

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

**CWP No.17768 of 2016
Date of decision: 30.08.2016**

Rajinder Sharma and others

.....Petitioners

Vs.

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr.Shiv Kumar, Advocate for the petitioners.

Ajay Kumar Mittal,J.

1. Prayer in this petition under Articles 226/227 of the Constitution of India is for quashing the order dated 25.8.2015, Annexure P.5 passed by respondent No.1, order dated 14.5.2007, Annexure P.4 passed by respondent No.2 and resumption order dated 2.2.2001, Annexure P.3 passed by respondent No.4. Further prayer has been made for restraining the respondents from taking possession of the booth in question from the petitioners.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The predecessor-in-interest of the petitioners namely Shri K.B.Sharma who was a retired teacher purchased Booth No.172, Sector 7, Faridabad and made payment to the extent of 25% as per the terms and conditions of the allotment out of the compensation received by him from the land acquired by the State of Haryana. Petitioner No.1 is the son whereas petitioner Nos. 2 and 3 are the

daughters-in law of Shri K.B.Sharma. Shri Sharma (since deceased) was planning to run his business in the said booth so that he may be able to pay the remaining amount out of the income. However, he was not earning anything and thus was unable to make the payment of the installments. Consequently, respondent No.3 issued notice under Section 17(4) of the Haryana Urban Development Authority Act, 1977 (in short, “the HUDA Act”) vide letter dated 30.12.2000, Annexure P.1. The petitioners sent reply to the said notice vide letter dated 6.1.2001, Annexure P.2. It was inter alia stated therein that due to unauthorized market development in the residential houses near the HUDA market in Sector 7 and other nearby sectors, it was difficult for the predecessor-in-interest of the petitioners to earn his livelihood and to make the payment of the remaining installments. Vide order dated 2.2.2001, Annexure P.3, respondent No.3 ordered resumption of the above said booth. Aggrieved by the order, the predecessor-in-interest of the petitioners filed appeal before the Chief Administrator. He also filed a civil suit for declaration and permanent injunction with consequential relief challenging the resumption order which was dismissed vide order dated 7.11.2005. The predecessor-in-interest of the petitioners filed appeal which was ultimately withdrawn by him. Thereafter, the predecessor-in-interest of the petitioners filed CWP No.4044 of 2007 before this Court seeking a direction to respondent No.2 to decide the appeal dated 12.2.2001 against the resumption order. The said writ petition was disposed of vide order dated 16.3.2007 with a direction to the respondents to decide the appeal within two months. Vide order dated 14.5.2007, Annexure P.4, respondent No.2 dismissed the appeal. Aggrieved by the order, the predecessor-in-interest filed revision petition before respondent No.1 which was dismissed vide order dated 25.8.2015, Annexure P.5. In the meantime, Shri

K.B.Sharma died and the petitioners were impleaded as legal representatives before respondent No.1. According to the petitioners, they are still ready and willing to pay the whole of the balance amount with reasonable interest as per HUDA policy. Hence the instant writ petition by the petitioners.

3. We have heard learned counsel for the petitioners.

4. It is the admitted position that the booth in question was allotted in favour of the predecessor-in-interest of the petitioners on 23.8.1994 in open auction. He deposited 25% cost of the said booth within the stipulated time but he failed to deposit the remaining due installments. Consequently, notices under Section 17 of the HUDA Act were issued to him. On his failure to deposit the due installments, the booth was resumed on 2.2.2001 by the respondents. The appeals and the revision filed by the petitioners against the said order were also dismissed by the respondent authorities. It has been categorically recorded by the revisional authority that inspite of the notices issued by the Estate Officer HUDA, Faridabad, no installment was paid by the petitioners. They were duty bound to make the payment as per the terms and conditions of the allotment. Therefore, the site was rightly resumed by the respondent authorities on 2.2.2001. The plea of the petitioners with regard to non payment of installments on account of running of unauthorized market from the residential area was also not accepted as the site was purchased by the predecessor-in-interest of the petitioners in the open auction. In any case, property in dispute was resumed in year 2001. The revisional authority had categorically observed that by participating in the auction, the petitioner had excluded other needy bidders from purchasing the site. The petitioner was bound by the terms and conditions of the auction and the allotment. The relevant findings recorded by the revisional authority in the impugned order dated 25.8.2015 read thus:-

“5. I have heard the arguments advanced by the learned counsel for the parties and gone through the record of the case produced before me by the official of the Estate Office, Faridabad. The site in question was allotted in favour of the petitioner on 23.8.1994 through open auction and admittedly, after making payment of 25% price, the petitioner failed to make payment of installments as per the terms and conditions of the allotment letter. The petitioner participated in auction and by giving bid therein excluded other bidders from purchasing the site. By participating in the auction, the petitioner undertook to abide by the terms and conditions of the auction as well as allotment. It is well settled legal position that in auction matters time is always essence of contract. In SLP (Civil) No.12968 of 2006 titled as *Municipal Corporation, Chandigarh and others vs. Vipin Kumar Jain* decided on 20.9.2007, it was observed by the Hon’ble Supreme Court that auction is basically an exercise in raising revenue for the Government. The default in payment results in loss of revenue to the State. Time is the essence of the contract in matters concerning auction. Property prices rise by the day and if within a stipulated period contractual obligations are not fulfilled then loss caused to the state cannot be compensated in terms of interest or penalty. Admittedly notices under Section 17(10, (2), (3) and (4) of the HUDA Act issued by the Estate Officer, HUDA, Faridabad on 14.7.2000, 7.11.2000, 21.11.2000 and 30.12.2000 were received by the petitioner and despite these notices no installment was paid. The petitioner was duty bound to make payment of installments as per the terms and conditions of the allotment letter. Therefore, the site was rightly resumed by the Estate Officer, HUDA, Faridabad on 2.2.2001 and the Hon’ble Supreme Court in SLP(C) No.14864 of 2013 titled as *Samitra Jain vs. HUDA and another* decided vide order dated 29.4.2013 held that a rank defaulter allottee like the petitioner who fails to make payment of outstanding amount despite repeated notices is not entitled to any relief. Plea of the petitioner that he could not make payment of installments due to unauthorized market

running from the residential area is also not acceptable as site was purchased by the petitioner in open auction with the open eyes. The petitioner has pleaded in the revision petition that business was started on the site but no proof of starting business has been attached with the revision petition. Type of business has also not been mentioned by the petitioner in the revision petition. This plea has been coined by the petitioner just to challenge the resumption of the site in question. Physical possession of the site was taken by the petitioner on 25.7.1994 and he has been enjoying the fruits of possession without making payment of installments.

In view of the above discussion, the present revision petition is dismissed being devoid of any merit. The Estate Officer, Faridabad is directed to take possession of the site within 30 days from receiving copy of the order after making refund of the deposited amount as per rules/instructions, if not already made.”

5. Learned counsel for the petitioners has not been able to produce any material on record to substantiate the claim made in the petition and to controvert the findings recorded by the appellate as well as revisional authorities.

6. With regard to the judgment relied upon by the learned counsel for the petitioners in *Haryana Urban Development Authority and another vs. Vinod Mittal and others*, LPA No.933 of 2009, decided on 16.10.2012, suffice it to notice that the factual matrix is totally different in the present case and, therefore, no benefit can be derived by the petitioners therefrom. Moreover, even otherwise, the operation of the judgment has been stayed by the Apex Court subject to the petitioners’ depositing interest at the rate of 10% calculated with the HUDA.

7. In view of the above, we do not find any ground to interfere with the impugned orders in exercise of writ jurisdiction under Articles

226/227 of the Constitution of India. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

August 30, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes