

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

CWP No.25455 of 2014
Date of decision:08.07.2016

Rajiv Vohra

... 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. CB Goel, Advocate for the petitioner.
Mr. Deepak Balyan, Addl. AG, Haryana,
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J.

Petitioner was allotted booth No.51, Sector 21-C, Faridabad, in an open auction held on 07.03.1996, for a total cost of Rs.7,55,000/-. Petitioner deposited 10% of the price of the allotted site i.e. Rs.75,500/-, as bid money, at the time of auction itself. In terms of the allotment letter dated 10.04.1996, petitioner was required to remit a further sum of Rs.1,13,250/- (15% of the price) within 30 days from the date of issuance of the letter of allotment. And, the balance consideration i.e. Rs.5,66,250/-, could be paid either in lump sum within sixty days without interest or in ten half yearly installments with interest @ 15%. Possession of the booth was delivered to the allottee vide possession certificate dated 06.05.1996 (Annexure P1).

Petitioner deposited 15% of the price within the specified time. However, he failed to furnish any of the ten installments. Resultantly, the site was resumed by the authorities vide order dated 02.02.2001, copy whereof has not been appended with the petition. The appeal preferred against the order of resumption was accepted by the appellate authority, vide order dated 04.01.2011 (Annexure P2). And, consequently, the order of resumption was set aside, and the petitioner was directed to clear all the outstanding dues with penalty of Rs.2,00,000/- within 30 days. Now, the authorities being aggrieved against the order rendered by the appellate authority, filed a revision, under Section 17(8) of the HUDA Act, 1977 (for short, 'the Act'). Vide order dated 30.09.2014 (Annexure P7), the revisional authority accepted the revision, set aside the order of the appellate authority, and restored the order of resumption. That is how, the petitioner is before this court, and seeks a writ in the nature of certiorari to quash the said order (Annexure P7).

Learned counsel for the petitioner submits that the petitioner had deposited 25% of the price of the site well within time, but he could not remit the balance consideration on account of acute economic hardship, and family circumstances. However, he submits that the petitioner was ready to clear the all outstanding dues with interest and, therefore, the order of resumption be set aside, particularly when, the drastic power of resumption has to be exercised as last resort. Further, he submits that the petitioner in compliance to the order, dated 04.01.2011 (Annexure P2), rendered by the appellate authority, had even deposited a sum of Rs.7,00,000/-, vide draft dated 09.02.2011 (Annexure P3).

We have heard learned counsel for the parties and perused the records.

On a due and thoughtful consideration of the matter in issue, we are of the considered view that this petition is wholly devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Undoubtedly, petitioner deposited 25% of the price of the allotted site. However, in terms of the allotment letter, dated 10.04.1996, he was required to remit the balance consideration in ten half yearly installments with agreed rate of interest. Concededly, the petitioner failed to furnish even a single installment. Records show that series of notices bearing memo No.3465 dated 03.12.1996, memo No.540 dated 20.02.1998, memo No.1735 dated 22.10.1999, memo No.1053 dated 03.06.1999 and memo No.1504 dated 08.09.2000, were served upon the petitioner to clear the dues, but to no avail. In compliance to the provisions of Section 17 of the Act, the petitioner was afforded due and adequate opportunities to express his defence, and also an opportunity of personal hearing. But, neither did the petitioner file any reply to the said notices nor chose to appear before the authorities. The entire period of 5 years, within which the balance consideration was required to be remitted, had gone by, therefore, the authorities were choice-less, but to order resumption of the booth.

The appeal preferred on behalf of the petitioner was dismissed in default on 23.04.2002, and the said order was duly communicated to the petitioner vide letter No.4972 dated 20.05.2002. Application filed by the petitioner for restoration of the appeal on 17.06.2002 was also dismissed in default on 23.10.2007. Ex facie, the petitioner accepted the order of

resumption, and the same attained finality, as for a period of three years petitioner did not resort to any measures to have his appeal restored. However, after a period of three years, vide application, dated 22.10.2010, he sought restoration of the appeal. Which, apparently was an afterthought, for in the interregnum the value of the real estate had escalated manifold. It appears that this entire litigation was/is speculative and sponsored. For, the petitioner was in acute financial crisis, and, therefore, he failed to pay even a single installment in five years. But, post passing of the order of resumption, he executed a General Power of Attorney in favour of one Ajay Pal son of Shri Chander Singh, who has pursued the matter since then. Nothing is indicated; that the General Power of Attorney holder of the petitioner is either his relative or was even known to him. Significantly, petitioner is a resident of Faridabad, where the site is situated, whereas the Power of Attorney holder of the petitioner is a resident of Chandigarh. It defies logic, that petitioner himself could not pursue his interest, but needed someone from that far to prosecute the matter on his behalf. The only inference we can draw is; that attorney holder of the petitioner bought petitioner's stake as also the litigation.

The period of 20 years has gone by; and the very purpose of allotment by auction stands completely defeated. Surprisingly, the petitioner still continues to be in use and occupation of the booth, but without paying a penny, except initial deposit of 25% of the price. Needless to assert, the interest of the authorities has been completely impeded in the process. Ex facie, it is a case of brazen, willful and conscious default. Undoubtedly, resumption is the last resort, but in the matter in hand, it was the only and inevitable option. Even if, the petitioner had deposited some amount,

pursuant to the order passed by the appellate authority, it is of no consequence, for it was a voluntary act on behalf of the petitioner. Authorities never accepted the alleged amount pursuant to any conscious decision or settlement, vide which it had resolved to withdraw the order of resumption. Further, under Section 17(8) of the Act, the authorities had a statutory right to assail the order rendered by the appellate authority, by way of revision. Thus, the mere deposit of some amount was inconsequential. To our minds, petition seriously lacks both: merit as also bonafides.

That being so, no interference is warranted, in the discretion exercised by the revisional authority, in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. Petition being devoid of merit is accordingly dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

08.07.2016
Rajan