IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3691 of 2008 (O&M)
Date of Decision: 15.07.2015

Gurcharan Kaur
.... Appellant

Versus

State of Punjab and others .... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.S. Rana, Advocate,
for the appellant.

Mr. T.N. Sarup, Addl. AG, Punjab.

Mr. Harit Sharma, Advocate,
for R-2 to 4.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

CM No.12251-C of 2010

The application filed under Order 41 Rule 27 read with section 151 CPC for placing on record some additional documents by way of additional evidence filed by R-4 is accepted and the documents are taken on record without objection.

RSA No.3691 of 2008 (O&M)

1. The substantial question of law which arises in this appeal is:-

> I. *Whether the resumption order is liable to be revoked, the appellant having already deposited the balance amount due with interest as per allotment letter and which has been accepted by respondent and the appellant being also still ready and willing to deposit balance amount as per terms and*

conditions of the allotment letter?

2. The plaintiff has approached this court in second appeal. She filed a suit for declaration that the order dated November 30, 1994 passed by the Punjab Urban Planning & Development Authority, SAS Nagar, Mohali resuming the suit property was a nullity and not binding upon the plaintiff inter alia for the reason that Mr. M.S. Narang, Estate Officer, PUDA who passed the order was never appointed by the State Government to perform the functions of the Estate Officer and, therefore, the order of resumption was one without jurisdiction. This technical argument has been rejected by the court of first appeal in para.12 of the judgment holding with reference to the order dated April 01, 2003 passed by this court in civil revision preferred against an interlocutory order arising from the suit held the objection to be hyper technical when the true position was that Mr. M.S. Narang was serving as Estate Officer, Urban Estate, Patiala the Government vide order dated October 06, 1994 gave him the additional charge of Estate Officer, Urban Estate, SAS Nagar, Mohali which dual charge he had assumed on October 10, 1994 while the resumption order was passed by him on November 30, 1994 while holding charge.

3. The suit was filed on January 03, 1998 and on notice defendant PUDA pleaded that the suit was filed beyond the period of limitation of three years from the date of the cause of action. PUDA admits that it did not take the objection of limitation in its written statement but it is argued that it is incumbent upon the court regardless of pleadings raised or not with respect to limitation, to determine whether the suit is barred by limitation. Such a jurisdictional fact need not be pleaded in view of section 3 of the

Limitation Act, 1963. In relying on this proposition of law, PUDA cited authority in **Gannmani Anasuya and others vs. Parvatini Amarendra Chowdhary and others**, (2007) 10 SCC 296 to urge that court is duty bound to decide the question of limitation irrespective of pleadings since it is a question of jurisdiction and maintainability of the suit.

4. The appeal preferred against the judgment and decree of the learned trial court dated October 15, 2005 in Civil Suit No. 4 of January 03, 1998 has remained unsuccessful. Hence, this second appeal. As the appeal involves resumption in default in payments of installments a few facts are culled out in brief to understand the case from the standpoint of the relevant dates and events shorn off unnecessary details.

5. The corpus of the suit is a booth site which the plaintiff purchased at an auction held on September 23, 1987 for the bid amount of Rs.2,59,500/-. PUDA issued allotment letter dated October 29, 1987 which spelled out the payment schedule and the terms and conditions of the auction. In terms of the sale by auction, the plaintiff deposited 25% (Rs.64,875/- at the fall of the hammer) of the auction amount. The balance 75% was payable in four yearly installments starting from the year 1988 ending in the year 1991 with interest accruing @ 7% calculated thereon as mentioned in the allotment letter which comes out to Rs.2,28,684/-. The plaintiff was required to construct the booth on site as per terms and conditions of the allotment letter. This she did.

6. The plaintiff and her family were riot affected persons migrating to Punjab in the aftermath of the anti Sikh riots which sadly afflicted the country in the year 1984. When the riots broke out their family was settled

in UP and after the law and order situation was restored they migrated to the safer havens in their state of origin, the Punjab. It was the case of the plaintiff that to pay the installments the family depended on a corresponding sale and exchange of their property in Uttar Pradesh but was unable to dispose of that property to defray payments of the installments due to the defendants and, therefore, the account fell in disrepute and in default. Due to non-payment of balance amount of 75% payable in four installments, the Estate Officer, PUDA resumed the property by order passed in writing on November 30, 1994 and thereby forfeited 25% of the amount deposited by the plaintiff towards the sale consideration.

