

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

**RSA No. 915 of 2015 (O&M)
Date of decision: 14.12.2015**

Haryana Urban Development Authority and another
... Appellant
versus
Sunil Kumar
.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Deepak Sabharwal, Advocate for the appellant.

K.Kannan, J.

CM No. 2680-C-2015

For the reasons mentioned in the application, duly supported by an affidavit, delay of 139 days in filing the appeal is condoned.

CM is disposed of.

RSA No. 915 of 2015

The appeal is at the instance of the Haryana Urban Development Authority (in short 'HUDA'), against the judgments of the trial Court and the Appellate Court setting aside the order of resumption issued against the original allottee of a plot. The allotment was made in favour of the plaintiff for consideration of Rs. 20,50,000/- on 11.06.1999 and it was subject to some stipulations regarding payment of installments. The plaintiff who had paid initial deposit money and also some installments admittedly defaulted and had purported to invoke the powers vested in it for ordering resumption for default in conditions of allotment. The suit had been filed on a plea that the plaintiff had not been served with any notices and there had been statutory violations of the requirements of prior notice under Section 17 of the HUDA act. The contest by HUDA was on a factual plea that

notice had been served and that further suit itself was barred under Section 50 of HUDA Act that excluded the jurisdiction of the Civil Court to decide on matter which were specifically provided for under the HUDA Act. The contention was that the plaintiff had actually filed an appeal to the Appellate Authority and after failing to successfully assail the official order of resumption, the plaintiff has no further remedy left. The suit was barred.

At the trial, the crucial issue was whether the notice of resumption had been served in the manner contemplated under the Act. The trial Court and the Appellate Court examined the evidence of witnesses and pointed out specifically to the admission of official witness of the HUDA that there was no record to prove that notice to show cause against resumption was ever served on the plaintiff. Section 17(2) did not merely require a notice to be given but also contemplated an opportunity of making the arrears payable along with penalty within such period as might be specified. Admittedly, the plaintiff had not been given any further opportunity to make the payment as contemplated under the Act.

Dealing with the issue of whether the civil suit was barred by Section 50, Courts below had set out the law laid down by this Court in HUDA Vs. Anita, 2012 (4) PLR 709, that examined the similar situation of the effect of resumption without notice as invalid. The same view was also expressed subsequently in HUDA Vs. Daljit Singh, 2013 (1) Law Herald 474. The Courts below have also referred to several other decisions that held that violation of principle of natural justice could be a ground of challenge through a suit irrespective of express provision for exclusion of jurisdiction. The reasoning is that the exclusion must be made to apply only to decisions taken in due compliance of the procedure laid down under the Act, but, if the right of hearing itself is denied, the breach is so fundamental that the Civil

Court's jurisdiction cannot be excluded.

Both the issues of fact whether the order of resumption had been served on the plaintiff and on the legal issue regarding the jurisdiction of the Civil Court, the Courts have taken correct view and there is no error for interference.

The judgments of the Courts below are confirmed and the regular second appeal is dismissed.

(K.KANNAN)
JUDGE

14.12.2015
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