

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.9019 of 2015
Date of decision: 06.01.2016

Ramesh Chand

... 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. Shyam Kumar Sharma, Advocate for the petitioner.
Mr. Deepak Balyan, Addl. AG, Haryana,
for respondent No.1.
Mr. Deepak Sabherwal, Advocate
for respondents No.2 to 4.

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 in the nature of certiorari is prayed for to quash the order dated 02.05.1996 (Annexure P7), vide which plot No.R-99 in Residential Area, Tohana, allotted to the petitioner had since been resumed as also the orders dated 29.06.2007 (Annexure P9) and 22.04.2014 (Annexure P16), vide which the appeal and even the revision petition preferred by the petitioner, against the said order were dismissed.

In brief, plot No.99, Model Town, Tohana was allotted to the petitioner on 13.10.1989 through an open public auction for a total consideration of ₹ 2,34,000/-. The 25% cost of the plot was deposited by the petitioner within time and the remaining 75% amount was to be deposited in six half yearly installments.

Petitioner deposited only two installments i.e. ₹ 45,679/- on 13.10.1990 and ₹ 32,762/- on 11.10.1991, but failed to deposit the remaining consideration. Resultantly, a show cause notice, dated 21.10.1992, under Section 17(1) of the Haryana Urban Development Authority Act, 1977 (for short, 'the Act') for imposition of penalty was issued to the petitioner. The petitioner did not respond thereto and resultantly, notice under Section 17(2) of the Act, dated 30.12.1992, was issued affording the petitioner an opportunity of hearing before imposing the penalty. But, as the petitioner failed to avail even the said opportunity, an order imposing penalty, dated 02.01.1993, was passed. Concededly, the petitioner had failed to pay the amount due as also the penalty which led to issuance of a show cause notice, dated 24.03.1994, under Section 17(3) of the Act, for resumption and forfeiture. As earlier, petitioner failed to respond. Vide notice dated 09.06.1994, under Section 17(4) of the Act, he was again afforded an opportunity of hearing before passing any order, but he failed to appear. Vide office memo No.4327 dated 18.03.1996, he was even afforded an additional opportunity of hearing but to no avail. That being so, the Estate Officer, Hisar i.e. respondent No.4 ordered resumption as also forfeiture of 10% of the total cost + 10% interest and other dues payable. An appeal preferred by the petitioner against the order of resumption before the Administrator, HUDA, Hisar (respondent No.3) was dismissed in default on 24.09.1996. And, after a delay of almost 11 years, the petitioner again filed an appeal on 30.05.2007, which was dismissed by the appellate

authority on account of delay as also on merits vide order dated 29.06.2007 (Annexure P9). For, even a revision preferred by the petitioner, under Sections 17(8) & 30 of the Act, was dismissed by the revisional authority, vide order dated 11.03.2014, the petitioner is before this court.

We have heard learned counsel for the parties and perused the paper book.

All what has been urged by learned counsel for the petitioner is that the petitioner deposited 25% of the total price of the plot and also sum of ₹ 45,679/- on 13.10.1990 and ₹ 32,762/- on 11.10.1991, however, the authorities failed to provide the basic amenities in the area and, thus, the petitioner could not be accused for default in payment of the balance installments. In any case, the petitioner was willing to deposit all the outstanding dues with interest and, thus, he was entitled for restoration of the site. Reliance is placed upon a Division Bench decision in LPA No.933 of 2009, titled **Haryana Urban Development Authority and another v. Vinod Mittal and others**, decided on 16.10.2012.

On a due and thoughtful consideration of the matter in issue and the material on record, 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, petitioner made a willful default in making payment of the outstanding dues. Despite repeated notices issued to the petitioner and the opportunities afforded by the authority, as demonstrated in the pleading paragraphs, neither did he choose to

respond nor appeared to express his defence. That being so, respondent No.4 was choiceless but to order resumption of the site in terms of Section 17 of the Act. The petitioner by choice did not pursue the appeal filed against the order of resumption, for he was in acute financial crisis and in no position to pay the outstanding dues, as conceded in the paragraphs 2 and 6 of his subsequent appeal (Annexure P10). As a result, the same was dismissed in default on 24.09.1996, vide order Annexure R2. It would be apposite to point out at this juncture that the petitioner was fully conscious of the order of resumption dated 02.05.1996, as also the order dated 24.09.1996 vide which his appeal was dismissed for non-prosecution. He indeed accepted the order of resumption and allowed it to attain finality, as for a period of 11 long years he did not pursue the matter any further. Nothing is brought on record either to show that during these 11 years he ever represented to the respondents to express his willingness to clear the dues. Ex facie, filing of another appeal after such an inordinate, gross and unexplained delay on 30.05.2007 (Annexure P8), was merely speculative and possibly even sponsored, as in the interregnum the property prices had escalated manifold. Needless to assert, delay defeats equity. Undoubtedly, the resumption is the last resort but in the matter in hand, the petitioner by conduct accepted the order of resumption. In the situation, petitioner could not be permitted to reopen the issue that stood concluded between the parties a decade ago. He by his own volition surrendered his right, whatever be the merit therein, to question the resumption. The petition lacks both

i.e. merit as also the bonafides. Therefore, the submission that the petitioner is willing to deposit all outstanding dues with interest cannot be countenanced. That being so, the reliance upon a Division Bench decision in **Vinod Mittal's case** (supra) is wholly misplaced. Likewise, the plea that the respondents failed to provide the basic amenities or the development works in the area such as road, water supply and sewerage work were not complete lacks conviction as this was never the case set out by the petitioner in the appeal preferred before the Administrator, HUDA, Hisar and is thus an afterthought. Therefore, in the wake of what has been noticed above, the only and the inevitable conclusion the authority could reach was to reject the claim of petitioner. Thus, we are dissuaded to interfere in the discretion exercised by the authorities. Writ petition is accordingly dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

06.01.2016
Rajan