

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

CWP-12109-2014 (O&M)

Date of decision:- 11.12.2017

Rajiv Arya

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present:- Mr. Deepender Singh, Advocate,
for the petitioner.

Mr. Deepak Balyan, Additional Advocate General, Haryana,
for respondent No. 1.

Mr. Deepak Sabherwal, Advocate,
for respondents No. 2 to 4.

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S.J. VAZIFDAR, C.J. (ORAL)

CM-17504-2017

Leave is granted to place on record an affidavit
alongwith the account statement of SCF No. 165 Sector-9,
Faridabad filed by respondents No. 2 to 4 and the application
is allowed.

CWP-12109-2014

The petitioner has challenged an order
dated 23.04.2013 passed by respondent No. 1 -
Financial Commissioner and Principal Secretary to Government of
Haryana, Town and Country Planning Department allowing the
revision petition filed by respondent No. 4 - Estate Officer,
Haryana Urban Development Authority, Faridabad.

2. The learned counsel appearing on behalf of the
petitioner states that the petitioner alone and not his

constituted attorney i.e. Sanjeev Guglani is entitled to the said premises. He makes a statement that the constituted attorney does not have any right, title and/or interest in respect of the said premises. He states that, therefore, this petition is maintainable.

3. We are inclined to set aside the order dated 23.04.2013 only on the limited ground that the revisional authority did not consider the petitioner's submission that the revision petition filed by respondent No. 4 was liable to be dismissed on the ground of limitation. The revision petition was admittedly filed after a delay of 517 days. The respondent No. 4 had filed an application for condonation of delay, but the same was not considered in the impugned order. Thus, neither the petitioner, nor respondent No. 4 ought to be prejudiced.

Mr. Sabherwal, the learned counsel appearing on behalf of respondents No. 2 to 4, states that in fact the application was considered, but the decision is not reflected in the impugned order. That is for the revisional authority to clarify.

4. It is necessary, however, to clarify certain aspects of the matter. The petitioner was allotted SCF No. 165 in Sector-9, Faridabad on 23.10.1989. He paid 25 per cent of the consideration within time. Nothing was paid thereafter. The petitioner executed a General Power of Attorney (GPA) in favour of one Ms. Geeta Maini on 30.09.1993. Notices were thereafter issued under Section 17 of the Haryana Urban Development Authority Act, 1977 (in short the 1977 Act) on account of the outstanding dues. The GPA in favour of Ms. Geeta Maini was cancelled on 06.05.1996. On 28.06.1996, the petitioner executed

a GPA in favour of one Sanjeev Guglani who in fact has filed

this petition as a constituted attorney of the petitioner. On 18.09.1996, Sanjeev Guglani sought permission for the transfer of the premises in favour of one Naveen Kumar which was permitted by HUDA vide communication dated 03.12.1996. The transfer, however, did not fructify. Possession was handed over by HUDA to Sanjeev Guglani on 29.01.1997.

5. Neither the petitioner, nor his constituted attorney has paid any amounts thereafter. Accordingly, HUDA initiated resumption proceedings. An order of resumption was passed on 24.09.1997. The petitioner's appeal was disposed of by an order dated 19.05.1998. The order of resumption was set aside conditional upon the petitioner paying certain amounts within the time stipulated in the order. That order was not complied with by the petitioner. The order of resumption, therefore, came into effect. It is important to note that this order of resumption had attained finality as it had never been challenged. An application for extension to comply with the order dated 19.05.1998 was not granted.

6. The HUDA thereafter initiated eviction proceedings under Section 18 of the 1977 Act. The respondent No. 3 - Administrator, Haryana Urban Development Authority, Faridabad had by an order dated 09.02.2011 allowed the appeal against the order of eviction under Section 18 and restored the premises in the petitioner's name subject to clearance of certain dues. Whether that order itself was complied with or not is in dispute.

The order of resumption had attained finality. The petitioner had not challenged the resumption order in the appeal. The appellate authority, however, set aside the resumption order.

7. The revisional authority allowed the revision petition and restored the order under Section 18. We set aside the order and remand the matter to the revisional authority only for the reasons stated above, namely, that the application for condonation of delay has not been dealt with in the impugned order.

8. According to Mr. Sabherwal, the order of resumption had attained finality and had not even been challenged in the proceedings under Section 18. He submitted that the appellate authority, therefore, wrongly went into that question.

Mr. Deepender Singh, the learned counsel appearing on behalf of the petitioner admitted that the resumption order had not been challenged even in the memorandum of appeal filed before the appellate authority. Only the orders under Section 18 had been challenged.

This issue can also be raised before the revisional authority if the application for condonation of delay is allowed. If not the respondents can challenge the same in appropriate proceedings subject to the maintainability thereof.

9. In view of the nature of the matter and in view of the fact that there have been several proceedings initiated over a period of time, the revisional authority is requested to dispose of the revision petition as expeditiously as possible and preferably by 31.03.2018. The parties shall appear in the office of the revisional authority in the first instance on 19.12.2017 at 11.00 AM at which time they will be intimated the first date of hearing. No further notice in this regard shall be issued to the parties.

10. All the contentions of the parties are kept open including HUDA's contention that the appellate authority could not have gone into the issue of resumption as the same had

neither been challenged nor raised before the appellate authority. It is also open to HUDA to adopt proceedings for claiming compensation for the use and occupation of the premises.

Pursuant to interim orders, an amount of ₹ 30 lacs has been deposited by the petitioner with HUDA. The HUDA shall be entitled to retain the same entirely without prejudice to its rights and contentions. The issue as to the manner in which the amount ought to be adjusted is kept open.

11. The writ petition is accordingly disposed of.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

11.12.2017

Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No