

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1299 of 2011 (O&M)
Date of Decision: 11.05.2015

The Haryana Urban Development
Authority and another

... Appellants

Versus

Jeet Ram

... Respondent

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

Present: Mr. Vishal Garg, Advocate,
for the appellants.

Mr. J.S. Bains, Advocate,
with Ms. Rajni Kaushik, Advocate,
for the respondent.

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.

Heard the learned counsel for the parties on the following
questions:

[1] "Whether the resumption order was passed on a mere suspicion of sale of booth to non-allottee third party who held a General Power of Attorney of plaintiff-allottee to represent him before HUDA and in violation of the principles of natural justice?"

[2] "Whether there was no due service of material notices under section 17 of the HUDA Act and the final resumption order under section 18 of the Act on the plaintiff-allottee?"

[3] "Whether the appellate order upholding the resumption order was passed in haste on an irrelevant consideration based on a suspicion of sale to third party even before the period fixed for payment of installments was due to expire?"

The major facts are that Jeet Ram filed a suit in 2006 against HUDA for declaration and permanent injunction with respect to Booth No.199, Sector 4, Mansa Devi Complex, Panchkula which property was allotted to him on April 03, 2000 for a total sale consideration of Rs.2,79,000/- under a rehabilitation scheme floated by HUDA in order to rehabilitate street hawkers in alternative built up sites and of such persons who had been actually running their businesses in kiosks for a sufficiently long time along the road leading to the Mata Mansa Devi Temple, Panchkula.

Jeet Ram deposited 10% of the sale price with the application form for allotment of the Booth and 15% was deposited after allotment within the stipulated period. The balance 75% of the sale price was to be deposited by plaintiff Jeet Ram as per terms and conditions of allotment letter in ten half yearly installments with 15% interest on the balance amount and in case of default in payment of installments, option was given to HUDA to impose penalty or to resume the property by invoking the provisions of Section 17 of the Haryana Urban Development Authority Act, 1977 (for short "the Act"). There was admitted failure to deposit the balance amount as per schedule of payment. This led to a spate of notices issued under Section 17 of the Act which in addition demanded 18% compound interest on the installments due and remaining unpaid in violation of rules and regulations. Different amounts were shown in different notices. Since HUDA was not satisfied by non-deposit of balance consideration the suit property was resumed on May 02, 2003. The plaintiff was represented by the General Power of Attorney holder namely Sant Arora who appeared on

his behalf but to no avail.

Aggrieved, the plaintiff filed statutory appeal on September 19, 2005 before the Administrator, HUDA (exercising the powers of Chief Administrator). The statutory appeal was dismissed on April 17, 2006 on the assumed ground that the suit property had been purchased by Sant Arora, GPA from plaintiff.

This led to filing of the lawsuit by the plaintiff complaining that the resumption was based on a ground which had not been verified as true, that is, whether the sale had taken place between the allottee and Sant Arora. The suit was contested by HUDA. The court struck three issues and parties led their evidence before the trial court. The plaintiff appeared as his own witness PW-1 to support his version in the plaint by tendering his affidavit Ex.P1 by way of examination-in-chief. He produced and examined Ashwani Kumar, Assistant, HUDA as PW-2. The defendants produced and examined once again Ashwani Kumar as DW-1. No other evidence was led except documentary by HUDA. Those documents were notices issued under the provisions of sections 17 and finally two notices under section 18 (1) (b) in a time span from the first notice under section 17(1) dated August 23, 2001 to the last adverse order under section 18(1) (b) dated July 22, 2003, which was the resumption order. The only serious dispute to be adjudicated was whether proper procedure envisaged under section 17 of the Act was followed before taking the last resort of resumption of property by cancelling the allotment.

The question which fell for determination was whether the resumption order passed by the Estate Officer, HUDA was vitiated by error

of fact and law and had there been a grave violation of the principles of natural justice in passing it. On the evidence presented before the trial court, the learned Civil Judge (Senior Division) Panchkula by the judgment and decree dated September 05, 2009 decreed the suit. The order of resumption was declared void and HUDA was restrained from dispossessing the plaintiff from the suit property illegally and forcibly. The plaintiff was directed to deposit the remaining balance amount with simple interest @10% per annum within four months failing which HUDA would be at liberty to take steps in accordance with law. The reason for arriving at a conclusion in favour of the plaintiff was that he had not been served the notices issued before passing the order of cancellation of allotment. The allotment was not in dispute. Non-payment of balance amount was also not in dispute. Certificate of Possession Ex.P-5 issued in favour of the plaintiff on May 13, 2000 was not in dispute. The action of HUDA in calling for balance sale consideration was within its rights. However, the final order of resumption was issued with copy to plaintiff's GPA Sant Arora under section 17(4) of the Act but the notices exhibited on record did not bear the stamp of a registered letter which showed that none of them was sent or delivered by registered post at the address of the plaintiff as required under the Act and rules framed thereunder. When service was improper, the resumption order could not hold.

