

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

**CWP No.4362 of 2015 (O&M)  
Date of decision: 6.4.2015**

**Bimla Devi and others**

**.....Petitioners**

**Vs.**

**State of Haryana and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL  
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Ms. Anju Arora, Advocate for the petitioners.

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**Ajay Kumar Mittal,J.**

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing the order dated 20.11.1990, Annexure P.2 passed by the Estate Officer, Haryana Urban Development Authority, Fatehabad – respondent No.3 whereby residential-cum-commercial Plot No.34 in Model Town Fatehabad allotted to Bhagwan Dass, predecessor-in-interest of the petitioners was ordered to be resumed while exercising the

powers under the HUDA Act, 1977. Further prayer has been made for quashing the orders dated 14.5.1991, 21.3.2012 and 9.10.2014 passed in appeal, review and revision, Annexures P.3A, P.3 and P.4 respectively.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. On enactment of Haryana Urban Development Authority Act, 1977, the functionaries under the New Mandi Township Act, 1960 were merged with the authority like Haryana Urban Development Authority and the object was development of Mandi Township. Accordingly, in order to develop Mandi Township in the area of Fatehabad, the respondent authority framed a scheme to allot the residential cum commercial plots by way of auction on free hold basis. Plot No.34 measuring 250 square yards in residential cum commercial area, Mandi Township, Fatehabad was purchased by Bhagwan Dass, predecessor-in-interest of the petitioners who unfortunately died during the pendency of the proceedings before the authorities on 24.2.1988 in open auction at the sale consideration of ₹ 3,90,000/- and accordingly allotment letter was issued in favour of Bhagwan Dass on 24.2.1988, Annexure P.1. He deposited a sum of ₹ 39,000/- i.e. 10% of the total sale consideration amount in favour of the respondent authority at the time of auction on 19.1.1988 and further 15% of the sale consideration amount i.e. ₹ 58,500/- was deposited by him on 23.3.1988 as per clause 4 of the allotment letter. As per clause 5 of the allotment letter, Bhagwan Dass was required to deposit the balance amount in lump sum without interest within 60 days from the date of issuance of the allotment letter or in six annual equal instalments. The first instalment was to fall after the expiry of the date of the allotment letter. Each instalment was recoverable together with interest

on the balance price at the rate of 10% interest. The interest was to accrue from the date of letter of possession. According to the petitioners, Bhagwan Dass could not deposit the balance amount due to his ill health and after his death, they also could not do the needful. Vide order dated 20.11.1990, Annexure P.2, the Estate Officer resumed the plot due to non payment. The petitioners filed appeal before the Administrator, HUDA, Hisar - respondent No.2 which was dismissed in default vide order dated 14.5.1991, Annexure P.3/A. The petitioners came to know about the said order in the month of March 2012 and they immediately filed review application on 7.3.2012 which was also dismissed on 21.3.2012, Annexure P.3 on the ground of delay. The petitioners filed revision petition before respondent No.1 which was dismissed vide order dated 9.10.2014, Annexure P.4. According to the petitioners, CWP No.16546 of 2008 filed by similarly situated person Hans Raj was disposed of by this Court vide order dated 17.9.2008, Annexure P.6 with liberty to that petitioner to move an application before the competent authority with a direction to consider the same for re-allotment of the plot on current market price. Hence the instant writ petition by the petitioners.

3. We have heard learned counsel for the petitioners and perused the record.

4. It is the admitted position that the plot in question was allotted to the predecessor-in-interest of the petitioners Shri Bhagwan Dass on 24.2.1988 who deposited 10% of the total sale consideration amount in favour of the respondent authority at that time and 15% amount was deposited by him on 23.3.1988. He was required to deposit the balance amount in lump sum without interest within 60 days from the date of the

issuance of the allotment letter or in six annual equal instalments. Bhagwan Dass could not deposit the balance amount during his life time and even after his death, the petitioners did not deposit the balance amount. Ultimately, the plot was resumed vide order 20.11.1990 passed by the Estate Officer, HUDA, Fatehabad, respondent No.3. The appeal filed by the petitioners was dismissed in default vide order dated 14.5.1991, Annexure P.3/A. They filed review application on 7.3.2012 after the expiry of 20 years. No satisfactory explanation for the inordinate delay was placed on record and the review application was dismissed vide order dated 21.3.2012, Annexure P.3. The revision petition filed by the petitioners also met the same fate vide order dated 9.10.2014, Annexure P.6. A stale claim is sought to be raked up by way of present petition. The petitioners remained silent for about two decades without any satisfactory explanation. No material was placed on record to substantiate the averments made in the petition regarding the delay. Consequently, we are not inclined to entertain the petition after a period of more than two decades. The relevant finding recorded by the revisional authority reads thus:-

