

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

CWP No.3753 of 2016
Date of decision: 25.02.2016

Prem Lata

... Petitioner

Versus

Haryana Urban Development Authority and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. Jai Bhagwan Sharma, 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?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J.

A writ of certiorari is prayed for to quash the letter No.6636, dated 24.12.2015 (Annexure P1), vide which the request of the petitioner for refund of the amount, charged on account of extension fee, has since been declined by the Estate Officer, HUDA, Chandigarh (respondent No.2). Further, to direct the respondents to refund the amount i.e. ₹ 40,560/- with interest.

In brief, the petitioner was allotted booth No.63 in District Shopping Centre, Jind, pursuant to a letter of allotment dated 12.10.1990 (Annexure P2), for a consideration of ₹ 1,27,500/-. Petitioner deposited 10% of the auction price of the booth on 30.07.1990 i.e. the date of auction itself. And 15% on 09.11.1990. Balance amount was to be paid in 10 half yearly

installments. Petitioner defaulted in payment of installments in time. Resultantly, vide letter dated 28.08.1998 (Annexure P3), a demand for sum of ₹ 42,473/- was raised by the respondents, which comprised of outstanding dues and 18% compound interest thereupon. Vide letter dated 15.09.1998, petitioner was offered possession of the allotted site. However, being aggrieved against the amount demanded by the authorities, and particularly the compound interest that was being claimed, petitioner assailed the order dated 28.08.1998 (Annexure P3) in a suit. Trial court dismissed the suit on 17.05.2001. But the appeal preferred against the said decree was accepted and the authorities were injuncted from recovering the penal interest @ 18% per annum on the delayed payment. In regular second appeal, preferred by the authorities, this court vide judgment dated 27.03.2009, modified the decree with liberty to the respondents to charge simple interest @ 10% per annum. The Special Leave Petition filed by the authorities against the said judgment was dismissed by the Hon'ble Supreme Court on 07.01.2014. Resultantly, petitioner vide representation dated 03.06.2014 (Annexure P9), requested the authorities to apprise her of the amount due, in terms of the decree. And vide letter No.3613, dated 01.09.2014 (Annexure P10), respondent No.2 required the petitioner to deposit ₹ 1,00,572/- i.e. ₹ 60,012/- qua outstanding dues with interest and ₹ 40,560/- towards extension fee. Petitioner deposited the said amount on 02.09.2014. Petitioner also obtained possession, and a possession certificate, dated 17.09.2014 (Annexure P11), was accordingly

issued. Thereafter, petitioner represented to the authorities for refund of the amount that was charged on account of extension fee, vide representation dated 18.11.2015 (Annexure P12). But, respondent No.2 declined the request of the petitioner vide order dated 24.12.2015 (Annexure P1). That is how, as indicated above, petitioner is before this court.

Learned counsel for the petitioner submits that the authorities charged the extension fee for the period commencing from the year 2000 to 2014, whereas the petitioner was delivered the actual physical possession only on 17.09.2014. Therefore, he submits that how could the petitioner be even expected to construct the site prior thereto. And, thus, respondents are liable to refund the amount with interest.

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

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

Clause 18 of the letter of allotment (Annexure P2), which is being set out hereinafter, requires the allottee to complete construction within two years of the date of offer of possession:

“18. You will have to complete the construction within two years of the date of offer of possession after getting the plan of the proposed building approved from the competent authority in accordance with the regulations governing the erection of building. This time limit is extendable by the Estate Officer if he is satisfied that

non-construction of the building was due to the reasons beyond your control, otherwise this plot is liable to be resumed and the whole or part of the money paid, if any in respect of it forfeited in accordance with the provision of the said act. You shall not erect any building or make any alteration/addition without permission of the Estate Officer. No fragmentation of any land or building shall be permitted.”

Concededly, the petitioner was offered possession of the allotted site by the authorities, vide letter No.4362 dated 15.09.1998 (Annexure P4), on completion of development works. Neither did the petitioner obtain possession nor even responded to the said letter. Therefore, on the expiry of the period of two years i.e. from 1998 to 2000, in terms of afore-reproduced clause, the authorities were entitled to charge extension fee on account of non-construction of the site. So much so, the authorities could even resume the site and forfeit the whole or part of the amount deposited by the petitioner. In fact, petitioner had defaulted in payment of installments in time. Accordingly, a demand of ₹ 42,473/- was raised by the authorities, vide letter dated 28.08.1998 (Annexure P3). Petitioner chose to question the demand by filing a suit, as indicated earlier, rather than writing even once to the authorities to deliver possession. No doubt, post decision by the first appellate court, on 20.09.2004 i.e. after six years and thereafter during the pendency of the regular second appeal in June and September, 2008 i.e. after ten years of the offer of possession, petitioner while representing to the authorities to apprise her of the dues in terms of the decree, did request for

possession as well. However, the purpose and intent was only to deposit the outstanding dues without any further delay subject to the decision in the pending lis and not to obtain possession. Which is why, petitioner neither visited the office of respondent No.2 to obtain possession, as required vide letter dated 15.09.1998 (Annexure P4), nor submitted any plan for approval, in terms of Clause 18 of the allotment letter, to construct the site. Petitioner indeed was not aggrieved on account of any inaction or non-delivery of actual physical possession of the site by the authorities. If that was so, he could always resort to an appropriate measure for redressal of his grievance. And, it was only after the dismissal of the Special Leave Petition on 07.01.2014, the petitioner deposited the requisite amount on 02.09.2014, and obtained possession on 17.09.2014. And after over a year, she chose to question the amount charged by the authorities on account of extension fee, vide representation dated 18.11.2015 (Annexure P12), which apparently is an afterthought.

In the wake of the position, as sketched out above, we are dissuaded to interfere with the discretion that has been exercised by the authorities, in the 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

25.02.2016
Rajan