

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.395 of 2014 (O&M)

Date of Decision: 29.04.2016

Kimat Lal & Ors.

.... Petitioners

VS.

State of Haryana & Ors.

.... Respondents

**Coram : Hon'ble Mr.Justice Surya Kant
Hon'ble Mr.Justice Amol Rattan Singh**

1. Whether Reporters of local papers may be allowed to see the judgment? yes

2. To be referred to the Reporters or not? yes

3. Whether the judgment should be reported in the Digest? yes

Present: Mr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Raj Kumar Chugh, Advocate for the petitioners

Mr. Vishal Garg, Addl. AG Haryana

Mr. Deepak Sabharwal, Advocate for HUDA

SURYA KANT J. (Oral)

(1) This writ petition is directed against the orders dated 03.04.2001 (issued on 02.07.2001) (P7); dated 31.10.2006 (issued on 17.01.2007) (P10) and dated 24.12.2013 (P12). Vide the first order, the Estate Officer, HUDA, Panchkula resumed booth site No.207, Sector 16, Panchkula in exercise of his powers under Section 17(4) of the HUDA Act for the consistent default in deposit of the due instalments and vide the subsequent orders, the statutory appeal and revision petition preferred by the petitioners against the order of resumption have been dismissed.

(2) A detailed reference to the facts is required.

(3) Booth No.207, Sector 16, Panchkula was allotted to the highest bidders (Kulwant Rai Sood and Anil Sood) on 31.05.1988 for a

consideration of ₹4,02,000/- and possession of the site was handed over to the allottees along with allotment letter dated 15.06.1988. The allottees paid 25% of the allotment price within 30 days and opted to pay the balance amount in 10 half-yearly instalments payable on 15th December and 15th June every year as per the detailed schedule given in clause-23 of the allotment letter. In this manner, the schedule of payments commenced on 15.12.1988 and last instalment was to be deposited on or before 15.06.1993.

(4) Soon after the allotment, the allottees applied for surrender of booth on 27.06.1988 but later on withdrew the said request and applied for 'transfer' of the booth in the name of Raj Rani Sharma. Their request was accepted and the booth site was re-allotted to Raj Rani Sharma on 10.08.1988. The booth site was apparently further sold as the allottee applied to transfer the site in favour of Kimat Lal s/o Roop Lal and his sons, namely, Rajesh Kumar and Vimal Parkash. The request was accepted and booth was re-allotted in favour of the above-named persons on 03.12.1990 on the same terms and conditions as were applicable to the original allottee (P3). The new allottees submitted the drawings for construction of the booth site which were approved and eventually they constructed the booth and started running their business.

(5) Though the ownership of the booth site kept changing hands frequently but none of the subsequent allottee(s) bothered to deposit the due instalments. The Estate Officer consequently issued various notices

under Section 17 of the HUDA Act including dated 29.10.1991, 11.12.1991, 04.03.1992, 10.06.1992, 15.01.1993, 31.01.1996, 18.03.1997, 29.10.1997 and 30.11.2000 etc. Neither the notices were responded to by the allottees nor the due instalments were deposited. Resultantly a sum of ₹9,12,078/- became due towards re-allottees who continued to run their business in the booth “without getting occupation certificate”. The Estate Officer thus resumed the site and forfeited 10% of the consideration amount.

(6) The petitioners-allottees still did not care as what to talk of any belated payment, they did not even challenge the resumption order in appeal. It was only when a show cause notice for eviction was served under Section 18(1)(b) of HUDA Act that they filed the statutory appeal in the year 2005. The plea taken in the grounds of appeal was that they *“could not deposit the amounts due within time frame as earmarked in the allotment letter due to some family circumstances and also as appellants suffered losses in their business...”*.

(7) The petitioners, however, deposited a sum of ₹2 lacs on 28.02.2005, before filing the appeal, directly in HUDA’s Bank account.

(8) Regardless of the inordinate delay in its filing the Appellate Authority entertained the appeal on merits and having held that the deposit of ₹2 lacs in the year 2005 “after a gap of twelve long years” was with an ulterior motive to create a lien and that at least two out of the three owners had received the several notices sent by the Estate Officer and the alleged non-receipt of such notices by the third owner was no

valid justification for not depositing the due instalments, the appeal was dismissed vide order dated 31.10.2006/17.01.2007.

