

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

C.W.P. No.26707 of 2013
Date of decision: 29.01.2015

Dimple Singla (now Verma) & 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. Aman Pal, Advocate
for the petitioners.

Mr. Ajay Nara, Advocate
for respondents no.3 to 6.

HARI PAL VERMA, J.

Through the instant writ petition, filed under Articles 226/227 of the Constitution of India, the petitioners have challenged the order dated 21.7.2003 (Annexure P7) whereby booth No.54, Sector 2, Panchkula has been ordered to be resumed under Section 17(4) of the Haryana Urban Development Authority Act, 1977 (for

short, “the HUDA Act”) along with forfeiture of 10% of the consideration money of the site. Challenge has also been laid to order dated 27.4.2004 (Annexure P8) whereby appeal against order dated 21.7.2003 has been dismissed, as well as order dated 6.9.2010 (Annexure P10), whereby revision petition has been dismissed by respondent no.1.

Briefly stated, the petitioners were allotted booth site no.54, Sector 2, Panchkula vide allotment letter dated 21.8.1986 being the highest bidders. The petitioners deposited the earnest money i.e. 10% of the amount at the fall of the hammer and in order to complete 25% of the total amount, further deposited Rs.15,150/- on 4.9.1986 and possession of the plot was taken. The petitioners were required to make balance payment in lump sum within 60 days from the date of issuance of allotment letter or in 10 half yearly equated instalments along with 10% interest. Subsequently, the petitioners completed construction thereon. However, the petitioners were served with a show cause notice dated 12.5.1992 under Section 17(3) of the HUDA Act raising a demand of Rs.1,75,164.47, for which, reply was submitted by the petitioner. Thereafter, another notice dated 26.4.2000 was served upon the petitioners pointing out an outstanding amount of Rs.4,40,365/- which was to be paid within one month as well as extension fee for completion of construction amounting to

Rs.15,586/- which was to be deposited by 31.12.2000. The petitioners served a legal notice dated 23.7.2000 upon the Estate Officer, HUDA for preparation of fresh demand notice. Through the legal notice, it has been submitted that an amount of Rs.1,21,000/- has already been deposited and use of residential premises for commercial purposes is causing loss to the petitioners. The petitioners also filed a complaint before the District Consumer Forum, Panchkula but the same was dismissed vide order dated 16.5.2002 on the ground that the complainant is not a 'consumer'.

In view of the fact that the petitioners have not deposited the outstanding amount and an amount of Rs.4,90,670/- was still outstanding against the petitioners, respondent no.4 passed the order of resumption dated 21.7.2003 (Annexure P7) under Section 17(4) of the HUDA Act and also ordered for forfeiture of 10% of the consideration money of the site in question. The petitioners filed an appeal against the order of resumption dated 21.7.2003, however, the appeal was dismissed by respondent no.2 vide order dated 25.3.2004 (Annexure P8), as the petitioners had not deposited the entire outstanding dues after making the initial payment of 25% amount and an amount of Rs.4,90,670/- was still outstanding against the petitioners at the time of resumption. Against the order

dated 25.3.2004 (Annexure P8), the petitioners have filed a revision petition before respondent no.1.

But at the same time, the petitioner no.1 has also filed a suit for declaration and mandatory injunction to the effect that the demand of Rs.4,40,365/-, as raised by the respondents and the order of resumption dated 21.7.2003 are illegal. The said suit was partly decreed to the extent that the respondents were restrained from illegally dispossessing the petitioners from the plot in question except in due course of law, whereas *qua* the remaining relief, the suit was dismissed being infructuous.

The revision petition filed against the order dated 25.3.2004 was also dismissed vide order dated 6.9.2010 (Annexure P10).

It is in the aforesaid circumstances, the petitioners have filed the present writ petition challenging the order of resumption dated 21.7.2003 (Annexure P7), order dated 25.3.2004 (Annexure P8) passed in appeal and order dated 6.9.2010 (Annexure P10) passed in revision petition.

