

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.5154 of 2015
Date of Decision: 16. 05.2016

Varun

..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. Naresh Kaushal, 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 in the nature of certiorari is prayed for, to quash the orders dated 11.03.2002 (Annexure P-2), vide which a residential site allotted to the petitioner was resumed, dated 15.03.2005 (Annexure P-4), whereby an appeal preferred against the said order was dismissed, as also, dated 08.08.2014 (Annexure P-6), vide which the revisional authority dismissed even the revision preferred by the petitioner.

The facts that are required to be noticed are limited.

Petitioner was allotted a residential plot no. 1071, Sector 40, at Gurgaon, vide letter of allotment dated 02.03.1995 (Annexure P-1). The tentative price of the site was Rs.06,40,500/- For, the petitioner had deposited 10% of the consideration at the time of submission of the

application itself, he was required to furnish Rs.96,075/-(15%), within a period of 30 days from the date of issuance of the allotment letter. The balance 75% of the price was to be deposited in six, equated, annual instalments. Concededly, petitioner failed to deposit any of those instalments. Resultantly, a show cause notice, under Section 17(3) of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as “the Act”), purports to have been served upon the petitioner vide memo no.1080, dated 12.03.2001, which was not responded to. In terms of the provisions of Section 17(4) of the Act, petitioner was afforded an opportunity of personal hearing, vide notice (memo no.3662), dated 26.06.2001, before passing an order of resumption. Neither did the petitioner appear before the authorities nor deposited the amount due. As a result, the Estate Officer, Haryana Urban Development Authority, Gurgaon (respondent no.3), vide order dated 11.03.2002 (Annexure-P2), resumed the site and ordered forfeiture of 10% of the total cost of the plot. The appeal preferred against the said order, was dismissed by the Administrator, Haryana Urban Development Authority, Gurgaon (respondent no.2), vide order dated 15.03.2005 (Annexure P-4), and, even the revision filed by the petitioner failed, for it was dismissed vide order dated 08.08.2014 (Annexure P-6). That is how, as indicated above, petitioner is before this court.

Learned counsel for the petitioner submits that no notice or opportunity of hearing, as envisaged under section 17 of the Act, was ever afforded to the petitioner, by the authorities, before passing the order of resumption. Therefore, he submits that the order is vitiated, for the procedure that is required to be followed under section 17 of the Act, is

mandatory. And, in any event, he submits that, he had duly expressed before the appellate authority that he has always been and was still ready to clear all the outstanding dues with interest, and, therefore, the site ought to have been restored.

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

Concededly, the site in question was allotted to the petitioner over 21 years ago, vide letter of allotment, dated 02.03.1995 (Annexure P1). Undoubtedly, the petitioner deposited 10% (Rs.64,050/-) of the price with the application itself, and, 15% (Rs.96,075/-) within 30 days of the issuance of letter of allotment. In terms of clause 6 of the letter of allotment, balance 75% of the consideration was to be remitted in six equated, annual instalments, i.e., from March, 1995 to March, 2001. Concededly, petitioner failed to deposit even a single instalment. Records show that a show cause notice was issued to petitioner, vide Estate Officer, HUDA, Gurgaon, memo no.4181 dated 17.9.2000, under section 17 (i) of the Act, on account of default in payment of consideration money, which was not responded to. Consequently, in terms of section 17 (ii) of the Act, the petitioner was required to appear before the Estate Officer, on 27.9.2000, and render explanation, if any, before imposing penalty upon the petitioner. But, the petitioner did not choose to avail the said opportunity. Faced with this, vide order dated 25.11.2000, a penalty of Rs.90,208/- was imposed upon the petitioner by the Estate Officer. For, the petitioner still did not deposit the outstanding dues, as also the penalty, a show cause notice under section 17 (iii) of the Act, was served upon him, vide memo no.1080 dated 12.03.2001;

why an order of resumption not passed. Again, petitioner failed to respond

thereto. As required under section 17 (iv) of the Act, vide memo no.3662, dated 26.6.2001, the petitioner was afforded an opportunity of personal hearing by the authorities, before passing any order. Petitioner was required to appear before the Estate Officer, HUDA, Gurgaon, on 24.7.2001, but he chose not to. Seven years had gone by, petitioner had not paid a penny after initial deposit of 25% of the price in March/April, 1995. Thus, the authorities were choiceless but to order resumption of the allotted site.

The submission of the learned counsel for the petitioner that none of these notices, referred to above, were served upon the petitioner, also lacks conviction. For, all these notices were sent to the petitioner at his given address, vide registered post, and were not received back undelivered by the authorities. That being so, in the wake of the provisions of section 27 of the General Clauses Act, 1987, read in conjunction with section 114 (f) of the Indian Evidence Act, 1872, the presumption that can be drawn is, service of these notices were, indeed, effected upon the petitioner. The observation, recorded by the Hon'ble Supreme Court, in this context in, C.C. Alavi Haji v. Palapetty Muhammed & Anr., (2007) 6 SCC 555; fortifies this position:

“ Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post..... Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.”

Undoubtedly, the presumption that emanates from the aforementioned provisions is rebuttable. But no cogent or credible material was brought on record to rebut the said presumption. If the petitioner, indeed, was not served with any of these notices, at least once, he would have approached the authorities in 07 years, to ascertain the developments, if any, or to render some explanation for not remitting any of the six instalments. But he did not, for he knew that he was in default and authorities would require him to clear all the outstanding dues. Whereas, he was neither ready nor willing to perform his part of the contract. Though, not urged before us, but we notice that in the grounds of appeal, before the appellate authority, petitioner had pleaded that he had intimated his changed address, to the authorities, in the year 2002. Nothing is brought on record to show that any such intimation was ever sent by the petitioner to the authorities, and also, when did he shift to another place.

The plea that a representative of the petitioner visited the Estate Office, in the last week of May, 2004, and it only then transpired that the site had already been resumed, on 11.03.2002, also lacks conviction. Nothing is indicated as to who approached the authorities on behalf of the petitioner and when. Further, nothing is stated that after the petitioner acquired knowledge of the order of resumption, when and who, applied for a copy of the said order. And when was it delivered. The complete payment schedule with requisite details as regards the amount and the dates by which the petitioner was required, to pay the instalments, was set out, in the letter of allotment itself. Therefore, petitioner was fully conscious of his obligations and also the ramifications, in the event of breach of the terms

upon which the allotment was made. Thus, appeal preferred by the

petitioner on 31.5.2004 after two years of the order of resumption was an after thought and was clearly speculative in nature. Likewise, an argument that petitioner was/is ready to clear all the outstanding dues, and, thus, site be restored, lacks merits, as also, the bona fides. Apparently, an attempt was to revive the stale and settled claim. For, in the interregnum, the value of real estate had escalated manifold. No doubt, resumption of a site/building is the last resort. But, in the matter, in hand, it was the only and inevitable option before the authorities, for there was a brazen and willful breach of the terms of allotment.

That being so, we are dissuaded to interfere with discretion that has been exercised by the authorities, particularly in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India. The petition, being devoid of merit is, accordingly, dismissed.

(S. J.VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

16.05.2016
VK