

CWP No.20205 of 2016

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

CWP No.20205 of 2016
Date of decision: 09.11.2016

M/s Mohit Metal Trading Company

..... Petitioner

Versus

The State of Haryana and others

..... Respondents

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

Present: Mr. Naveen S. Bhardwaj, Advocate,
for Mr. Deepender Singh, Advocate, for the petitioner.

RAMENDRA JAIN, J.

Put pithily, the petitioner was allotted commercial plot No.425, Sector 59, Loha Mandi, Faridabad, measuring 90.45 sq. yards on freehold basis after deposit of 10% of the tentative price i.e. ₹ 1,35,042/- vide allotment letter bearing memo No.128 dated 10.01.1995 (Annexure P-2). Thereafter, as per terms and conditions of the allotment letter, petitioner deposited further 15% amount i.e. ₹ 28,761/- within the time prescribed. As per term and condition No.5 of the allotment letter, balance amount i.e. ₹ 1,01,281/50 of the total price of the plot/building could be paid either in lump sum without interest within 60 days from the date of issue of the allotment letter or in half yearly equal instalments with interest @ 15% per annum. The first instalment was to be deposited after expiry of six months of the date of issue of allotment letter. However, the interest was to accrue

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completion of development work of the area. Respondent No.4 failed to deliver the actual possession of the site in question for want of basic amenities like sewerage, water, roads and electricity etc. So far as the possession of the plot was not offered, petitioner was not liable to pay any instalments as well as interest or penalty on the amount of instalments. HUDA offered possession of the site vide its letter dated 30.04.1999 without any development in the area by HUDA. Even the demarcation plan was not finalized till then. Due to financial constraints, petitioner could not deposit the balance amount as per terms and conditions of the allotment letter in time. Respondent No.4 – Estate Officer, Haryana Urban Development Authority, by order dated 29.05.2003 (Annexure P-5) resumed the site in question due to non-payment of the instalments. Against the order dated 29.05.2003 (Annexure P-3) petitioner filed an appeal before respondent No.3 – Administrator, Haryana Urban Development Authority, which was dismissed vide order dated 31.12.2003 (Annexure P-6). Petitioner again filed appeal before respondent No.3, however, the same was dismissed being not maintainable vide order dated 10.12.2004 (Annexure P-8). Thereafter, petitioner filed revision petition before the Financial Commissioner, Town and Country Planning, Haryana on 31.12.2004. The revision petition of the petitioner was also dismissed by the Financial Commissioner vide order dated 24.06.2014 (Annexure P-10).

2. Hence, by way of present writ petition filed under Articles 226/227 of the Constitution of India, petitioner has sought issuance of writ in the nature of *certiorari* for quashing the order dated 24.06.2014

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by the petitioner was dismissed, order dated 31.12.2003 (Annexure P-6), order dated 10.12.2004 (Annexure P-8) passed by respondent No.3 whereby appeals of the petitioner were dismissed and order dated 29.05.2003 (Annexure P-5) passed by respondent No.4 whereby plot in question has been ordered to be resumed.

3. Learned counsel for the petitioner contended that the impugned orders passed by the respondents are illegal, arbitrary and not sustainable in the eyes of law. The petitioner deposited 25% amount of the total sale price of the aforesaid plot. Respondent No.4 did not deliver the possession of the site in question for want of basic amenities. As there was no offer of possession of the plot in question, petitioner was not liable to pay any instalment muchless interest or penalty on the amount of instalments. Even as per HUDA policy where the development works are not complete and possession is not offered within three years, the allottee is entitled to interest on the deposited amount. Therefore, respondents were wrong in demanding interest and penalty and thereby resuming the plot in question. Petitioner was always ready and still willing to make the balance payment.

4. After going through the record and giving our thoughtful consideration to the submissions made by learned counsel for the petitioner, we find that this writ petition is completely devoid of any merit for the reason to follow.

5. The plot in question was allotted in favour of the petitioner on 10.01.1995 and admittedly he failed to make payment of instalments as per the terms and conditions of allotment letter. Notices under Section 17(1),(2)

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issued by the Estate Officer, Faridabad, to the petitioner on 17.09.2000, 29.11.2002, 03.03.2003 and 08.04.2013 for non-payment of instalments. Petitioner was duty bound to make payment of instalments in time as per the terms and conditions of the allotment letter. In the present case, instalments have not been paid as per schedule given in the allotment letter. Petitioner was aware of the condition that in case terms and conditions of the allotment are not followed action could be taken against him. Property in question is the commercial property. HUDA, an agency of the Government, sold the plot in order to raise revenues for the Government and non-payment of price by the petitioner amounts to loss to the public exchequer. The contention of the learned counsel for the petitioner that basic amenities were not provided, is mis-conceived for the reason that possession was offered on 30.04.1999 after providing basic amenities. Admittedly, it was the petitioner who could not arrange the money to pay the instalments. Moreover, the petitioner has played fraud with the respondents as he has sold the plot in question to GPA holder after passing of the resumption order.

6. The property prices increase day by day and if within stipulated period contractual obligations are not fulfilled, the loss caused to the State cannot be compensated in terms of interest or penalty after many years. The intention of the petitioner appears to be dishonest and with an ill motive he did not make the balance payment in terms of the allotment. The contention of the learned counsel for the petitioner that petitioner is ready to make the balance payment cannot be accepted. In case the contention of the learned counsel for the petitioner is accepted and resumption order is set aside, it

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will totally paralyse the functioning of the authorities. In many cases, after allotment, allottees do not pay the instalments due in time with an intention to pay the dues along with penalty and interest after many years in order to earn huge profits in case the prices of the property increased. Similarly, the petitioner wanted to enjoy the fruits of the property in question at the cost of public exchequer. For a long period, petitioner did not show his bona fide to pay the amount. Therefore, the authorities were fully justified in passing the resumption order.

7. As a consequence of all what has been said and discussed hereinabove, petitioner is not entitled to any discretionary relief under the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

8. Dismissed.

9. Registry is directed to bring this judgment to the notice of the respondents.

(RAMENDRA JAIN)
JUDGE

November 09, 2016
R.S.

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No