

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

CWP No.4989 of 2015
Date of decision: 16.03.2016

Neelam Rani and others

... Petitioners

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. Gaurav Mohunta, Advocate and
Ms. Komal Abrol, Advocate for the petitioners.
Mr. Deepak Balyan, Addl. AG, Haryana.
Mr. Vishal Garg, Advocate for respondent-HUDA.

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 order dated 16.01.2001 (Annexure P4), rendered by Estate Officer, HUDA, Hisar (respondent No.4), vide which the booth site, allotted to the predecessor-in-interest of the petitioners i.e. late Sh. Om Parkash, was resumed on account of non-payment of dues, orders dated 09.09.2008 (Annexure P8) and 11.03.2014 (Annexure P10), vide which the appeal as also the revision petition preferred by the petitioners against the order of resumption were dismissed.

Briefly, the case set out by the petitioners is that a booth site bearing No.SSB-15P, MT, RCC, Fatehabad, admeasuring

232.41 sq. meter, was allotted to late Sh. Om Parkash, husband and father of the petitioners respectively, for a consideration of ₹1,45,000/- in an open auction, vide letter of allotment dated 23.05.1989 (Annexure P1). The allottee had deposited ₹14,500/- i.e. 10% of the total price, as bid amount at the time of auction itself. A further sum of ₹21,750/- i.e. 15% of the price, was also deposited, as stipulated in the letter of allotment, within 30 days from the date of issuance of the said letter. Balance 75% of the price could either be deposited in lump sum, without interest, within 60 days from the date of the allotment letter or in 10 equal half yearly installments, each of which was recoverable together with interest @ 10%. However, late Om Parkash (allottee) furnished only the first 4 installments and the balance consideration could not be deposited. For, the allottee suffered from ill health and acute financial crisis. Resultantly, vide order dated 16.01.2001/ 24.01.2001 (Annexure P4), rendered by respondent No.4, the site was resumed. But, the order of resumption was neither communicated to the allottee nor was in his knowledge. In fact, late Om Parkash deposited ₹400/-, as extension fee, which was duly accepted by the authorities, against receipt dated 29.12.2006 (Annexure P5). Possession of the site was also handed over to the allottee and he was issued a possession certificate dated 30.12.2006 (Annexure P6). For, subsequently respondent No.4 cancelled the possession certificate, for the allotted site was purported to be resumed, only then it transpired that respondent No.4 had already passed an order of resumption. That being so, the

said order (Annexure P4) was assailed by way of appeal, which was dismissed by the appellate authority, vide order dated 09.09.2008 (Annexure P8), on account of delay as also on merits. Likewise, even the revision petition preferred by the allottee was dismissed by the revisional authority, vide order dated 11.03.2014 (Annexure P10). That is how, as indicated above, the petitioners are before this court.

Learned counsel for the petitioners contends, for even post resumption, the authorities accepted the extension fee (Annexure P5) and delivered possession of the allotted site, the ground that formed basis of the order of resumption paled into insignificance. It is contended that the petitioners were willing to clear all outstanding dues with interest and thus the order of resumption be set aside. Accordingly, a reliance is placed upon a decision rendered by the Division Bench of this court in **Smt. Fana alias Maina Devi and others v. The Financial Commissioner and Principal Secretary to Government of Haryana and others**, dated 17.10.2014 [CWP-3197-2014]. Further, in any case, he contends that the authorities failed to afford any notice or opportunity to the allottee before the order of resumption (Annexure P4) was passed, therefore, the said order was liable to be struck down on that score alone. As regards delay, he submits that the order of resumption was never communicated or served upon the allottee, thus, he filed the appeal immediately upon acquiring knowledge of the said order.

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.

Concededly, the site in question was allotted to late Om Parkash in a public auction as back as on 23.05.1989. No doubt, the allottee deposited a part of the sale consideration, but concededly he failed to deposit the last 6 installments. Repeated notices and reminders that were sent through registered post, under Sections 17(1), 17(2), 17(3) & 17(4) of the HUDA Act, 1977, yielded no result. Post 13.03.1992, when the allottee furnished the 4th installment, till the order of resumption, dated 24.01.2001, was passed, for a period of 9 years, neither did he deposit the balance consideration nor rendered any plausible explanation to condone the default. That being so, the only and inevitable conclusion, the authorities could resort to was to order resumption. It seems wholly incredible that the allottee indeed was oblivious of the order of resumption (Annexure P4). Records show that the order of resumption (Annexure P4) was duly forwarded to the allottee at his given address. Be that as it may, the schedule as regards payment of all the 10 installments, with requisite details, was duly set out in the letter of allotment. Thus, he was fully conscious of his obligations, liabilities and the precise time by which he was required to deposit the requisite amount. But he defaulted in

payment of last 6 installments. Therefore, he very well knew the ramifications thereof and also that the order of resumption shall follow. Rather, the fact that post resumption the allottee remained quiet for a period of 6 years and never even attempted to ascertain the status of his allotment, shows that the order of resumption was well within his knowledge. In fact, he accepted and reconciled therewith. Therefore, an attempt to deposit extension fee on 29.12.2006, was apparently an afterthought and to revive a stale claim, which had lost its significance with efflux of time. For, in the interregnum the property prices had escalated manifold. Likewise, the possession certificate, which the allottee managed to obtain on 30.12.2006 (Annexure P6), was also cancelled on the next day itself i.e. 31.12.2006 (Annexure P6/A), for the site already stood resumed. In the face of the order of resumption, which was in existence and operating, depositing extension fee and obtaining possession certificate would hardly vest any right in the petitioners, for they had even ceased to be the allottees. Site in question, which is a commercial property, was auctioned on 23.05.1989, for ₹1,45,000/-. On completion of development works, allottee was offered possession vide letter dated 26.08.1994 (Annexure P3). For, he was not ready and willing to perform his part of the contract, he concededly never chose to obtain physical possession of the allotted site. Now, when almost 27 years have gone by, it is too late in the day to set aside the resumption, even though the petitioners are willing to clear the dues with interest. That being so, the decision

rendered by the Division Bench in **Smt. Fana alias Maina Devi** (supra) has no bearing on the matter in issue.

The appeal against the order of resumption was preferred after an inordinate delay of 7 years and 3 months, but still the appellate authority examined the matter on merits as well. And, having found no substance therein, the same was dismissed. The said order was affirmed even by the revisional authority.

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

16.03.2016
Rajan