

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CIVIL WRIT PETITION NO.17065 of 2014

DATE OF DECISION: SEPTEMBER 24, 2015

Kamal Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM:-** HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE  
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

**Present:** Mr.Sharad Aggarwal, Advocate for the petitioner.

Mr.Deepak Balyan, Additional Advocate General,  
Haryana.

Mr.Anil Chawla, Advocate for respondents No.2 and 3.

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***TEJINDER SINGH DHINDSA, J.***

The instant petition is directed against the resumption of a booth site by the Haryana Urban Development Authorities.

2. A commercial booth site admeasuring 20.25 sq.mts. in Urban Estate, Faridabad was purchased by the petitioner through open auction held on 5.3.1980 upon his bid of ₹38,600/- having been accepted. 10% of the auction purchase price i.e. ₹3,860/- was deposited on the spot. Allotment letter dated 28.7.1980 was issued in favour of the petitioner. In terms of Clause No.4 thereof, an amount of ₹5,790/- i.e. 15% of the auction price was deposited

within 30 days of the issuance of allotment letter to make good 25% of the total price. The balance amount of ₹28,950/- was required to be deposited in lump sum without interest within 60 days or in ten half yearly instalments along with interest @ 10%. It has been averred that the petitioner deposited three instalments i.e. on 2.3.1981, 16.2.1982 and 20.1.1983 respectively. It is the case of the petitioner that since no development had been carried out in the area, the balance instalments were not deposited. Thereafter, a sum totalling ₹1 lac was deposited on five different dates between 20.9.1996 to 22.9.1997. However, vide order dated 12.2.2001 passed by the Estate Officer, HUDA, Faridabad, the booth was resumed on the ground of having defaulted in depositing instalments. Such action was impugned by the petitioner by instituting a civil suit bearing No.939 dated 8.5.2001 and which was decreed by the Civil Judge (Junior Division), Faridabad vide judgment and decree dated 21.9.2006. The Civil Court set aside the resumption order and directed the HUDA Authorities to furnish statement of accounts after charging 10% simple interest upon the amount due and which the petitioner was held liable to pay. The respondents filed an appeal against the judgment and decree dated 21.9.2006 and counsel for the petitioner conceded before the 1st Appellate Court, that a statutory remedy of appeal was available against the order of resumption and, accordingly, in terms of order dated 17.4.2007 passed by the Additional District Judge, Faridabad, the judgment and decree passed by the Civil Court was set aside and liberty was granted to the petitioner to prefer an appeal within a period

of one month. The appeal filed by the petitioner against the order of resumption was dismissed by Administrator, HUDA, Faridabad vide order dated 5.7.2011, Annexure P14. Even a revision petition preferred before the first respondent has been dismissed in terms of order dated 15.7.2014 at Annexure P15.

3. It is against such brief factual backdrop that the issuance of a writ of certiorari has been prayed for quashing of resumption order dated 12.2.2001, Annexure P11, as also the orders dated 5.7.2011, Annexure P14, and 15.7.2014, Annexure P15, passed by the Appellate and Revisional Authorities affirming the order of resumption. Mandamus has also been sought for directing the respondents to restore the booth site in question to the petitioner.

4. Counsel for the parties have been heard at length.

5. Section 17 of the Haryana Urban Development Authority Act, 1977 confers a confiscatory power that empowers the respondents to resume a plot and forfeit part of the consideration amount. Under Clause 8 of the allotment letter dated 28.7.1980, Annexure P1, it was open for the Estate Officer to proceed to take action for imposition of penalty and resumption of the plot in the eventuality of the instalments not being paid by the allottee. The power of resumption is the ultimate civil sanction and has, therefore, to be used as a weapon of last resort. Such power is to be used with great caution and circumspection. In our view, the Estate Officer before passing a resumption order was obligated to determine whether there was a breach of terms and conditions of allotment including that of default of deposit of

instalments by the allottee, if any, and thereafter to also examine if such default was “wilful and deliberate”. For reasons that we would now indicate, the respondents have failed to discharge such obligation.

6. In the writ petition, it has been categorically averred that after having paid 25% of the total auction price, three instalments were deposited i.e. ₹4342.50/- on 2.3.1981, ₹4197.75/- on 16.2.1982 and ₹3908/- on 20.1.1983. Even a tabulation has been furnished in para 3 of the petition giving out details of a total sum of ₹1 lac having been deposited between 20.09.1996 to 22.9.1997. It would be useful to extract the tabulation hereunder:

| <u>Amount deposited</u> | <u>Receipt No.</u> | <u>Date</u> |
|-------------------------|--------------------|-------------|
| ₹15,000/-               | 138693             | 20.09.96    |
| ₹40,000/-               | 145788             | 27.02.97    |
| ₹20,000/-               | 147724             | 17.04.97    |
| ₹15,000/-               | 151552             | 23.07.97    |
| ₹10,000/-               | 153618             | 22.09.97    |

7. In the joint written statement filed on behalf of respondents No.2 and 3, the receipt of the payments detailed above stand admitted. Even in the judgment and decree dated 21.9.2006 passed by the Civil Court, an admission of the Clerk of the concerned HUDA office i.e. defendant witness DW1 had been recorded that a sum of ₹1,26,150/- had already been deposited by the petitioner against purchase of the booth site. As such, it clearly emerges that against the purchase price of ₹38,600/-, a sum of ₹1,25,000/- approximately already stood deposited by the

petitioner upto 22.9.1997. However, in the resumption order that was passed on 12.2.2001, Annexure P11, the Estate Officer has given no credit to the petitioner for the payments made apart from the initial deposit of 25% of the auction price.

8. The Principal Secretary to Government, Haryana, Town & Country Planning & Urban Estates Department in the impugned order dated 15.7.2014, Annexure P15, affirming the order of resumption passed by the Estate Officer has furnished the following reasoning:

*“.....The petitioner could have shown his bonafides by making payment of the amount due as per his own calculations but the petitioner did not deposit any amount of instalments till resumption of the booth which shows his intention to retain public property without making payment as per his contractual obligations.”*

9. Such reasoning is clearly perverse and contrary to the record. We have already noticed that after deposit of 25% of the auction purchase price, the petitioner had deposited three instalments as also a sum of ₹1 lac between different dates in the years 1996 and 1997. All these payments were made prior to the passing of the order of resumption. Deposit of such payments stands conceded in the written statement filed to the instant petition. The resumption proceedings have been finalized by the authorities without even adverting to the record. We would have no hesitation in observing that the resumption of the booth in question has been directed in a perfunctory manner. The action, as such, cannot sustain.

10. In view of what has been stated hereinabove, we allow

the writ petition and set aside the impugned orders dated 12.2.2001, 5.7.2011 and 15.7.2014, Annexure P11, P14 and P15 respectively. The booth site in question shall stand restored in favour of the petitioner. The respondents shall be free to levy interest and penalty in accordance with law after making adjustment of the amount that the petitioner has already deposited. It is, however, clarified that the petitioner would not be liable to pay extension fee for the period the plot had stood resumed.

11. Petition allowed in the aforesaid terms.

( S. J. VAZIFDAR )  
ACTING CHIEF JUSTICE

( TEJINDER SINGH DHINDSA )  
JUDGE

SEPTEMBER 24, 2015  
*SRM*

*Note: Whether referred to Reporter? (Yes/No)*