

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.23927 of 2014 (O&M)

Date of decision: May 30, 2016.

Iqbal Arora and others

... Petitioners

v.

State of Haryana and others

... Respondents

CORAM: **HON'BLE MR. JUSTICE SURYA KANT**
HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Shri N.G. Sharma, Advocate for
Shri Yogesh Goel, Advocate, for the petitioners.

Ms. Kirti Singh, Deputy Advocate General, Haryana.

Shri Baldev Raj Mahajan, Senior Advocate
Shri Deepak Balyan, Advocate for respondents No.2 to 4.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

A.B. Chaudhari, J. (Oral):

In the present writ petition under Articles 226 and 227 of the Constitution of India, the petitioners have put to challenge the resumption order originally issued on 4.9.2001 (Annexure P-3) and other consequent orders, so also the memo in the matter of resumption of the commercial site that was allotted to the petitioners.

FACTS

The petitioners had participated in the open auction for commercial site in Panchkula and were the successful bidders for SCO

No.43, Sector 11, Panchkula for an amount of Rs.1,46,40,000/- in the auction that was conducted on 16.10.1998. Having been successful in the said auction, they deposited 10% of the auction amount, i.e., Rs.14,64,000/- with HUDA. The auction was approved and the letter of allotment dated 9.11.1998 was issued in their favour. There was schedule of payment that was published by HUDA, which was to be strictly adhered to. After deposit of 25% amount as per the policy, the petitioners were given the possession of the site on 14.12.1998, of course, subject to the payment of the balance amount to HUDA. The petitioners were found not to have made the payment from time to time as per the schedule and were issued notices dated 19.4.2001 and 21.5.2001 to make payment of Rs.98.60 lacs or else there would be resumption proceedings.

HUDA passed an order of resumption on 4.9.2001. The petitioners filed civil suit in the civil court. The civil suit was filed on 30.10.2001 which finally came to be decided on 14.1.2013 and the learned Civil Judge (Junior Division), Panchkula held that the suit was not maintainable in view of the bar under Section 15(2) of the HUDA Act. In appeal, the lower appellate court confirmed the said judgment and decree. A regular second appeal was filed in this Court but was withdrawn. The petitioners then filed the present petition with the prayers, as stated above.

In support of the writ petition, learned Counsel for the petitioners submitted that the petitioners made major payments to HUDA and there was no reason for the authorities in HUDA to deprive the petitioners of the valuable property which they purchased in the public auction being the highest bidders. The payments were made, though late,

but with interest, as charged by HUDA. The petitioners have constructed the building with the approved building plan by HUDA. To make resumption in this situation would obviously work out serious injustice to the petitioners at such a late stage and even now the petitioners are ready and willing to make the balance payment to HUDA with interest but the resumption should not be made. Learned Counsel for the petitioners then vehemently contended that the balance of convenience is certainly in favour of the petitioners and they should not be deprived of the valuable property which they purchased in the open auction. According to the petitioners, the action of HUDA in refunding the amount that was paid by the petitioners is consequently also under challenge in this petition as the petitioners are only interested in the property purchased by them in public auction and are not interested in any refund.

Per contra, learned Counsel for the respondent-HUDA opposed the writ petition and submitted that the petitioners have been playing with HUDA by resorting to a number of legal cases by abusing the process of the court. According to learned Counsel for the respondent-HUDA, the petitioners have been keeping HUDA busy in the litigation right after the allotment of the plot to them in the year 1998. The petitioners have totally abused the process of the court of law and kept the respondent-HUDA away from earning its legally due revenues. Learned Counsel for the respondent-HUDA invited our attention to the written statement filed by them in detail and submitted that the petitioners were given number of opportunities to clear the dues but the petitioners' only intention was not to pay the balance dues but to deprive HUDA of its dues by raising one or the other plea in one

or the other form. According to learned Counsel for the respondent-HUDA, the petition lacks bona fides and is nothing but an abuse of process of law. He, therefore, prayed for dismissal of the writ petition.

We have heard learned counsel for the rival parties at length. We have seen the entire record with the assistance of the counsel for the rival parties.

It is not in dispute that the petitioners were allotted the plot in question after they were successful highest bidders in respect of SCO No.43, Sector 11, Panchkula. It is also not in dispute that the petitioners had obviously agreed to the terms and conditions of the public auction to adhere to the schedule of payment that was fixed by HUDA without any stipulation or condition for the alleged non-development of the area or the infrastructure, as claimed by the petitioners.

The law in relation to the terms and conditions and schedule of payments is well settled, namely, that auction is a price discovery mechanism for raising revenues for the government and when the price is not paid in time, it results in loss of revenue to the State. Time is the essence of the contract in such matters regarding auction, obviously because the property prices rise day by day.

From the facts in the instant case what we find is that despite repeated notices of resumption given to the petitioners, upon their default to make the payments in accordance with the schedule, an order was passed by Financial Commissioner on 3.9.2004 giving an opportunity to the petitioners to make deposits of the dues in the given time and upon failure thereof, the resumption order passed by the Estate Officer and confirmed by

the Administrator, would revive without any further notice to them. It is thus clear that the said order dated 3.9.2004 was made by the authorities almost after six years after the allotment and when the petitioners had already defaulted in making the payments as per schedule.

In our opinion, the petitioners are not entitled to canvass a grievance that they were not given enough time and opportunities to make deposits with HUDA. The petitioners did not take advantage of the lenient approach shown by the Financial Commissioner and in disregard of the said order, continued with their conduct of taking HUDA for granted. Not only that the petitioners filed civil suit immediately in 2001 knowing fully well that the said suit was barred by law and that was the ultimate decision by the civil court confirmed by the appellate court almost after 12 years. Thus the petitioners kept HUDA engaged in civil suit for over 12 years which was not maintainable. But so far as adherence to the order dated 3.9.2004 passed by the Financial Commissioner is concerned, the petitioners did not even obey the said order in their favour but went on raising untenable disputes. The petitioners filed writ petitions after writ petitions in this court, about which there is a detailed reply given in the written statement in para 3 and 4 thereof which we need not reproduce. Having thus fed up with the petitioners' conduct in hoodwinking HUDA and upon the result of the civil suit finally in terms of the order made by the civil court, refund order was issued to the petitioners. We do not think that the petitioners should at all be heard when from 1998 till the resumption of the property and refund order the HUDA was deprived of its dues. In that view of the matter, the petitioners do not deserve any sympathy or relief from this Court.

We, thus, find no merit in the writ petition.

ORDER

CWP No.23927 of 2014 is dismissed.

No order as to costs.

[**Surya Kant**]
Judge

[**A.B. Chaudhari**]
Judge

May 30, 2016.
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