The learned trial court found that the notice under section 18 (1) (b) of the Act was sent at the address of the suit booth and not at the residential address on which the other notices under section 17 were sent.

There is an endorsement on the copy of the notice under section 18 (1) (b)

resuming the property which reveals that it was forwarded to Sant Arora GPA holder of the plaintiff with one copy affixed on the booth itself. However, HUDA led no material evidence to prove service by affixation. The second notice under section 18 (2) (b) was also at the address of the booth in question with copy to GPA holder but for this as well there is no proof on record. Though the words “registered post/by hand” exist on the final notice but no proof was forthcoming by way of proof of service either by hand or by registered post on the plaintiff. Defendant HUDA failed to produce the Dispatch Clerk or the original record of dispatch to establish service upon the plaintiff of the notices under section 17 and 18 of the Act. In the circumstances, receipt of notice was seriously doubted by the court. It is settled proposition of law that judicial review should ordinarily be limited to illegality, irrationality and procedural impropriety. All three appear to be present in the dispensation of HUDA in this case.

To make matters worse for HUDA its sole witness Ashwani Kumar, Assistant in the office of Estate Officer, HUDA, Panchkula candidly admitted in his cross-examination that there is no record of service of notices upon the plaintiff or his GPA holder. He also admitted that the address of the plaintiff is different on the notices to that of the address provided in the application form submitted by the plaintiff to HUDA. He admitted that HUDA had received intimation of appointment of GPA by the plaintiff but the copy of the resumption order was forwarded to GPA of the plaintiff, but, no explanation, reasonable or otherwise was deposed to by the witness as to why none of the notices under section 17 and 18 of the Act were sent to the GPA holder after HUDA was intimated by the plaintiff that

his affairs were then on being handled by the GPA in his stead. These facts have been highlighted by the learned trial court in para.18 of the judgment found at page 34 of the appeal paper book. It is also a fact that all of the notices were not received. The plaintiff admitted receiving two notices out of the ten or more notices but those were not resumption orders. The cancellation of allotment was found an extremely harsh act in the circumstances. In any case, it is a view of the Supreme Court and of this Court that resumption is a harsh step and is to be resorted to in extreme cases where the conduct of the allottee supports such action. In **Ram Puri v. Chief Commissioner, Chandigarh**, AIR 1982 Punjab & Haryana 301 the Full Bench of this Court upheld the validity of the provisions relating to resumption of the land only on the ground that the same is to be taken recourse to as a last resort. The principle laid down in the above authority was affirmed by the Supreme Court in **Babu Singh Bains & Ors. v. Union of India & Ors.**, (1996) 6 SCC 565 while dealing with the Capital of Punjab (Development and Regulation) Act, 1952 read with the Chandigarh Lease Hold of Sites and Buildings Rules, 1973 and the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 the principles of which are much the same in HUDA cases. See also the exhaustive judgment in **Teri Oat Estates (P) Ltd vs U.T. Chandigarh And Ors**, (2004) 2 SCC 130 especially on the point of misplaced sympathy, dishonesty and ill-motive of allottees in failing to pay installments and if such impairments are not present from the conduct of the defaulting party and the same is bona fide, then the above principle of last recourse will apply and lean the equities in its favour.

In this view of the matter, where the procedure of due service on plaintiff in accordance with rule prescribed was not adhered to, then opportunity of hearing offered *ex post facto* at statutory appeal stage is not in accordance with law and as one not conforming to the principles of natural justice, while on the other hand is in clear breach of duty.

In the appeal preferred against the resumption order, the Administrator, HUDA passed a whimsical, arbitrary and stereotyped order where non-application of mind is writ large, in the considered view of the learned trial court, to which may be added that an irrelevant consideration has had its play in fallaciously assuming that plaintiff had sold the booth to the GPA holder. There may have been truth in it but it was not a proven fact. Suspicion, however grave, cannot take the place of proof. The entire order was reproduced in the judgment from where the fatal flaw is discernible that the Administrator, HUDA assumed that the property was sold by allottee to Sant Arora immediately after allotment on May 03, 2000 on the basis of a GPA.

If there was transaction of sale of suit property between the allottee and Sant Arora, then fairness demanded that an opportunity should have been offered to the allottee to explain whether Sant Arora was a GPA holder alone or a vendee of the allottee. There could be no assumptions or presumptions of sale without confronting the allottee with this suspicion in the mind of HUDA before resuming the property. The requirement of recording proper reasons by the authorities when passing orders adversely affecting the civil rights of a person is an important facet of the rule of law and a substantive safeguard against arbitrary action to ensure there has been

fairness-in-action. It is quite apparent that the foundation of the order of resumption is based on a hunch that plaintiff had sold the disputed booth to Sant Arora while there was in operation a restriction against sale in the scheme of rehabilitation of petty shop-keepers who were being dislocated.