(9) The petitioners went in revision before the State Government and a plea that meanwhile substantial part of the due amount stood deposited by them, hence a lenient view may be taken. The revisional authority called for the entire record and found that on two occasions i.e. on 02.12.2013 and 05.12.2013, the petitioners had deposited some amount in the Bank account of HUDA directly which was not accepted by the Estate Office. The revisional authority came to the conclusion that it was a case of willful default by the petitioners who usurped the commercial property and continued to enjoy its fruits without paying a single instalment on time. The revision petition was thus dismissed.

(10) The aggrieved petitioners have approached this Court.

(11) A bright young lawyer very passionately argued the case on 14.01.2014 but we did not find any valid ground to interfere with the impugned orders on merits, nevertheless, this Court agreed to call upon the respondents to consider the alternative relief as the petitioners expressed their willingness *“for re-allotment of the site at the current price subject to adjustment of the amount already paid by them”*. The parties were directed to maintain *status quo* subject to the condition that the petitioners would bring a demand draft of ₹20 lacs in favour of the Estate Officer, HUDA to show their *bona fide*.

(12) The record reveals that despite reasonable opportunities, the petitioners failed to comply with the order dated 14.01.2014 even though the HUDA authorities meanwhile informed this Court that a similar size booth No.88 in Sector 15, Panchkula was auctioned for a sum of ₹1,24,00,000. The Bench then vacated the *status quo* order on 30.07.2015.

(13) The petitioners thereafter moved an application for 'modification' of the order dated 14.01.2014 so as to wriggle out of the statement made on the basis of their instructions for the "re-allotment of the booth site at current market price". Their application was dismissed.

(14) We have heard learned counsel for the parties on merits at a considerable length and gone through the record.

(15) Learned senior counsel for the petitioners vehemently urges that:-

- (i) the revised demand raised by the HUDA authorities for a sum of ₹1,11,00,000 for re-allotment of booth site is highly arbitrary and the amount has been fixed on whims and fancies;
- (ii) the petitioners are entitled to restoration of original allotment as most of the due amount was deposited by them during the pendency of the proceedings and the petitioners are still ready and willing to pay the balance amount, if any, found due;

- (iii) The power of resuming a property ought to be exercised only in exceptional circumstances and non-payment of due instalments does not fall within such exceptions;
- (iv) The delay in deposit of the due instalments is a curable error for which the authorities can be well compensated with penal interest or penalty.
- (16) On the other hand, learned counsel for HUDA submits that the petitioners are guilty of a schemed motive to not to deposit even a single instalment despite repeated notices which were admittedly served on two of them. Albeit, they constructed the booth and started running their business to enjoy the fruits of the commercial property. The petitioners very shrewdly did not obtain any occupation certificate which is a condition mandatory before physical occupation of the site, for they would have been compelled to clear all the dues at the time of issuing the occupation certificate. Learned counsel further submits that the petitioners have been abusing the process of law as they instituted parallel proceedings before the Civil Court by *filing Civil Suit No.427 dated 06.03.1993 and obtained ad interim injunction*. They prolonged the suit for 9 years which was though decreed with a direction that HUDA authorities could not charge simple interest in excess to 10% per annum but the appeal by HUDA authorities was allowed by the First Appellate Court on 25.03.2003 and the suit was dismissed for want of jurisdiction.

(17) The petitioners preferred Regular Second Appeal but this Court declined to interfere with the order of the First Appellate Court except that they were relegated to file statutory appeal under the Act. In this manner, the petitioners have been yielding profits out of the commercial property for more than two decades unmindful of their liability towards due instalments.

(18) Having pondered over the rival submissions, we are satisfied that no case to interfere with the impugned orders is made out either in law or in equity. It is undeniable that as per the terms and conditions of the allotment, 10 half yearly instalments were payable between 15.12.1988 to 15.06.1993. The booth site was transferred in favour of the petitioners on 03.12.1990. At least 6 instalments were still due to be paid from 15.12.1990 till 15.06.1993 but they did not make effort to pay even a single instalment. The record further reveals that after getting the booth site transferred in their favour, the petitioner deposited ₹2 lacs on 28.02.2005 i.e. after more than 15 years of such transfer. Meanwhile, the petitioners had admittedly got the building plan sanctioned and constructed the site in the year 1992-93. While they continued to accumulate the proceeds of business, the petitioners refused to bear the burden of due instalments.