7. Aggrieved by the order of resumption, the plaintiff carried an appeal to the Chief Administrator, PUDA which was partly allowed by the order dated December 08, 1995 granting further time to the appellant to make good the deposit of the balance sale consideration and the outstanding dues. However, the plaintiff could not deposit the amount in the time enlarged and thereagainst preferred a revision before the Secretary Urban Housing Development, Punjab. The revision was also dismissed on July 02, 1996. This is where the plaintiff stood.

8. On notice, the defendants appeared and contested the suit by filing written statement. The defendants pleaded that several notices were issued to the plaintiff during the period May 09, 1990 to July 29, 1993 but still she failed to appear and make deposit of dues despite service of those notices and thus the Estate Officer, PUDA had no alternative but to resume the booth site. By a short judgment, the Civil Judge (Junior Division) Kharar dismissed the suit on October 15, 2005 for reasons contained in

para.18 which are reproduced:-

> *"18. After hearing the ld. counsel for the parties I do not find any merit in the contention raised by the ld. Counsel for plaintiff. The stand taken by the defendants is that Mr.M.S. Norang, was posted as Estate Officer, Urban Estate, Patiala. The stand taken by the ld. Counsel for the plaintiff had Mr.M.S. Norang had not been given the additional charge to act as Estate Officer, Urban Estate SAS Nagar has not been proved on the file. Moreover, it has come on the file that Govt. of Punjab had been given the additional charge to act as Estate Officer Urban Estate SAS Nagar to Mr. M.S. Norang and moreover, the plaintiff has filed a revision petition against the order, which has also been decided against her and the plaintiff has failed to place any exhibited document on the file, it is well established law that unexhibited documents can not be read in the eyes of law. So issues No.1, 2 & 3 are decided against the plaintiff and in favour of the defendants."*

9. A reading of the judgment of the trial court shows a lack of application of mind and the assiduousness expected from a judicial verdict. The trial court non-suited the plaintiff, firstly because the resumption order was not exhibited on the file and since the plaintiff was to prove her case independently she must fail since the adverse documents affecting her rights are not exhibited or even marked as documents and, therefore, had not turned into legal evidence. I would only say that the contents of the resumption order were neither in dispute nor were material to the determination as no argument was raised by either of the parties as to its contents. The plaintiff did not say, and neither did PUDA, that there was any ambiguity on documented facts of the case. Both parties knew the case against each other, and would be assumed to have known, that the real issue between the parties was whether the plaintiff was entitled to recover ownership over the property by decree by reason of being allowed to cure

inability to pay the remaining amount by deposit and the effect of non-payment of installments and the outstanding dues on rights over the disputed property. The trial court was required to go into the conduct of the plaintiff and reasons of default and not to have dismissed the suit straightaway for the reasons mentioned in para.17 of the judgment which read as under:-

> *"17. I have gone through the citations as well as facts of the case. In the present case Estate Officer who has been duly appointed by the Punjab Govt. had issued notice to the plaintiff which are on the file. Moreover, the plaintiff has also filed revision petition before the competent authority against the order which has also been decided against her."*

The trial court made the following observations in preceding para.16:-

> *"16. I have gone through the file very carefully. The plaintiff has not exhibited the document on the file, which she has relied upon 2001(2), CCC, 412 (P&H) that non payment of instalments, resumptions of site is a very serious matter. Such orders should be passed in rare cases when the authorities are satisfied that the default committed by the allottee is intentional and consistent. If the conduct of the allottee indicates that he is sincere in complying with the conditions and he has invested a huge amount on construction, resumption should be avoided. Intent of law is not to deprive the citizens of the properties which they acquire in a legal manner. The authorities are to assist and accommodate the citizens unless the things have gone out of control."*