Whether there was sale of the booth or not by the respondent, it would have been a relevant or irrelevant consideration, given the case, had it been established as a fact either way. But the result could not be achieved without hearing the plaintiff on the point. It was a verifiable fact, or if not, then by taking undertakings etc. on affidavits from the allottee, but no effort of the kind was made by the Administrator, HUDA while issuing notice to the plaintiff even at the appellate stage to ask him if this were true or not that Sant Arora was the real owner or he the ostensible one. Even this was not done.

Still further, had the plaintiff been put to notice he would have had opportunity to come forward and explain the position, and if the reply was found satisfactory discrediting onward sale, then the plaintiff could be called upon deposit the balance amount or to undertake to do so within a reasonable time as may be allowed by HUDA. In para.10 of the plaint it was pleaded that the Estate Officer, HUDA failed to take note of the fact that the plaintiff was not shying away from depositing the due amount of balance installments as he had never willfully defaulted in payment of moneys. The Estate Officer, HUDA - 2nd defendant did not consider the fact that the installments were spread over a period of five years payable up to April 2005 while the resumption order was passed abortively on March 17, 2003 under section 17(4) while there was sufficient time left to make

compliances. A mere delay in payment of installments could not have invited such a harsh penalty as that of resumption when the plaintiff was protected by article 300-A of the Constitution of India. On the question of compound interest, the trial court rightly relied on the decision of the Supreme Court in **Roochira Cermics vs. HUDA and others**, (2002) 9 SCC 599 and the decision of the Division Bench of this Court in **Gian Inder Sharma vs. HUDA**, 2003 (1) PLR 141 (P&H) (DB), holding that charging of compound interest @18% per annum was impermissible in cases of default in payment of installments. For these reasons, the suit was decreed.

Against the judgment and decree of the learned trial Judge, HUDA went in appeal to the learned Additional District Judge, Panchkula which was dismissed on October 05, 2010 by affirming the findings of the trial court on both issues, i.e., resumption and levying of compound interest. In para.12 of the judgment of the court of first appeal, it has been noticed that though the question of issuance of notices to the respondent prior to resumption order is raised in the grounds of appeal but at the time of arguments, this aspect was not stressed on behalf of HUDA. Obviously, this would have been by reason of an admission suffered by the witness produced by HUDA deposing that the original record was not available in HUDA office to support due service of the notices including the resumption order.

If this was the incontrovertible position in the oral and documentary evidence, the Court *a quo* could have reached no other conclusion except to set aside the resumption order for violation of the rule

of *audi alteram partem*. The court of first appeal reduced the interest from compound to simple awarding the rate at 10% per annum. A direction stands issued to defendant HUDA to serve a fresh calculation sheet on the plaintiff within one month and thereafter the plaintiff was called upon to deposit the balance amount with 10% interest within one month, failing which the defendant-HUDA was set at liberty to proceed against the plaintiff-respondent as per law.

I do not find the judgments and decrees of the courts below as suffering from any legal or factual infirmity. The findings of fact recorded by the courts below are based on the appreciation of evidence on record and the appeal deserves to be dismissed as no question of law as above framed, much less a substantial one, arises worth any further consideration for admission of the appeal for regular hearing in the second appeal side within section 100 of the Code.

However, the time set for compliance of the appellate decree is extended by one month at first stage and a reasonable two months time at the second stage from the date a certified copy of this order is served on HUDA to be reckoned from the date account statement is furnished to the respondent and after giving an allowance of 10 days in between to satisfy himself as to the calculation sheet or bring a mistake, if any, to the notice of HUDA and then calling upon him to deposit the balance amount of installments with interest as decreed by the court of first appeal payable in terms of this order.

Resultantly, this Court is disposed towards dismissing the appeal subject to the above amendatory directions, if complied with; the divestiture

of title will be restored to the status quo ante as obtaining one day prior to the final resumption order.

While this order is passed HUDA would remain at liberty after all the stages of this order are crossed and stand complied with, then to ensure by reasonable and lawful means that the terms and conditions of the scheme of rehabilitation are not being misused after the re-entry of the respondent in the booth allotted and he is found using it for his own business for profit or gain. In case the booth has been sold or is sold contrary to the scheme, HUDA will be free to take such action/s as is/are found necessary and strictly in accordance with law in the HUDA Act and the rules and regulations framed thereunder.

However, I am unable to wring my hands off the case completely and dismiss the appeal unconditionally by putting the imprimatur of the Court on the second appeal side which might give unfairly to the respondent a carte blanche by virtue of restoration of status of the allotment. Last resorts to due process of law cannot come without reasonable riders placed on them so that sympathy does not appear misplaced while dealing with what had turned back to public property by act of resumption, which action was appropriately faulted by the courts *a quo* for good and sufficient cause arising out of breach of procedural safeguards which are verily the tensile strands of the all-pervading rule of law strengthening its root system.

(RAJIV NARAIN RAINA)
JUDGE

11.05.2015
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