

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

CWP No. 19331 of 2016

DATE OF DECISION : 17.10.2016

Vinod Aggarwal and others

.... PETITIONERS

Versus

Union Territory, Chandigarh and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Krishan Singh Dadwal, Advocate,
for the petitioners.

* * *

RAMENDRA JAIN, J.

1. Father of the petitioners, namely Shri Om Parkash (now deceased), purchased the Godown Site No. 180, Grain Market, Sector 26, Chandigarh, in an open auction held on 06.02.1972 for a total sale consideration of ₹ 85,600/-. A sum of ₹ 21,400/-, being 25% of the auction money, was deposited by him, as was required by the terms and conditions of the auction. Thereafter, allotment letter dated 12.04.1972 (Annexure P-1) was issued in favour of the original allottee, mentioning therein that the balance of sale price together with interest thereon at the rate of 6% per annum shall be payable in three equated annual instalments, the first instalment being payable on 06.02.1973, i.e. on the expiry of one year from the date of auction. Possession of the site was handed over to him on 15.04.1972, as is evident from the letter dated 22.04.1972 (Annexure P-2).

2. While the original allottee was raising construction on the site in question, he defaulted in making the payment of two instalments, which were payable on 06.02.1973 and 06.02.1974, therefore, vide order dated 11.02.1975 (Annexure P-3), the Estate Officer, Union Territory, Chandigarh (respondent No.4) resumed the site and forfeited 10% of the price of the site. Subsequently, vide letter dated 14.05.1980 (Annexure P-4), the original allottee deposited a sum of ₹ 70,000/- by way of Demand Draft towards the payment of instalment of the site, with the further request to the authorities to intimate him the remaining outstanding amount, payable by him. Having no response from the respondents, the original allottee challenged the aforesaid resumption order dated 10.02.1975 by way of CWP No. 2077 of 1980, which was dismissed by this court vide order dated 05.06.1990 (Annexure P-5). However, it was clarified that the allottee can still exercise the option for repurchasing the site under the provisions of Rule 11-D of the Chandigarh (Sale of Sites and Building) Rules, 1960 (hereinafter referred to as 'the Rules'), and in that case, the letter dated 14.05.1980 depositing Demand Draft be considered as his request. Thereafter, vide letter dated 28.06.1990 (Annexure P-6), respondent No.4 intimated the allottee that a sum of ₹ 66,226/- was due, subject to audit, on account of instalments, interest and forfeiture. On the next day, vide letter dated 29.06.1990 (Annexure P-7), the allottee deposited the amount, which was acknowledged by respondent No.4 vide receipt dated 02.07.1990 (Annexure P-8). Thereafter, vide letter dated 03.07.1990 (Annexure P-9), respondent No.5 re-transferred the site in favour of the original allottee, in exercise of powers conferred under Rule 11 D of the Rules, subject to payment of ₹

40,313/- representing 1/3rd of the difference between the price originally paid and the value at the time of the application/clearance of all the outstanding dues. It was mentioned in the said re-transfer letter, 25% of the consideration money, i.e. ₹ 10,054/-, was to be paid within 30 days from the date of issue of the letter. The remaining 75% amount was required to be paid in three annual equal instalments of ₹ 11,492/- each. Vide letter dated 03.07.1990 (Annexure P-10), the allottee deposited 25% of the aforesaid amount. Accordingly, vide letter dated 05.07.1990 (Annexure P-11), respondent No.4 intimated to the authorities under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act'), regarding re-allotment of the site in question and requested them to deliver possession of the site to the original allottee. Thereafter, vide memo dated 07.07.1990 (Annexure P-12), Tehsildar, Chandigarh, in compliance with the orders of the authorities under the Act, handed over the vacant possession of the site to the allottee.