(19) The petitioners successfully pre-empted the authorities from taking any coercive action against them by securing *ad interim* injunction from the Civil Court in March, 1993 even though the jurisdiction of the Civil Court is expressly barred under the HUDA Act.

The suit remained pending for nine long years and the petitioners encashed this period to their best advantage without paying even a single penny to HUDA towards the allotment price.

(20) The petitioners were fully aware of the resumption order passed against them on 30.04.2001/02.07.2001. They chose not to file any appeal, may be due to undue protection given by the Civil Court. It is only after they lost battle in the Civil Suit that a sum of ₹2 lacs was suddenly deposited in the HUDA account directly without any prior approval or order of the competent authority. The payment was first a pretention of *bona fide*. The Appellate Authority rightly observed that the sudden deposit of ₹2 lacs after a gap of 12 long years was an attempt to overreach the authorities. Even otherwise also, it did not create any legitimate right for revival of allotment in their favour.

(21) The revision authority also summoned the record and has found that all the payments were made by the petitioners directly in the HUDA account without any knowledge of authorities. None of those payments were accepted and the demand draft/cheques were returned in original to the petitioners.

(22) Equity can be pleaded by those who come to the Court with clean hands and do not play with the law or indulge in unholy practices to secure relief through tainted means.

(23) In *Manohar Lal vs. Ugrasen, (2010) 11 SCC 557*, the Supreme Court has very aptly observed '*When a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under Article*

226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. 'Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice'. Who seeks equity must do equity. The legal maxim 'Jure naturae aequum est nemini cum alterius detrimento et injuria fieri locupletiores', means that it is a law of nature that one should not be enriched by the loss or injury to another'.

(24) In **Vimal Chand Ghevarchand Jain & Ors. vs. Ramakant Eknath Jadoo (2009) 5 SCC 713** also holds that an equitable relief can be prayed for by a party who approaches the court with clean hands.

(25) The authorities have shown their full compassion as the petitioners' appeal was entertained despite unexplained prolonged delay. The petitioners could not take shelter behind the fact that they filed civil suit knowing fully well that the civil court had no jurisdiction in such like matters. They knowingly breached the terms and conditions of allotment as while enjoying injunction they did not bother to deposit the due instalments with simple interest also.

(26) When an allottee defies the terms and conditions with open eyes; occupies the property through unlawful means; misuses such property for personal gains and invokes all possible technicalities and illegitimate pleas to shield his own failures and misdemeanour, the authorities would be well within their right to invoke provisions like

Section 17(4) and subject such defiant allottee to a harsh action, including resumption of the property. “The drastic power of resumption and forfeiture however should be exercised only as a last resort. If the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive then such a drastic power of resumption can be taken recourse to...”. [Ref. **Teri Oat Estates (P) Ltd. vs. UT Chandigarh & Ors., (2004) 2 SCC 130**]

The case in hand surely exhibits those exceptional situations where invocation of power of resumption is fully justified.

(27) The peripheral limits on the exercise of power of resuming a property as a last resort only, have been well elucidated by this Court also through two Full Bench decisions in (i) **Ram Puri, Chandigarh versus Chief Commissioner, Chandigarh and others, AIR 1982 (P&H) 301** and (ii) **Dheera Singh versus U.T. Chandigarh Administration and others (2013-1) 169 PLR 1.**

(28) The conduct of the petitioners after they approached this Court also requires special reference. When they failed to convince this Court on merits, the alternative prayer made by their counsel after seeking instructions from the petitioners “for re-allotment of the site at the current market price” was sympathetically considered and the respondents were called upon. The petitioners misused the *status quo* order for more than one year without honouring the conditional order.

They flouted the directions of this Court knowing fully well that the

tentative price of the subject booth, as per the current market value, was in any case not less than ₹1 crore. They continued to hoodwink this Court on one pretext or the other and also made an attempt to seek modification of the order dated 14.01.2014 so as to wriggle out of the statement made before this Court. We are thus fully convinced that the impugned orders are perfectly valid and the conduct of the petitioners does not warrant any interference with the action of resumption of the booth site.

(29) Dismissed.

(Surya Kant)
Judge

29.04.2016
vishal shonkar

(Amol Rattan Singh)
Judge