

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

**CWP No.16042 of 2015
Date of Decision: 12.5.2016**

Malkit Singh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

**CORAM: Hon'ble Mr. Justice S.J.Vazifdar, Acting Chief Justice
Hon'ble Mr.Justice Arun Palli**

Present : Mr. Namit Gautam, Advocate for the petitioner.
Mr.R.K.S.Brar, Addl.AG Haryana.
Mr. Deepak Sabharwal, Advocate for respondents No.2 to 4.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE (Oral)

The petitioner has challenged the resumption order and the orders of the Appellate and Revisional Authorities confirming the same.

The petitioner was allotted a shop pursuant to the scheme floated by the respondents for rehabilitation of the shop keepers of Mansa Devi Temple Complex.

The petitioner was allotted a shop on 3.4.2000. By 2.5.2000, he paid 25% of the amount due under the letter of allotment. He, however, admittedly failed to pay the balance amount, despite the fact that he was put in possession of a shop on 13.5.2000.

In view thereof, the respondents issued a notice under Section 17(1) of Haryana Urban Development Act (for short 'the Act') on 23.8.2001.

Thereafter notices under Sub Sections 17(2), 17(3) and 17(4) of the Act

were also issued.

Ultimately, by an order dated 31.12.2002, the respondents passed the order resuming the shop.

The petitioner filed an appeal under Section 17(7) of the Act only about 3 years later on 9.11.2005. The appeal was dismissed as was the revision filed by the petitioner.

In the meantime, the petitioner deposited an amount of Rs.1,25,000/- and Rs.30,600/- on 16.1.2006/6.6.2006. These deposits were made by the petitioner unilaterally and without the knowledge and consent of the respondents.

Ultimately, the respondents issued a notice of eviction under Section 18(1) (b) of the HUDA Act on 10.9.2007. The petitioner's appeal was dismissed on 17.6.2008 and the revision petition was dismissed on 22.7.2008.

The petitioner filed Civil Suit No.122 of 2008 for a declaration challenging the order of resumption and the order of the Appellate Authority. The suit was dismissed and the findings on merits were against the petitioner. His appeal was also dismissed. However, the suit was also dismissed on the ground of maintainability. We will presume that in view thereof, this petition is maintainable.

Respondent No.4 vide letter No.3018 dated 8.3.2013 refunded the amount of Rs.1,64,138/- by a cheque. The petitioner, however, refused the offer.

The first contention is that the petitioner did not make payment on account of encroachers in the complex which adversely affected his

business. The terms and conditions did not absolve him of the liability to make payment of the installment as per the letter of allotment.

It was then contended that the notice under Section 17 had not been received by the petitioner. However, as admitted by the petitioner in the evidence tendered in the civil suit, the notices were addressed to the petitioner at the address notified. If the petitioner was infact residing at another place, the respondent cannot be faulted. Further possession of the premises had already been taken on 13.8.2013 and has now been allotted to a third party. Third party is not before us.

The petitioner states that in similar matters, the Administrator has recalled the order of resumption on an application made before him.

Mr.Deepak Sabharwal, Advocate, appearing on behalf of the respondents denies the same.

We do not express any opinion in that regard. The petitioner is at liberty to make an application. The petition, is therefore, dismissed.

(S.J.Vazifdar)
Acting Chief Justice

(Arun Palli)
Judge

12.5.2016
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