

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

C.W.P. No.17865 of 2014
Date of decision: 09.02.2015

Bhim Sain Mittal

-----**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. Hardeep Singh Dhillon, Advocate
Mr. Vikram Singh, Advocate
for the petitioner(s).

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

Mr. Raman Gaur, Advocate
for respondent-HUDA.

HARI PAL VERMA, J.

Through the instant writ petition filed under Articles 226/227 of the Constitution of India petitioner has challenged the order dated 31.12.2005 (Annexure P3), whereby respondent no.3 while exercising powers under Section 17(4) of the Haryana Urban Development Authority

Act, 1977 (for short, “the HUDA Act”) has ordered resumption of booth No.39, Sector 13, Urban Estate, Karnal along with forfeiture of an amount equivalent to 10% of the consideration money including interest etc. Challenge has also been raised to orders dated 3.7.2008 (Annexure P4) and 1.8.2014 (Annexure P7), whereby the appeal and revision petition against the order of resumption have been dismissed.

Briefly stated, the facts of the case are that booth No.39, Sector 13, Urban Estate, Karnal was allotted to the petitioner on 5.4.2004 and possession of the same was handed over to the petitioner in the year 2004. The petitioner paid 25% of the amount. He was required to pay balance amount in nine instalments. After paying two instalments and completing construction, Occupation Certificate was issued to the petitioner on 2.8.2004. After the issuance of the Occupation Certificate, a notice was issued to the petitioner that the petitioner has not paid the remaining instalments. Accordingly, the order of resumption dated 31.12.2005 (Annexure P3) was passed on the ground of non-payment of outstanding amount.

The petitioner challenged the order of resumption dated 31.12.2005, by way of an appeal and deposited an amount of Rs.95,000/- on 2.5.2006, however, the appeal was dismissed by respondent no.2 vide order

dated 3.7.2008, not only on the ground of limitation but also on account of default of the petitioner in depositing the instalments. The order dated 3.7.2008, passed in appeal, was further challenged by the petitioner by way of revision petition which was also dismissed vide order dated 1.8.2014 (Annexure P7).

It is in the aforesaid circumstances, the petitioner has filed the present writ petition challenging the order of resumption dated 31.12.2005 (Annexure P3), order dated 3.7.2008 (Annexure P4) passed in appeal and order dated 1.8.2014 (Annexure P7) passed in revision.

On notice having been issued to the respondents, written statement has been filed on behalf of respondents no.2 and 3, wherein it has been submitted that the booth in question was purchased by the original allottees namely Navneet Arora and Sonam Arora in an open auction and the allotment letter dated 5.11.2004 (Annexure P1) was issued in their favour. The original allottees paid Rs.82,100/-, being 10% of the auction price of Rs.8,21,000/-, at the time of auction as earnest money, whereas 15% amount i.e. Rs.1,23,150/- was deposited in terms of the allotment letter. The remaining 75% of the tentative price i.e. Rs.6,15,750/- was to be paid in terms of Clause 5 of the allotment letter. Clause 5 reads as under:-

“5. The balance amount i.e. Rs.6,15,750/- of the above price of the plot/building can be paid in lump-sum without interest within 60 days from the date of issue of the allotment letter or in 10 half yearly installments. The first installment will fall due after the expiry of six months from the date of issue of this letter. Each installment would be recoverable together with interest on the balance price at 11% interest on the remaining amount. The interest shall, however, accrue from the date of offer of possession.”

It has been further averred that the original allottee had opted for the payment of the outstanding amount of 75% in instalments and the balance amount of Rs.6,15,750/- was required to be paid in ten half yearly instalments along with interest @ 11% per annum. However, on depositing Rs.95,000/- on 25.3.2004, the booth in question was re-allotted to the petitioner at the request of the original allottee. Accordingly, re-allotment letter dated 5.4.2004 was issued on usual terms and conditions of the original allotment letter (Annexure R3/1). Since the petitioner failed to pay the balance price of the booth within the stipulated period along with interest, the petitioner was issued notice under Section 17(1) of the HUDA Act, vide memo dated 11.11.2004, asking the petitioner to deposit an amount of Rs.93,132/-, but the petitioner has failed to deposit the said amount.

Thereafter, another notice under Section 17(2) of the HUDA Act was issued to the petitioner on 16.12.2004 and an opportunity of hearing was given to the petitioner for 10.1.2005 at 11-00 AM. However, neither the petitioner attended the office nor deposited the balance amount. Accordingly, penalty of 10% on the aforesaid amount was imposed, which was also not paid by the petitioner. The petitioner was again afforded an opportunity of personal hearing under Section 17(3) of the HUDA Act vide letter dated 18.5.2005, but again, the petitioner neither deposited the amount nor appeared. Thereafter, further notices were issued under Section 17(4) of the HUDA Act on 18.8.2005 and 10.10.2005, calling upon the petitioner to either make payment of the balance outstanding amount or to appear personally in the office on 28.10.2005. Since the petitioner failed to clear the outstanding dues despite issuing various notices, the respondents had no option but to pass the resumption order dated 31.12.2005. It was after the resumption of the booth, the petitioner deposited Rs.95,000/- on 2.5.2006, but as the site was already resumed, the said amount was refunded to the petitioner, vide cheque No.000144 dated 20.8.2014.

It has been further pleaded that the plea of the petitioner that his financial position was not good, is inconsequential, as the petitioner should have purchased

the property only after identifying his resources and therefore, the ground taken by the petitioner is untenable and is liable to be rejected. In this manner, the respondents have justified the order of resumption on account of non-payment of the instalments.

We have heard learned counsel for parties.

Learned counsel for the petitioner has argued that the petitioner had deposited the entire outstanding amount which was due but the same was returned back by the respondents and the petitioner is again ready to deposit the balance outstanding amount, as calculated by the respondents.

After hearing the rival contentions of the parties, we find that in view of the fact that the petitioner had deposited a substantial amount towards the price of the booth in question and he is further ready to deposit the outstanding amount, as calculated by the respondents, 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 petitioner that

he is ready and willing to deposit the outstanding amount, we allow the present writ petition and quash the order of resumption dated 31.12.2005 (Annexure P3) as well as orders dated 3.7.2008 and 1.8.2014 (Annexure P4 and P7) passed in appeal and revision respectively.

Accordingly, the site/booth in question is restored to the petitioner. Respondents are directed to calculate the outstanding amount and communicate the same to the petitioner along with interest, if any, within one month. After the receipt of such communication about the outstanding amount, the petitioner shall deposit the amount within two months thereafter and in case the petitioner fails 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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