

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

CWP No.26063 of 2015(O&M)

Date of decision: 16.02.2016

Pushpa

... 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. Rajiv Kataria, Advocate for the petitioner.

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.

A writ of certiorari is prayed for to quash the order dated 23.08.2002 (Annexure P1), rendered by the Estate Officer, HUDA, Panchkula, vide which the booth site and building constructed thereupon was resumed; order dated 27.03.2003 (Annexure P2), whereby the appeal preferred against the order of resumption was dismissed; as also the order dated 10.06.2014 (Annexure P10), vide which the revisional authority dismissed the revision petition.

In brief, booth No.182, Sector 4, MDC, Panchkula was allotted to Vidhya Devi, under a rehabilitation scheme, at a tentative price of ₹ 2,79,000/-. Letter of allotment dated

03.04.2000, was issued to the allottee. And in terms of clause 5 thereof, the allottee was required to deposit 15% of the bid money within 30 days from the date of issuance of the letter of allotment. And, as envisaged in clause 6, the balance 75% of the price was either to be paid in lump-sum without interest within 60 days from the date of the letter of allotment or in 10 half yearly installments together with interest @ 15%. The detailed payment schedule was duly set out in letter of allotment itself. But, as the allottee (Vidhya Devi) failed to deposit the installments, site in question was ordered to be resumed by respondent No.3. Resumption was preceded by a show cause notice and the allottee was also provided an opportunity of hearing as envisaged under Section 17 of the HUDA Act, 1977. The appeal preferred by the allottee against the order of resumption was dismissed by the appellate authority (respondent No.2), vide order dated 27.03.2003 (Annexure P2). The original allottee is alleged to have passed away on 31.08.2010. And the petitioner, i.e. Pushpa wife of Anil Kumar, purports to be her successor-in-interest, for vide a registered Will dated 03.10.2007 (Annexure P6), the allottee purports to have bequeathed the site in favour of the petitioner.

Records show that post dismissal of the appeal preferred by the allottee, a civil suit was filed in the year 2007, challenging the order of resumption. The said suit was dismissed by the civil court on 22.09.2007 for lack of jurisdiction under Section 50 of the HUDA Act, 1977. And, so was the fate of the appeal preferred against the said decree. Regular second appeal,

preferred before this court, was dismissed as withdrawn on 26.10.2010. Subsequently, the petitioner even filed a civil writ petition i.e. CWP No.14193 of 2012, which too was dismissed as withdrawn on 03.12.2012, with a liberty to the petitioner to pursue any other remedy admissible in law. This is how, the petitioner (Pushpa) eventually preferred a revision under Section 30(2) of the HUDA Act, 1977, assailing the order of resumption as also the order vide which the appeal preferred by the allottee was dismissed. However, the revisional authority dismissed the revision petition, vide order dated 10.06.2014 (Annexure P10), being barred by time, for it suffered from an inordinate delay of 8 years 7 months and 11 days, as also on merits. That is how, as indicated above, the petitioner is before this court.

Learned counsel for the petitioner submits that the petitioner had deposited a substantial amount over a period of time to clear the outstanding dues and was even ready to clear the balance, if any, with up to date interest. Thus, he submits that the site be restored.

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

Concededly, a booth site was allotted to Vidhya Devi wife of Ram Parsad (allottee). But, as she failed to deposit the requisite amount, in terms of the letter of allotment, the site was resumed. In fact, even till the date of the order of resumption i.e.

23.08.2002, she had not deposited even a single installment. Even before the appellate authority, the allottee had undertaken on 04.03.2003, to clear all outstanding dues by the next date of hearing i.e. 27.03.2003. However, neither did she appear on the date fixed nor deposited the dues i.e. ₹ 1,52,000/-, as on 18.05.2000. And, for, even the future installments had fallen due, the appellate authority was constrained to dismiss the appeal. Significantly, the order of resumption was not assailed any further by the allottee and thus it attained finality. Petitioner i.e. Pushpa wife of Anil Kumar arrived at the scene only in the year 2007 i.e. 5 years after the order of resumption was passed. She perhaps entered into some latent arrangement/agreement with Vidhya Devi qua the resumed site, of course for some consideration. And, to secure her interest, she got executed a Will dated 03.10.2007 (Annexure P6), vide which the resumed site was purportedly bequeathed in her favour. And, that is how, the matter was sought to be revived by the petitioner, though the order of resumption had become final years' ago. As a consequence of the order of resumption, the allottee was not left with any right, title or interest in the site, more particularly when she by her own volition allowed it to attain finality. She ceased to have any transferable title and thus could not bequeath the resumed site in favour of the petitioner. In any event, the allottee herself had not yet become the absolute owner of the site. Therefore, the alleged Will dated 03.10.2007 (Annexure P6) was hardly of any consequence. At best, the heirs or the legatees of the allottee could claim a right to

question the order of resumption, post death of Vidhya Devi. But in the matter in hand, their case for the same must fail, for the allottee herself accepted the order of resumption and never questioned it, though she was alive for 7 years thereafter.

The petitioner made yet another attempt to gain some ground beneath her feet, for vide her affidavit dated 08.02.2016, as also the affidavit dated 05.02.2016 of one Atma Ram, who is purported to be one of the heirs of the allottee, it is sought to be alleged that the petitioner was indeed pursuing the litigation on behalf of the heirs of the allottee. And she herself had no personal interest in the resumed site. Concededly, neither the revision petition nor the petition in hand has been preferred by the petitioner as an attorney of the heirs of the allottee, but in her independent capacity. Rather, in paragraph 2 of the petition, she claims herself to be the successor-in-interest of the allottee pursuant to a Will dated 03.10.2007 (Annexure P6). Thus, there is an apparent dichotomy in the case the petitioner has set out in the writ petition and what she seeks to state vide the two affidavits she has subsequently brought on record.

The submission that the petitioner had deposited a substantial amount to clear the outstanding dues is also of no consequence, as the said amount was deposited directly in the bank account of HUDA without any approval of the competent authority. Post resumption, deposit of outstanding dues by an erstwhile allottee or his/her successor-in-interest, vide a unilateral act, which is not backed by any requisite sanction/approval/

permission by the competent authority, would neither bind the authorities in any manner nor create any right in favour of the depositor.

Learned counsel for the petitioner contends and rightly so, that if the order of resumption is to prevail then at least the amount deposited by the petitioner be refunded at the earliest. A bare analysis of the order passed by the revisional authority itself reveals that respondent No.3 was directed to refund the amount deposited by the petitioner after permissible deductions in terms of the rules within 30 days from the date of order itself. So much so, it was observed that in the event of the amount not being refunded within the stipulated period, the same would carry simple interest @ 12% per annum, which shall be recoverable from the concerned Estate Officer. That being so, no direction by us is warranted in this regard.

In view of the above, we are dissuaded to interfere with the orders being assailed. The petition being devoid of merit is accordingly dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

16.02.2016
Rajan