10. Merely because statutory remedies were availed against the resumption order and had failed does not ipso facto mean that the resumption orders etc. are fair and just or the best dispensation possible in law and in equity and judgment should not have been based only on cold facts but also the attending circumstances as well in which the appellant and

her family was placed. The law which has developed over the years on the subject of resumption of property has been largely in favour of conditional restoration of ownership of property after many valuable decisions rendered and especially by this Court in its first-on-the-point Full Bench ruling in oft quoted **Ram Puri vs. Chief Commissioner, Chandigarh**, AIR 1982 Punjab & Haryana 301 that resumption should ordinarily be the last resort. The principles laid down in *Ram Puri* have been consistently followed with exceptions carved out from case to case and examination of the justification in restoring property or depriving persons of it, for which multiple factors can be at play and to be accounted for to achieve a just balance of rights of both the parties. The Supreme Court has further refined the law in a string of precedents including in **Teri Oat Estates (P) Ltd. vs. U.T., Chandigarh and others**, (2004) 2 SCC 130 where the Court applied the doctrine of proportionality and held that the drastic step of resumption should be taken as a weapon of last resort. The fulcrum of such cases mostly rests on the conduct of parties and much would depend whether there has been an oblique and deceitful default with ulterior motive. Defaults must thus be bona fide and properly explained in the facts and circumstances. On the point of resumption of property as a measure of last resort when no other option is left with the allotting authority, see also the ruling in **HSIDC v. Hari Om Enterprises**, (2009) 16 SCC 208 and the Division Bench decision of this court in **Ajay Singh Mann v. State of Haryana**, 2009 (1) R.C.R. (Civil) 474 applying the ratio in *Teri Oat Estates.*

11. If the learned trial court honed in or around the main question mark in the probabilities of justification in resumption or lack of it, then

some further discussion I think was needed to differentiate the facts of the present case from amongst the species of resumption by last resort cases by assigning cogent and valid reasons as to whether resumption ought or ought not to be judicially sustained for the superior court to review the reasoning and form an opinion as to the relief to be granted or denied.

12. Against the dissatisfactory judgment of the learned trial Judge an appeal was carried by the unsuccessful plaintiff to the court of the learned Additional District Judge, Ropar who by judgment and decree dated January 18, 2008 has declined the appeal. The discussion on the material issues 1 to 3 are found in para.13 of the judgment in appeal. The lower appellate court noticed that in the remedies availed under the statute a plea was taken by the plaintiff that due to financial hardship; given that family was admittedly riot affected, could only be a valid reason for inability to pay the balance consideration and the scheduled installments only in cases of short term defaults. The plea was not available on a permanent basis over an unreasonably long period of time. This may be partially true but then the facts leading to default would require fuller and holistic examination whether party should be non-suited and divested of ownership of property altogether. It would also require a re-look whether party made genuine effort in compliance of discharging debt by deposit or a bona fide request for making deposit. The only success the plaintiff met in revision against the order of resumption was in Chief Administrator, PUDA deleting penalty levied @30% p/a which was rightly found unsustainable and illegal since there was no provision of law in PUDA statutes by which penal interest could be charged. But be that as it may, the revision was dismissed by

allowing further time for deposit of the outstanding dues within a set time frame. Accordingly, the order imposing penal interest @30% was withdrawn by PUDA and so also the order of resumption conditionally.

13. The case takes an interesting turn when Jaswant Singh, husband of the plaintiff was allotted a plot by PUDA under the riot affected category which was also resumed. Litigation ensued between Jaswant Singh and PUDA which finally came to this court in RSA No. 1216 of 2004 titled **Jaswant Singh vs. State of Punjab and others**, reported in 2006 (4) RCR (Civil) 769. The appeal was allowed on September 15, 2006 in favour of Jaswant Singh and the Special Leave Petition No. 6694 of 2007 filed by PUDA in the Supreme Court was dismissed as withdrawn on January 11, 2008 but the question of law, if any, was left open. However, it may be retold that Jaswant Singh purchased the property from PUDA at an open auction but in the quota category on the strength of being a displaced person affected by the 1984 riots.