3. In the meantime, one Shri Pawittar Singh Walia, claiming that on 19.12.1979, he had entered into an agreement to sell with the original allottee regarding purchase of the site in question, filed an arbitration case, and got arbitral award from the civil court. The award was made rule of the court. SLP (C) No. 5085 of 2007 filed by the original allottee in the matter was dismissed by the Apex Court vide order dated 26.03.2007 (Annexure P-13). Thereafter, unfortunately, the original allottee expired on 30.06.2007. However, the request of Shri Pawittar Singh Walia to re-transfer the site in question in his favour was rejected by respondent No.4 vide order dated 08.04.2008. The appeal and revision petition filed by him against the said

order were also dismissed by the Chief Administrator, U.T. Chandigarh (respondent No.3) and Adviser to the Administrator, U.T. Chandigarh (respondent No.2) vide orders dated 13.10.2009 and 08.04.2012, respectively. Aggrieved by the said orders, Shri Pawittar Singh Walia filed CWP No. 22898 of 2012, which was also dismissed by this court vide order dated 21.11.2012 (Annexure P-18).

4. The petitioners also filed an application for transfer of ownership rights in respect of the site in question in their favour, being legal heirs of the original allottee. They also deposited two Demand Drafts amounting to ₹ 25,000/- each towards balance due towards the consideration money, which were received by respondent No.4 vide receipt dated 16.11.2007 (Annexure P-14). The said application was also rejected by respondent No.4 vide letter dated 03.03.2008 (Annexure P-15), and both the aforesaid Demand Drafts were returned to the petitioners. The appeal dated 07.04.2010 (Annexure P-16) filed by the petitioners against the said letter after a gap of more than two years, was dismissed by the Chief Administrator (respondent No.3) vide order dated 03.11.2014 (Annexure P-21). Revision petition (Annexure P-22) filed by the petitioners against the said order has also been dismissed by Advisor to the Administrator, U.T. Chandigarh (respondent No.2) vide order dated 19.08.2016 (Annexure P-23).

5. Thus, feeling aggrieved against the above said letter/orders dated 03.03.2008, 03.11.2014 and 19.08.2016, issued/passed by respondent Nos. 4, 3 and 2, respectively, rejecting the claim of the petitioners for transfer of ownership rights in respect of the site in question in their favour,

being legal heirs of the original allottee, the petitioners have filed this writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of certiorari to quash the aforesaid orders.

6. Learned counsel for the petitioners contended that the petitioners have already paid the entire due amount, although there was some delay in making the payments, for which penal interest could have been imposed. But, their request for transfer of the ownership rights of the site in question in their favour has been declined by the respondents on the ground that the instalments of re-transfer were not paid in time and Rule 11-D of the Rules regarding re-transfer stood repealed with effect from 31.01.2007.

7. After giving our thoughtful consideration to the contentions raised by learned counsel for the petitioners, we do not find any merit in the instant petition.

8. A bare perusal of re-allotment letter dated 03.07.1990 (Annexure P-9) reveals that the site in question was re-transferred in favour of the original allottee, in exercise of powers conferred under Rule 11 D of the Rules, subject to payment of ₹ 40,313/- representing 1/3rd of the difference between the price originally paid and the value at the time of the application/clearance of all the outstanding dues. 25% of the said amount was to be paid within 30 days from the date of issue of the letter and the remaining 75% amount was required to be paid in three annual equal instalments of ₹ 11,492/- each, falling due on 03.07.1991, 03.07.1992 and 03.07.1993. It was made clear that in case any instalment is not paid on the due date, it shall be deemed as if no re-transfer had come into effect.

9. It is an admitted case of the petitioners that after making payment of 25% amount of the consideration money vide letter dated 03.07.1990 (Annexure P-10), their father (original allottee) failed to pay the instalments. Hence, as per the terms and conditions of the said re-allotment letter, it was deemed that no re-transfer had taken place and the site in question was ownership of the Estate Office. Possession of the site was taken over as per directions of this court vide order dated 21.11.2012 (Annexure P-18) passed in CWP No. 22898 of 2012. Thus, it has been rightly observed by the revisional authority vide impugned order dated 19.08.2016 that the petitioners have no right, title or interest of the property in dispute. Thus, we do not find any illegality or perversity in the impugned orders passed by the authorities below.

10. Petition is, accordingly, dismissed.

(RAMENDRA JAIN)
JUDGE

October 17, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No