“7.....The plot in question was allotted to the petitioner on 24.2.1988 through open auction. As per clause No.5 of the allotment letter, 75% price of the site was required to be paid by the petitioner either in lump sum within 60 days from the date of issue of allotment letter without interest or in six annual instalments alongwith interest at the rate of 10% per annum and the interest was to accrue from the date of offer of possession. The petitioner participated in auction and by giving bid therein excluded other bidders from purchasing the site. By participating in the auction, the petitioner undertook to abide by the terms and

conditions of the auction as well as allotment. It is well settled legal position that in auction matters time is always essence of contract. The petitioner failed to make payment of instalments in time as per the terms and conditions of the allotment letter despite notices under Section 17 of the HUDA Act. In SLP (Civil) No.12968 of 2006 titled as Municipal Corporation, Chandigarh and others vs. Vipin Kumar Jain, decided on 20.9.2007, it was observed by the Hon'ble Supreme Court that auction is basically an exercise in raising revenue for the Government. The default in payment results in loss of revenue to the State. Time is the essence of the contract in matters concerning auction. Property prices rise by the day and if within a stipulated period contractual obligations are not fulfilled then loss caused to the State cannot be compensated in terms of interest or penalty. The Revision petition is liable to be dismissed in view of the ibid decision of the Hon'ble Supreme Court. Admittedly, the petitioner failed to make payment of instalments after depositing 25% price of the plot. Allotment letter was sent on the address of VPO Bhora, Tehsil Ratia, District Hisar which was admittedly received by the petitioner and payment of 15% price was made. Notices under Section 17(1), (2) and (3) of the HUDA Act dated 25.4.1989, 22.7.1989, 30.8.1989 and 16.11.1989 were issued on the same address. Notices under Section 17(1), (2) and (4) dated 9.4.1990, 3.7.1990 and 5.11.1990 were issued on the address of Bhagwan Dass Medical Hall, Fatehabad which is similar address as Kamboj Medical Hall, Fatehabad because name of Shri Bhagwan Dass is Shri Bhagwan Dass Kamboj. In smaller towns like Fatehabad, it is very easy to deliver letters addressed with said slight difference. Since the petitioner failed to make payment of instalments despite notices, the plot in question was rightly resumed by the Estate Officer,

Hisar vide order dated 20.11.1990 due to non payment of instalments by the petitioner and a copy of the order was sent to the petitioner on the address of Bhagwan Dass Medical Hall, Fatehabad which was admittedly received by the petitioner and appeal against the resumption order was filed on 20.12.1990. Therefore, plea of the petitioner that notices were served on the wrong address is not acceptable. The appeal filed by the petitioner against the resumption order was dismissed in default on 14.5.1991. Only copy of the order dated 14.5.1991 was sent at the address of Kamboj Medical Store, Hisar instead of Fatehabad but that by itself is not sufficient to condone the huge delay of more than 20 years as it was duty of the petitioner to attend the hearing of the appeal filed by him on each and every date but the petitioner failed to perform even this duty. Thereafter, for more than 20 years the petitioner remained in slumber as if he did not have any interest in retaining the plot in question and as per his own version in the Revision Petition, he woke up only in the month of March 2012 when the prices of the property increased manifold. It seems that it is only the manifold increase in the prices of the property that revived the interest of the petitioner in the plot in question because silence of the petitioner for more than 20 years after dismissal of appeal on 14.5.1991 speaks volumes about his intention to make payment. The petitioner filed application to review and rehear the appeal before the Administrator, Hisar on 7.3.2012 which was rightly dismissed vide order dated 21.3.2012 being hopelessly time barred. Otherwise also, this application was not maintainable as per HUDA Act. There is default on the part of the petitioner on every stage i.e. firstly he failed to make payment of instalments in time as per the terms and conditions of the auction as well as allotment letter and secondly, he failed to pursue

the appeal filed by him before the Administrator, Hisar against the resumption order. The plea of the petitioner that copy of the order dated 14.5.1991 was never received by him cannot be accepted as sufficient explanation for the huge delay of more than 20 years during which the petitioner remained silent as appeal was filed by the petitioner himself and he ought to have inquired about the status of the same. Plea of the petitioner that he could not make payment due to serious illness is also not acceptable as he never requested of extension of time in making payment of instalments. The undersigned vide order dated 17.6.2014 directed the counsel for the petitioner to place on record documentary proofs in support of the illness of the petitioner. The counsel for the petitioner placed on record certain documents vide application dated 18.8.2014 and all these documents are pertaining to the year 2001 onwards whereas resumption order was passed on 20.11.1990. Therefore, this plea of the petitioner is also not acceptable.”

5. The impugned order has been passed by the revisional authority after considering the entire material on record and the facts and circumstances of the case. Learned counsel for the petitioners has not been able to point out any illegality or perversity in the impugned order. Further, judgments reported in *Sat Pal Bhatia vs. Estate Officer, Chandigarh*, 1998 (2) RCR (Civil) 407 (P&H), *M.D.H.S.I.D.C and others vs. M/s Hari Om Enterprises and another*, 2009(16) SCC 208 (SC), *Ajay Singh Kinha vs. State of Haryana and others*, 2009(1) RCR(Civil) 959 (P&H) and *The Administrators, Haryana Urban Development Authority, Hisar and another vs. Anguri Devi and others*, 2013(2) RCR (Civil) 224 (P&H) and relied upon by learned counsel for the petitioners do not come to their

rescue as all these judgments are based on individual fact situation involved therein.

6. Accordingly, finding no merit in the petition, the same is dismissed.

**(Ajay Kumar Mittal)**  
**Judge**

**April 06, 2015**  
**'gs'**

**(Rekha Mittal)**  
**Judge**