

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

**CWP No.9048 of 2015
Date of decision: 11.5.2015**

Phoolan Devi and others

.....Petitioners

Vs.

The State of Haryana and others

.....Respondents

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

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Gaurav Arora, Advocate for the petitioners.

Ajay Kumar Mittal,J.

1. The petitioners seek quashing of orders dated 22.5.2013 and 3.7.2014, Annexures P.3 and P.4 whereby appeal and the revision against the order of resumption of plot allotted to them were dismissed.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The State of Haryana acquired land for the development of New Grain Market, Thanesar and thereafter started developing the same for the construction of New Grain Market. The respondents issued a public notice for auctioning of plots measuring 20'x85' in the New Anaj Mandi, Thanesar with the condition that any person could take part in open auction and he had to deposit ₹ 5000/- as security before taking 1/4th amount of the cost of the plot at the spot. The rest of the amount was to be recovered in easy six half yearly instalments of the total amount to be deposited within 30 days of allotment. The

predecessor of the petitioners namely late Shri Prem Kumar son of Shri Thakar Dash had taken part in the auction proceedings. Plot No.5 had been released in favour of Prem Kumar at the highest bid of ₹ 6,00,000/-. He had deposited 1/4th of the auction money on the spot i.e. ₹ 1,50,000/- with the respondents. The allotment letter dated 31.5.1990 Annexure P.1 was issued to the predecessor of the petitioners specifying plot number and terms and conditions of allotment. The office of Chief Administrator had approved the bids of the predecessor of the petitioners on 25.6.1991. The predecessor of the petitioners wrote a letter to the respondents with regard to the possession of the plot in question so that the construction could be made thereon. The offer of possession had not been given. Instead of demarcation of the plot or offering possession to the predecessor of the petitioners, the respondents started proceedings regarding resumption of the plot in dispute and passed order dated 18.11.1998, Annexure P.2. According to the petitioners, there was no condition regarding resumption of plot in the allotment letter once it was auctioned and allotted to the party. The petitioners challenged the said order in appeal before the Chief Administrator. Vide order dated 22.5.2013, Annexure P.3, the appeal was dismissed. Still not satisfied, the petitioners filed revision petition before the Financial Commissioner cum Secretary Government of Haryana. Vide order dated 3.7.2014, Annexure P.4, the revision petition was also dismissed. Hence the instant writ petition.

3. Learned counsel for the petitioners contended that no offer/letter of possession had been given to the petitioners till date but proceedings for resumption of the plot in question were initiated. As per allotment letter, the respondents were entitled to charge interest and penal

interest for default which could be from the date of offer of possession. In other words, it was argued that there was no condition of resumption in Annexure P.1 allotment letter and the interest and penalty could be levied after the offer of possession by the respondents. Support was drawn from Division bench judgment of this Court in **Haryana Urban Development authority and another vs. Vinod Mittal and others**, LPA No.933 of 2009, decided on 16.10.2012. Reliance was also placed on judgments of the Apex Court in **Bahadurgarh Plot Holders Association (Regd.) vs. State of Haryana**, (1996) 1 SCC 485, **Municipal Corporation Chandigarh and others vs. M/s Shantikunj Investment Pvt. Limited**, (2006) 4 SCC 109 and **UT Chandigarh Administration and another vs. Amarjeet Singh and others**, (2009) 4 SCC 660 to contend that interest could not be demanded till the offer of possession was given.

4. After hearing learned counsel for the petitioners, we do not find any merit in the writ petition.

5. It is the admitted position that the plot in question i.e. No.5 situated at New Grain market was allotted to the predecessor of the petitioners on 5.4.1990 by open auction for ₹ 6 lacs. As per Condition No.4 of the allotment letter, the allottee was to deposit the balance 75% of the bid cost within thirty days of the allotment letter without interest or in six half yearly instalments with interest at the rate of 12.5% per annum. However, he failed to deposit the balance amount in lump-sum or in instalments. On the failure of the allottee to deposit the instalment, notice dated 14.6.1996 was issued to deposit the instalments alongwith penal interest which was followed by another notice dated 12.9.1996. Thereafter, when no response was received from the allottee, a show cause notice dated 17.4.1997 for

resumption of plot was issued. In reply thereto, the allottee pleaded that there was some family dispute regarding the plot and the amount shall be deposited thereafter. However, another notice for personal hearing was given to him when the allottee did not appear. The allottee after depositing the initial amount of 25% in 1990 never paid any instalments thereafter. Ultimately vide order dated 18.11.1998, Annexure P.2, the site was resumed. The said order was communicated to the allottee vide letter dated 5.4.1999. After the delay of more than 10 years, the legal representatives of the allottee filed appeal against the impugned order of resumption. Even there, they did not appear inspite of various opportunities. Ultimately, vide order dated 22.5.2013, Annexure P.3, the appeal was dismissed. The revision petition filed by the petitioners was dismissed vide order dated 3.7.2014, Annexure P.4. The relevant finding recorded by the revisional authority reads thus:-

“5. On perusal of the case file and after hearing the arguments advanced by both the parties, it comes out that the petitioner has not taken any care to make the payment of 75% balance amount of auction in time and thereupon his plot was resumed vide order dated 18.11.1998 by the Market Committee. I am not convinced with the arguments advanced by the learned counsel for the petitioner. The allottee died in the year 2002 but before his death the plot in question was resumed by the Market Committee and moreover the petitioner himself did not try to agitate the order of resumption during his life time. Therefore, I tend to agree with the arguments of the learned District Attorney that even the present revision petition is time barred and is not accompanied by any application for the condonation of the delay, hence the present revision petition is not maintainable. In view of the above facts and circumstances, I am of the considered view that the order dated 22.5.2013

passed by the Chief Administrator, HSAMB is having no illegality or infirmity. Therefore, the present revision petition is hereby dismissed being devoid of merits. I order accordingly.”

6. The facts and circumstances in the present case fully justify the action of the respondents in resuming the plot which was in consonance with clause 20 of the letter of allotment dated 31.5.1990 (Annexure P.1) which is as under:-

“20. Should any transferee fail to observe or comply with any of the terms and conditions mentioned above the plot will be resumed and his deposit shall be forfeited to the M.C.Thanesar which may have the property resold by public auction.”

The contention of learned counsel for the petitioners that the plot should not have been resumed as no offer of possession was made and the respondents could only charge penal interest alongwith penalty does not merit acceptance in the light of grave facts noticed hereinbefore.

7. In all fairness to learned counsel for the petitioners, adverting to the judgments relied upon by him, it may be observed that the issue arising in those cases was relating to levy of interest, compound interest and the penalty for not making the instalments in terms of the conditions of letter of allotment. The primary dispute in the present case concerns the resumption proceedings in the facts and circumstances noticed above. Therefore, none of these pronouncements come to the rescue of the petitioners. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

May 11, 2015
'gs'

(Rekha Mittal)
Judge