IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5222 of 2015 (O&M)
Date of decision: 23.3.2015

Raghubir Singh

……Petitioner

Vs.

The State of Haryana and others

…..Respondents

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

Present: Mr. R.S.Sathi, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Through the present petition filed under Articles 226/227 of the Constitution of India, the petitioner prays for quashing the impugned order dated 9.9.2014, Annexure P.5 passed by respondent No.1 – Secretary and Financial Commissioner, Town and Country Planning, Haryana whereby the revision petition filed by the petitioner against the cancellation order dated 15.7.2004 in respect of Plot bearing SSB No.170, Sector 13, Part II (16 and 17), Hisar, passed by Estate Officer, HUDA, Hisar, respondent No.3 was dismissed. Prayer has been made for a direction to the respondents to restore back the site in question to the petitioner.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The Haryana Urban Development Authority (HUDA) held public auction of residential and commercial site on 15.10.2003. The petitioner participated in the said auction and he was the highest bidder for Plot bearing SSB No.170, 13, Part II (16 and 17), Urban Estate, Hisar for ₹ 8,11,000/-. The said bid was accepted as per provisions of HUDA Act, 1977 (in short, "the HUDA Act") and Haryana Urban Development (Disposal of Land and Building) Regulations, 1978 (in short, "the Regulations"). The petitioner being the highest bidder deposited 10% amount i.e. ₹ 81,000/- on the fall of hammer at the spot. As per the regulations, the bid had to be approved by the Chief Administrator, HUDA. According to the petitioner, the bid in the present case was not approved by the Chief Administrator and hence the action of the respondents was against Regulation 6(2) of the Regulations. The petitioner did not receive any allotment letter inspite of his many visits to the office of respondent No.3. During the second week of April 2010, he came to know that the allotment letter was issued and thereafter the same was cancelled. Therefore, the petitioner applied for certified copy of the allotment and cancellation letters to respondent No.3 vide application dated 16.4.2010, Annexure P.1. The petitioner also deposited ₹ 100/- for supply of copies of the allotment and cancellation letters. On 3.5.2010, the petitioner was supplied the copies of the orders. Immediately thereafter, the petitioner filed revision petition before respondent No.1 for setting aside the impugned order. He appeared before respondent No.1 on 31.1.2014.

The revision petition was adjourned to 2.9.2014 but inadvertently he noted down the date of hearing as 9.9.2014 and due to non appearance on 2.9.2014, he was proceeded ex parte on the said date. On 9.9.2014, the petitioner along with his counsel appeared before respondent No.1 but he did not mark their presence and passed the impugned order dated 9.9.2014, Annexure P.5. Hence the instant writ petition.

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

4. Learned counsel for the petitioner contended that no letter of allotment was received by the petitioner and, therefore, 15% amount could not be deposited by him. Even cancellation letter was not received by him. Learned counsel further submitted that as per letter of allotment, no approval of Chief Administrator had been obtained. Section 42 of HUDA Act was not followed. Reliance was placed on judgment of this Court in ***Mohinder Singh vs. State of Haryana,*** 1983 PLJ 134. Learned counsel also urged that Regulation 5 of the Regulations was only referred but no reference was made to Regulation 6(2) in the impugned order. Reliance was placed on judgment of this Court in ***M/s Orchid Infrastructure Developers Pvt. Limited vs. Haryana Urban Development Authority and others,*** 2011 (2) PLR 816. Learned counsel also relied upon judgment of this Court in ***Kuldeep Singh vs. Haryana Urban Development Authority and others,*** 2013(1) Law Herald 64 in support of his submission that the default committed by the petitioner in not depositing 15% of the sale consideration was condonable.

5. The relevant provisions read thus:-

Regulations 5 and 6 of 1978 Regulations:

"**5**. The applicant whom land/building has been allotted shall communicate his acceptance or refusal within 30 days of the date of allotment, by registered post to the Estate Officer in case of acceptance, the letter shall be accompanied by such amount as intimated to him in the allotment letter. In case of refusal, he shall be entitled to refund of the money tendered with the application. In case he fails to either accept or refuse within the stipulated period, allotment shall be deemed to be cancelled and the deposit made under sub regulation (2) may be forfeited to the authority and the applicant shall have no claim for damages.

6. Sale or lease of land or building by auction (1) In the case of sale or lease by auction, the price/premium to be charged shall be such reserved price/premium as may be determined taking into consideration the various factors as indicated in sub regulation (1) of Regulation (1) of Regulation 4 or any higher amount determined as a result of bidding in open auction.

(2) 10% of the highest bid shall be paid on the spot by the highest bidder in cash or by means of a demand draft in the manner specified in sub regulation (2) of Regulation 5. The successful bidder shall be issued allotment letter in form 'C' or 'C-II) by registered post and another 15 per cent of the bid accepted shall be payable by the successful bidder, in the manner indicated, within thirty days of the date of allotment letter conveying acceptance of the bid by the chief Administrator; failing which the 10 percent amount already deposited shall stand forfeited to the authority and the successful bidder shall have no claim to the alnd or building auctioned.

(3) the payment of balance of the price/premium, rate of interest chargeable and the recovery of interest shall be in the same manner as provided in sub regulations (6) and (7) of

Regulation-5.

(4) The general terms and conditions of the auction shall be such as may be framed by the Chief Administrator from time to time and announced to the public before auction on the spot."

Section 42 of HUDA Act, 1977

"42. **Service of notice etc**. (1) All notices, all orders and other documents required by this Act or any rule or regulation made thereunder to be served upon any person shall, save as otherwise provided in this Act or such rule or regulation, be deemed to be duly served-

(a)xx xx xx xx xx

(b)xx xx xx

(c) xx xx xx xx

(d) In any other case, if the document is addressed to the person to be served and -

(i)is given or tendered to him; or

(ii)is sent by registered post to the person; or

(iii)If such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business, if within an urban area or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building to which it relates."

