 6.10.2000 (Annexure P1). The price of the plot/building was fixed at Rs.27,35,000/-and the petitioners deposited Rs.2,73,500/- as bid money at the time of auction and also paid Rs.4,10,250/- within 30 days so as to make 25% price of the shop in question. As per the terms and conditions of the allotment letter, the balance 75% amount was required to be deposited without interest within 60 days from the date of issuance of allotment letter or by way of eight half yearly instalments along with interest @ 15% on the remaining amount. The petitioners opted to deposit the balance amount in half yearly instalments of Rs.3,50,204/-. As per Clause 6 of the allotment letter, the possession could be taken on deposit of 15% price in addition to 10% already paid at the time of auction. The petitioners took possession of the site on 10.11.2000 and after usual payments, the petitioners

started raising construction thereon, which was completed and thereafter, application for issuance of occupation certificate was submitted by the petitioners on 11.10.2001, which was issued on 6.2.2002 (Annexure P2). Till 4.2.2003, out of the total price of Rs.27,35,000/-, the petitioners had deposited an amount of Rs.21,10,750/- and thereafter, the petitioners suffered huge monetary losses in their business and could not deposit the instalments in time. It has been further stated that the development work in the area was not complete and civic amenities like electricity, sewerage, roads etc. were not provided in the vicinity.

On account of failure to deposit the outstanding instalments, the respondents issued notices under Sections 17(1), (2), (3) and (4) of the HUDA Act for not clearing the amount of arrears of Rs.4,75,000/- and respondent no.3 vide order dated 14.8.2003 (Annexure P6), ordered resumption of the site i.e. Booth No.40, Sector 21, Faridabad along with forfeiture of 10% of the consideration money by invoking powers vested under Section 17(4) of the HUDA Act.

The order dated 14.8.2003 was made subject matter of challenge by way of an appeal. However, the said appeal was dismissed vide order dated 27.8.2007 (Annexure P9) on the ground that the petitioners have not deposited the due instalments and that the appeal has

been filed after the prescribed period of limitation. The order dated 27.8.2007, passed in appeal, was further challenged by way of revision petition under Section 17(9) of the HUDA Act and the said revision petition was also dismissed vide order dated 6.6.2014 ((Annexure P11).

It is in the aforesaid circumstances, the petitioners have filed the present writ petition challenging the order of resumption dated 14.8.2003 (Annexure P6), order dated 27.8.2007 (Annexure P9) passed in appeal and order dated 6.6.2014 (Annexure P11) passed in revision.

On notice having been issued to the respondents, respondents no.2 and 3 have filed their written statement. It has been submitted that the commercial site i.e. Shop No.40, Sector 21-C, Faridabad was purchased by the petitioners in an open auction held on 21.9.2000 by giving the highest bid of Rs.27,35,000/-. However, the petitioners after depositing three instalments of the balance price, stopped depositing further instalments, for which, the respondents served notice upon the petitioners under Sections 17(1),(2),(3) and (4) of the HUDA Act for depositing the outstanding dues. But the petitioners did not pay any heed to the said notices, as such, creating compelling circumstances for issuance of resumption of the allotted commercial site vide order dated 14.8.2003 (Annexure P6). It has been further submitted

that the commercial site in question was allotted on 6.10.2000 and construction thereon was raised immediately, as the basic amenities were already provided by the respondents. The occupation certificate dated 6.2.2002 was issued against the commercial site in question whereas the resumption order was passed on 14.8.2003, as the petitioners have failed to deposit the remaining instalments after depositing three instalments.

We have heard learned counsel for the parties.

Learned counsel for the petitioners has submitted that the petitioners purchased the site in question in an open auction for an amount of Rs.27,35,000/- and deposited Rs.2,73,500/- as bid money at the time of auction and Rs.4,10,250/- within 30 days towards 25% price of the shop in question. The remaining 75% of the amount of the plot i.e. Rs.20,51,250/- was required to be paid either in lump sum within 60 days from the date of issuance of allotment letter without interest or in eight half yearly instalments along with interest @ 15% per annum. A total amount of Rs.21,08,750/- has been paid by the petitioners upto 4.2.2003. It has been further submitted that two demand drafts for a total sum of Rs.9,50,000/- i.e. one for an amount of Rs.6,50,000/- and another for an amount of Rs.3,00,000/- were submitted before the Administrator, Faridabad on 4.9.2006, but the

same were not accepted. Similarly, three more demand drafts of Rs.6,30,000/-, Rs.3,60,000/- and Rs.3,75,000/- were submitted on 18.12.2006 so as to make the entire payment of the price of the plot in question, but the same were also not accepted. It has been further submitted that no development works like electricity, water supply and sewerage system were undertaken in Sector 21, Faridabad upto September, 2003. Despite that, the petitioners have been making payment of the instalments.

Learned counsel for the petitioners has further submitted that the petitioners have deposited a major part of the demand raised by the respondents and they are further ready to deposit the balance outstanding amount, as calculated by the respondents.

On the other hand, learned counsel for the respondents has stated that the petitioners have failed to adhere to the total payment plan and have not deposited the instalments on due dates as per the terms and conditions of the allotment letter. He has further contended that the area of the site is fully developed with all basic amenities.

Considering the fact that the petitioners have deposited the substantial amount of the consideration money and they are further ready to deposit the outstanding amount, the action of the respondents in

passing the order of resumption, is too harsh. 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.

In view the facts and circumstances of the case and keeping in view the undertaking of the petitioners that they are ready and willing to deposit the outstanding amount, we allow the present writ petition and quash the order of resumption dated 14.8.2003 (Annexure P6) as well as orders dated 27.8.2007 and 06.06.2014 (Annexure P9 and P11) passed in appeal and revision respectively.

Accordingly, the site/booth in question is restored to the petitioners and respondents are directed to calculate the outstanding amount along with interest and to communicate the same to the petitioners within one month. On receipt of such communication about the outstanding amount, the petitioners shall deposit the said amount within two months thereafter and in case the petitioners fail to deposit the amount in question, the order of resumption shall be revived.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

February 09, 2015
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