14. Mr. P.S. Rana, learned counsel for the appellant has urged that though the resumption order was passed the plaintiff was ready and willing to pay the balance amount due as per terms and conditions of the allotment letter for which she made genuine offers but PUDA would have none of it due to resumption. The plaintiff in her deposition by way of affidavit stated that the family had suffered huge losses in the 1984 riots after which they were compelled to migrate to their parent State of Punjab to rehabilitate themselves in small business. Her testimony was not shaken in cross-examination. That apart, the policy of the Government was liberal in dealing with cases of riot affected Sikhs and had allowed many similarly situated

affected persons to make payment of dues in lump sum or in re-scheduled installments by those who suffered on account of financial difficulties and also could not pay the outstanding dues towards houses, plots and booths which were resumed also got relief from PUDA but the plaintiff was treated differently. Therefore, it is urged that equals were treated unequally and this was discriminatory. She deposed in emphatic terms in her testimony that she made sincere attempts and tried to pay the amounts due but the defendants would not allow her to do so or credit the payment. She says she tried her best in the years 1994 and 1996 but by that time the axe of the resumption order had fallen but PUDA was obstinate and not ready to accept the payment, but still she was and still is. There is a material fact on record which could not obviously be rebutted by Mr. Harit Sharma, learned counsel appearing for Respondents 2 to 4 that plaintiff had deposited with PUDA an amount of Rs. 2,28,684/- by a demand draft dated April 10, 2008 issued by Oriental Bank of Commerce, SCF No. 18, Phase-XI, Branch, Mohali which was due as per the allotment letter which includes interest till September 23, 1991 and the same has been accepted and encashed by the defendants.

15. It has also come on the record of the appeal papers as witnessed in the interim order dated July 21, 2014 that a further amount of Rs.7,04,853/- was deposited by the plaintiff on July 08, 2013 during the pendency of this appeal. The plaintiff had maintained before this court on July 21, 2014 that whatsoever amount is still due *vis-à-vis* the suit property, the appellant is still ready and willing to clear any such liability. Time was granted to the respondents to verify the position and apprise the court of the true and

correct facts in this regard. Respondents 2 to 4 sought more time to respond to the interim order dated July 21, 2014 passed by this court. On January 15, 2015 Mr. Harit Sharma, returned with instructions from PUDA that it was ready to restore the suit property on payment of current market price of the booth i.e. Rs. 68,75,000/- but the learned counsel for the appellant made statement that the proposal is not acceptable and the appellant is not capable or ready to pay the current market price of the booth and that is how the matter was posted to July 13, 2015 and the appeal was heard on July 15, 2015 for final disposal.

16. Counsel revisited the facts of *Jaswant Singh* case in disposed of RSA No 1216 of 2004 which was ordered to be attached with the record of the present case by an interim order dated February 26, 2010 to examine the facts of that case in order to draw a parallel between the present appeal and the appeal of Jaswant Singh, the husband of the plaintiff in the present suit, Mr. Rana submits that once the appellant Jaswant Singh had deposited the balance price inclusive of interest, respondent had accepted the same as such the judgment in RSA No. 1216 of 2004 becomes fully applicable and the resumption order in the present appeal is thus liable to be set aside on calling deposit of any other amount due from the appellant as per terms and conditions of the allotment letter. He submits that the principle of law stated in *Teri Oat Estates (P) Ltd.* (supra) was followed in *Jaswant Singh's* case and the decision in appeal was called in question before the Supreme Court in the aforesaid SLP which was dismissed as withdrawn. Therefore, the facts and circumstances of the present case are not widely off the mark in *Jaswant Singh's* case and in both the cases the allottees were de facto riot

victims and unable to pay the amount in time due to reasons beyond their control as they could not sell their property in Uttar Pradesh to defray the costs of the present allotment. This is appellant's case which is not unbelievable given the special circumstances obtaining from the fall out of the riots which have ruined many good people who may need protection by the collective conscience of the nation responding to any extraordinary situation. Mr. P.S.Rana would also rely on the decision of the Supreme Court in **Jasbir Singh Bakshi vs. Union Territory, Chandigarh and others**, AIR 2004 Supreme Court 2660 which has taken a similar view of relieving allottee of hardship of resumption by accepting deposit of balance dues though delayed and on depositing them, the resumption order was set aside. It is further submitted that admittedly plaintiff had raised construction on the booth site in question within the specified period as per terms and conditions of the allotment letter and has presently today available the amounts due in respect thereof and is also ready and willing to pay the outstanding balance amount as per the allotment letter.