6. Admittedly, the site in question i.e. SSB No.170, Sector 13, Part II (16 and 17), Hisar was allotted in favour of the petitioner on 22.12.2003 at a total price of ₹ 8,11,000/- through open auction. As per clause 4 of the allotment letter, the petitioner was required to make payment of 15% price of the site i.e.. ₹ 1,21,650/- within 30 days from the date of issue of the allotment letter failing which allotment was to be cancelled and 10% deposited amount was to be forfeited. The petitioner failed to make payment of 15% price within the stipulated 30 days and thus, the allotment was

cancelled by the Estate Officer, Hisar vide order dated 15.7.2004. Aggrieved by the order, the petitioner filed revision petition before respondent No.1. It was categorically recorded by the revisional authority that the cancellation order was passed on 15.7.2004 whereas the petitioner filed revision petition after more than five years on 11.5.2010. The allotment letter was issued to the petitioner by registered post on 22.12.2003. Since the petitioner failed to submit acceptance alongwith 15% price of the plot within the stipulated time, no legally enforceable contract came into existence between the parties. With regard to the plea that the letter was not received by the petitioner, it may be noticed that in para 2 of the grounds of revision, it has been mentioned that 15% amount had not been deposited due to family circumstances of the petitioner. No application for condonation of delay had been filed by the petitioner in the revision petition. There is nothing on record by which it could be inferred that no notice was received by the petitioner. On the failure of the petitioner to deposit 15% of the amount within the stipulated period, allotment was cancelled by the Estate Officer. The relevant finding recorded by the revisional authority reads thus:-

> "Coming to the merits of the case, the site was allotted through auction and in the terms and conditions of the auction, it was specifically mentioned that 10% price of the site shall have to be paid at the fall of hammer and 15% price shall have to be paid within 30 days from the date of issue of allotment letter. By participating in the auction, the petitioner impliedly undertook to abide by the terms and conditions of the auction. Allotment letter was issued in favour of the petitioner through registered post on 22.12.2003 and as per clause No.4 of the allotment letter and Regulation 5(5) of the Regulations of 1978, the petitioner was required to make payment of 15% price of

the plot within the stipulated 30 days from the date of issue of allotment letter. In the allotment letter an offer of allotment was made to the petitioner which was to be accepted by submitting acceptance alongwith 15% price of the site within stipulated 30 days from the date of issue of allotment letter. Since the petitioner failed to submit acceptance alongwith 15% price of the plot within the stipulated time, no legally enforceable contract came into existence between the parities. As per the Indian Contract Act, 1872, a legally enforceable contract comes into existence only when an offer of allotment made by the Estate Officer in the allotment letter is accepted by depositing 15% price by the allotment. The Hon'ble Apex court in the case of SLP (C) No.20651 of 2007 titled as ***Chaman Lal Singhal Vs. HUDA and others*** has held that there was no agreement/contract between the allottee and the authority and there being no such agreement/contract and because of non compliance with requirement of clause 4 of the allotment letter, the issue with regard to violation of principles of natural justice does not arise and Section 17 of the HUDA Act which provide for issuance of notice is not applicable. Therefore, allotment was rightly cancelled by the Estate Officer, Hisar vide order dated 15.7.2004 as per the terms and conditions of the allotment letter. Admittedly, allotment letter dated 22.12.2003 was received by the petitioner and it was bounden duty of the petitioner to make payment of 15% price in time. It is not the case of the petitioner that allotment letter was not received by him. As per policy dated 9.4.1999 regarding condonation of delay in depositing 15% price, power to condone delay upto 15 days in depositing 15% price in respect of sites allotted through auction is vested with the concerned Estate Officer and to condone delay upto 30 days power is vested with the concerned Administrator. Delay beyond 30 days is not condonable. Time is of essence in commercial transactions. The rates of commercial properties keep on fluctuating from time to time and that is why in the HUDA policy, a very strict time schedule for condonation of delay has been prescribed for commercial properties. The petitioner has never applied for condonation of delay in depositing 15% amount. The plea of the petitioner that 15% price could not be paid due to family circumstances is not acceptable as no such circumstance has been pleaded by him. It was incumbent upon him to plead and prove any such family circumstance which prevented him from making payment of 15% price in time in order to justify the non payment of 15% price. Rather this plea seems to have been coined by the petitioner just to challenge the cancellation of the allotment."

7. The impugned order has been passed by the revisional authority taking into consideration the evidence on record and the overall facts and circumstances of the case. Learned counsel for the petitioner has not been able to point out any illegality or perversity in the order. Coming to the judgments relied upon by the learned counsel for the petitioner, it may be noticed that in ***Mohinder Singh's*** case (supra), no notice was served on the petitioner as envisaged by Section 17(3) of the HUDA Act before order of resumption was passed. In ***M/s Orchid Infrastructure Developers Pvt. Limited's*** case (supra), suit for declaration and consequential relief of permanent injunction filed on the ground that the Administrator HUDA was not competent to take decision because no notification had been issued by the State Government delegating the powers of the Chief Administrator, HUDA to any other authority or office under Section 51(4) of the HUDA Act was held to be rightly decreed by the trial court. In ***Kuldeep Singh's*** case, there was mistake on the part of the HUDA authorities in not dispatching/sending letter of allotment to the petitioner at his residential address. Thus, it was held by this Court that the default committed by the

petitioner in not depositing 15% of the sale consideration was condonable. All these cases being based on individual fact situation involved therein do not come to the rescue of the petitioner.

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

(Ajay Kumar Mittal)
Judge

March 23, 2015
'gs'

(Rekha Mittal)
Judge