On notice having been issued to the respondents, written statement has been filed on behalf of respondents no.2 to 5, taking various pleas to the effect that the petitioners had opted for making the payment for consideration money in instalments, but after making

payment of 25% of the amount, the petitioners have defaulted in making the payment of the amount/ instalments due and no instalment was deposited as per the schedule provided in the allotment letter. The conditions of the allotment letter provide that no separate notice shall be sent for payment of instalments. The possession of the site was offered in the allotment letter itself, as development works at the site were complete, construction was raised and the benefits out of the property were being reaped by the petitioners. Thus, it has been pleaded that the petitioners are habitual defaulters who are enjoying the fruits of the property at the cost of the public exchequer without clearing the outstanding instalments. Since the petitioners have violated condition no.5 read with condition no.23 of the allotment letter, the respondents have passed the order of resumption, as provided under Section 17 of the HUDA Act in terms of condition no.8 of the allotment letter. The petitioners were issued various notices from time to time and in response thereto, reply dated 30.6.1992 was received from the petitioners, wherein it was submitted that there was no development and they will have to arrange the amount. The issue of non-development was an afterthought in order to deflect the attention from real issue of non-payment. The

petitioners have taken recourse to Consumer Court as well as to Civil Court but remained unsuccessful throughout.

We have heard learned counsel for the parties.

On 25.8.2014, when the matter came up for consideration before this Court, learned counsel for the petitioners had contended that the resumption of the booth site was on account of non-payment of instalments and such instalments have been paid during the pendency of the proceedings, after the order was passed by the Administrator, HUDA.

At this stage, it will be relevant to refer to affidavit dated 12.12.2014 filed on behalf of the respondent-HUDA through Shri Mahavir Kaushik, Estate Officer, HUDA, Panchkula showing therein that following payments have been made by the petitioners:-

Sr.No.	Amount	Date	Remarks
1	10,100.00	4.8.1986	Earnest money
2	15,150.00	05.09.1986	15%
3	25,000.00	23.07.1992	-
4	26,000.00	22.11.1995	-
5	10,000.00	12.05.1997	-
6	10,000.00	04.12.1997	-
7	15,000.00	05.02.1999	-
8	10.000.00	23.06.1999	-

9	10,000.00	08.06.2000	-
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The affidavit further suggests that the booth in question was resumed on 31.3.2003 for non-payment of price of the booth. It has been further submitted that by virtue of order dated 17.5.2012 passed by Additional Civil Judge (Sr. Divn.), Panchkula, while granting interim injunction in favour of the petitioner, respondent-HUDA was restrained from resuming the booth in question, subject to the condition that the petitioner shall deposit 50% of the amount of Rs.4,40,365/- within 45 days, failing which stay granted shall stand vacated automatically. Accordingly, the petitioners deposited Rs.2,20,220/- on 15.6.2012 directly in the Indian Bank, Sector 6, Panchkula. Thereafter, the petitioners deposited Rs.3,25,000/- on 23.9.2013 in same mode. Ultimately, an amount of Rs.31,500/- was pointed out to be outstanding upto 31.12.2014 after adjusting the payments made by the petitioners.

Learned counsel for the petitioners contended that the only ground for resumption of the booth in question was non-deposit of outstanding dues except an amount Rs.31,500/- and now, considering the fact that the petitioners have deposited the outstanding amount and raised construction over the booth site in question, the said

site, which has been resumed, be restored back to the petitioners. It has been further undertaken on behalf of the petitioners that the outstanding amount of Rs.31,500/-, as submitted in affidavit dated 12.12.2014 filed on behalf of the Estate Officer, HUDA, shall be deposited within two weeks.

Accordingly, the present writ petition is allowed subject to payment of Rs.50,000/-, as litigation costs, to be deposited by the petitioners with the respondent-authorities for taking precious time of the Court. Consequently, the order of resumption dated 21.7.2003 (Annexure P7), order dated 25.3.2004 (Annexure P8) passed in appeal and order dated 6.9.2010 (Annexure P10) passed in revision petition are quashed. The petitioners shall also deposit the outstanding amount of Rs.35,500/- or any other amount, which is due, within two months. In case, the petitioners fail to deposit the outstanding amount, to be communicated to the petitioners, the order of resumption shall become operative.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

January 29, 2015
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