17. Mr. Rana submits that an artificial distinction cannot be drawn between *Jaswant Singh's* case and the present one on the specious plea that Jaswant Singh was allowed to deposit the outstanding dues but in the present case, the plaintiff was not permitted to do so and thus the learned Additional District Judge, Ropar erred in distinguishing both the cases on the ground that balance price was deposited by Jaswant Singh but no such balance price has been deposited by the plaintiff till the date of the judgment passed in the year 2008. The deductive premiss applied by the court of first appeal was apparently erroneous and illogical distinction based only on

remittance and acceptance, in one case Yes, in the other- No. Mr. Rana's contention does not appear to me as a jurisprudential principle to be incorrect or wide off the mark with reference to relief capable of being granted. In *Jaswant Singh's* case, the Secretary Urban Housing Development, Punjab had after all recorded that the plaintiff was facing financial hardship due to being a riot affected person in 1984 but the affliction could not be viewed as a permanent one and due advantage could be given only in cases of short term default. The theory of short term and long term default is an unruly horse with hardly any controlling factors or guidelines to reign in the relief. Since the plaintiff was unable to pay installments beyond 25% the resumption order was justified so far as lack of effort to deposit balance sale consideration is concerned. But the position changed when the plaintiff deposited two amounts in GMADA and they have been accepted even as late as up to the year 2013. Besides, GMADA is on record to admit that is still prepared to restore the plot but at the current market price. This admission and statement made before this court substantially removes the basis of the judgment of the learned Additional District Judge, Ropar so far as inability to pay money in the long run is concerned. The court of first appeal has stopped the needle to turn beyond 25% of the sale price and this no longer appears to be a fair and just dispensation seen in the light of supervening events where deposits of money have been tacitly accepted without demur. Therefore, the only triable dispute which remains is the price to be paid for the booth site in case the resumption is set aside. For this end no evidence or lengthy arguments are required to be tendered or addressed, as the case may be.

18. It is the opposing contention of Mr. Harit Sharma, that the case of *Jaswant Singh* and the present appellant are different and the same benefit cannot be granted to the appellant as she had purchased the suit property in open auction with open eyes and not on the basis of a riot affected person. But when he says this he misses the point that she waited for too long to be rehabilitated as a riot affected person and had little option but to scour the market for the rehabilitation of her family to settle in business as a shopkeeper. But PUDA/GMADA was apathetic to her immediate wants despite Punjab policy of resettlement of riot affected persons.

19. I would need to record that GMADA says that Jaswant Singh sold his riot quota property on April 30, 2008 by registered sale deed, the photocopy of which is attached with the written submissions filed on behalf of R-2 to 4 which is taken on record. Mr. Sharma says this is profiteering on special property.

20. In order to explain this turn of events, Mr. Rana submits that the rights of a riot affected person is a special right of rehabilitation created by a policy decision of the Government to rehabilitate and re-settle the exodus of the Sikhs to their homeland in Punjab for their safety and for making a fresh start in life. When the promise of allotment to riot affected Sikhs were not being percolated down to the sufferers in time for their rehabilitation the present plaintiff was left with no option but to secure property through public auction so that the family could meanwhile re-settle itself in business. Jaswant Singh's right of allotment on the basis of being riot affected person matured much later when special auctions were held by GMADA etc. In *Jaswant Singh's* case this court held in paras.9 to 11 as

follows and which are relevant and therefore reproduced:-

> *"9. In the light of the above-noticed admitted facts, the only substantial question of law left to be determined is as to whether the drastic action of resumption of the allotted site, in the facts and circumstances of the present case, can sustain or not?*
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> *10. The parameters within which answer to the above-noted question is to be traced out, have been laid down by the Apex Court in the case of* ***Teri Oat Estate (P) Ltd.'s case*** *(supra). If on facts it is found that the lessee/allottee failed to deposit the installments and/or defaulted in payment thereof willfully or in a dishonest manner, the competent authority shall be justified to resume the site and forfeit the amount, if any, deposited by him. However, if the default in payment has occurred for the reasons and circumstances beyond the control of the allottee, the order of resumption would warrant interference.*
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> *11. In the case in hand, there is no denial to the fact that the appellant is a victim of 1984 anti-sikh riots. His property and source of livelihood, which he was having in the State of Uttar Pradesh were completely ruined and he had to migrate to the State of Punjab to save his own life as well as of his family members. It must have been a very hard time for the appellant and his family to sustain themselves and then to save for the installments. It is not the case of the respondent-authorities that the appellant, despite having sufficient means, did not deposit the installments and/or he wanted the allotment for speculative gains. In the absence of any such allegation or evidence on record, there can be no other conclusion but to hold that the appellant, having lost his livelihood in the riots, had no means to pay the installments in time and it was a reason beyond his control. The fact that with the passage of time and on improvement of his financial condition, he has cleared all the arrears along with the interest, also strengthens the conclusion that he had no dishonest intention to delay the payment of installments."*

21. Reliance is also placed on a short judgment of the learned Single Judge in **M.S. Ahluwalia vs. The State of Punjab and others**, 2006(4)

RCR (Civil) 768 which is a case decided in the light of section 10 of the Punjab Urban Estate (Development and Regulation) Act, 1964 where the court held that when defaults in payment of installments of premium was not willful or dishonest but were bona fide and was beyond allottee's control, the drastic step of resumption and forfeiture should not be taken. If the allottee is still ready to clear the outstanding dues or has already cleared them, the default should be condoned and request for restoration of property should be considered sympathetically. This decision was rendered in proceedings under article 226 of the Constitution whereas *Jaswant Singh* case arose from a civil suit. It would be apposite to notice the observations of the Supreme Court in *Jasbir Singh Bakshi's* case (supra) which is a case dealing with the Chandigarh Leasehold of Sites and Buildings Rules, 1973 where cancellation of a lease of an industrial plot allotted to the petitioner in auction was considered in the light of Rule 12(3) of the Rules. As I read the judgment the facts appear to be in *pari materia* with the present case. The Supreme Court held that though the conduct of the petitioner is such that he does not deserve any sympathy yet the court granted the petitioner more time to enable him to clear the entire outstanding dues to save the property from draconian resumption. The case originated from writ proceedings.

22. On the question of the allotment letter not being exhibited on record the same has been considered by the learned trial court but has not been taken up in first appeal and, therefore, it will be deemed to have been given up by GMADA and, therefore, Mr. Harit Sharma, can haul no real benefit of the decision of the Supreme Court in **Surinder Singh vs. Central Government**, (1986) 4 SCC 667 that there would be no interference by the

writ court when a copy of the adverse order is not filed with the petition which is brought under challenge. Then the High Court cannot set aside the order. If the allotment letter was not on record even then the parties knew the case against each other and went to trial. It is then too late in the day to raise the hyper technical plea. In any case the letter of allotment was not under challenge or in issue. In the main valuable rights flowing therefrom were at issue. The question at large was whether resumption order was supportable in law and in the facts resulting from non-adherence of schedule of equal installments due and payable on dates fixed and if the resumption deserved to be revoked by decree.

23. For the foregoing reasons, the appeal is allowed and the judgments and decrees of the courts below being harsh, unreasonable and oppressive on the rights of the plaintiff are found unsustainable and are, therefore, set aside, by applying the doctrine of proportionality explained in *Teri Oat Estates (P) Ltd* ruling. The unrelenting demand of current market price by PUDA as a bargaining point is held to be excessively disproportionate to the cause and a draconian measure which is clearly beyond the capacity of the plaintiff. The pistol of duress cannot be pointed on her temple for her to do or die on the bidding of the defendants. Consequently, the resumption order is declared disproportionate to the cause of resumption and is set aside. The suit is decreed. The property is restored to appellant subject to clearance of outstanding dues to be paid to PUDA/GMADA. The defendants/respondents will inform the appellant of the details of payments left to be paid upon which the outstanding dues as remaining will be paid by the appellant within reasonable time fixed by the

authority. GMADA would beforehand furnish a detailed calculation sheet of money paid and due, in finalizing of which exercise the appellant would be associated so that no dispute remains unresolved between the parties in the future. Thereafter, physical possession of the booth be delivered to the appellant. The substantial question of law framed above is answered accordingly in favour of the appellant and against the defendants. However, while accepting the appeal there will be no order as to costs in all the courts.

(RAJIV NARAIN RAINA)
JUDGE

15.07.2015
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