

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

CWP No.23740 of 2015 O&M)
Date of Decision: August 30th, 2017

Surat Singh

---Petitioner

Versus

Principal Secretary to Government of Haryana and others

---Respondents

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

Present: Mr. Ashwani Bhardwaj, Advocate
for the petitioner.

Mr. Deepak Balyan, Addl. A.G., Haryana.

Mr. Anil Chawla, Advocate
for HUDA.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order dated 11.03.1999 passed by the Estate Officer, HUDA, Hisar, whereby, allotment of plot No.274, Mela Ground Area, Hisar to the petitioner has been cancelled and 10% amount deposited by him has been forfeited.

Also impugned are the orders dated 19.01.2011 and 27.09.2011 passed by the Administrator, HUDA, Hisar and the Principal Secretary to Government of Haryana, Town and Country Planning and Urban State Department, respectively, whereby, the appeal and revision of the petitioner was dismissed.

The petitioner was allotted plot No.274, Mela Ground Area,

Hissar (162.00 sq. meters) on his being the highest bidder in the auction for the plot held on 18.06.1997. Allotment letter was issued on 17.07.1997. As per the allotment letter, the total price of the plot was Rs.2,10,300/-. It was specified that Rs.21,030/-, being 10% of the bid amount already deposited would be adjusted against the price of the plot. The petitioner was required to remit an amount of Rs.31,545/- in order to make 25% of the total price of the plot within 30 days from the issue of the allotment letter. The last date for this was 15.08.1999.

The relevant clause 4 of the allotment letter is reproduced below:

“4. You are requested to remit Rs.31545/- in order to make the 25% of the total price of the said plot/ building within 30 days from the date of issue of this allotment letter. The payment shall be made by a Bank Draft payable to the Estate Officer HUDA Hisar and drawn on any scheduled bank at Hisar. In case of failure to deposit the said amount within the above specified period, the allotment shall be cancelled and the amount of 10% bid money deposited at the time of bid shall stand forfeited to the Authority, against which you shall have no claim for damages.

Note:- Last date to deposit 15% amount is 15.8.99.”

The petitioner deposited this amount on 18.08.1997. It is his case that 15th August, 1997 was a holiday on account of Independence Day, 16th and 17th August, 1997 were holidays being Saturday and Sunday. The amount was deposited on the next working day i.e. 18th August. In proof thereof, he has annexed the calender of the year 1997 as Annexure P-10. The petitioner deposited Rs.40,000/- on 28.12.1998 and Rs.30,000/- on

mentioned plot No.271, instead of 274. As soon as he realized the mistake, the petitioner wrote to the respondent to rectify the error in mentioning the plot No.271, instead of 274. However, instead of correcting that mistake, the respondents sent him letter dated 11.3.1999 regarding cancellation of the allotment of the plot and forfeiture of the 10% amount deposited. The reason for the cancellation was that the petitioner had not deposited the amount of Rs.31,545/- within 30 days of the issuance of the letter as per condition No.4 of the allotment letter.

The petitioner submitted representation dated 7.5.1999 requesting that the amounts of Rs.40,000/- and Rs.30,000/- wrongly deposited in account of plot No.271 be adjusted in the account of plot No.274 allotted to the petitioner. In response thereto, the Estate Officer vide his communication dated 23.7.1999 informed the petitioner that as the allotment of plot No.274 to the petitioner had already been cancelled, hence, the amount deposited against plot No.271 could not be adjusted against plot No.274. The petitioner, however, could claim its refund. On 23.8.1999 requested for refund of the amount of Rs.70,000/- and the amount was refunded. It is the case of the petitioner that he submitted representation dated 28.11.2005 requesting that the plot be restored. It was followed by another representation dated 16.5.2006. On 14.6.2006, the Estate Officer, HUDA, Hisar responded stating that the plot could not be restored under any circumstances as it had already been cancelled on 11.3.1999. The petitioner thereafter filed a complaint before District Consumer Disputes Redressal Forum, Hisar (for short "the Consumer Forum") on 1.2.2008, which was disposed of on 3.7.2010 as being not maintainable. However, the

the petitioner filed appeal u/s 17(5) of the Haryana Urban Development Authority Act, 1977 (for short “HUDA Act”) before Administrator, HUDA, Hisar, which was dismissed on 19.10.2011. The revision petition filed by the petitioner on 2.5.2011 under 30(2) of the HUDA Act, was dismissed on 27.9.2011. The order of the Estate Officer dated 11.3.1999 cancelling the plot on failure to deposit of 15% price was upheld. It was also held that the appeal filed by the petitioner after 12 years of the cancellation order was time barred.

Ld. Counsel for the petitioner contends that the cancellation of the plot was wholly illegal. The last date for deposit of 15% amount was 15.8.1997. He argued that 15.8.1997 was holiday being Independence Day, 16th and 17th August, 1997 were holidays being Saturday and Sunday. He deposited the 15% amount on 18.8.1997, the first working thereafter. Hence, the payment had to be treated as being within time. This argument of the petitioner has to be accepted. Even as per Section 10(1) of the General Clauses Act, 1897 where by any Central Act or Regulation any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

Ld. Counsel for the petitioner further argued that the cancellation was not preceded by any notice as required in terms of Section 17(3) and 17(4) of the HUDA Act. As against this Ld. Counsel for the respondents argued that it was a case of cancellation in terms of the letter of

no application. In support he relied on a decision of the Supreme Court in **Chaman Lal Singhal Vs. Haryana Urban Development Authority (2009) 4 SCC 369**. We need not go into this question as we are of the view that the cancellation was on wholly unjustifiable basis.

However, it is the subsequent development consequent upon the inaction of the petitioner, which in our view, dis-entitles him to any relief.

The petitioner does not state that the cancellation order was not communicated to him. It is his own case that on being informed by the Estate Officer, Hissar through his letter dated 23.7.1999 that the amount of Rs.70,000/- deposited against plot No.271 could not be adjusted against plot No.274 as the allotment had been cancelled and that he could claim its refund, he wrote to the respondents claiming the refund on 23.7.1999, which amount admittedly, was refunded soon thereafter. By accepting the refund the petitioner clearly accepted the cancellation of the allotment. He abandoned the allotment itself. This is further clear from the fact that he did nothing thereafter for six years. The petitioner thereafter remained totally silent. He did not protest against the cancellation to urge that it was unjustified or offer to pay the further instalments.

It was only on 30.11.2005 and 19.5.2006, a good six years after the cancellation that the petitioner wrote to the respondents to restore the plot. The petitioner cannot at his choice keep the allotment open. The respondents through their communication dated 14.6.2006 informed him that in view of the cancellation dated 11.3.1999, the plot could not be restored under any circumstances. Thereafter, the petitioner adopted legal

statutory appeal and revision which have been dismissed.

The respondents in their written statement, have stated that plot No.274 has already been allotted to Vijay Singh s/o Shri Dewan Chand by office letter No.11467 dated 29.9.2000. This fact adds another dimension. If the plot had not been allotted, it may have been possible to consider restoration on certain terms at the current market price. However, the petitioner having slept over the matter, has permitted a change in the situation which cannot now be reversed. No relief for restoration of the plot can be granted to the petitioner at this stage.

However, as we are of the view that the cancellation was wholly unjustified, the order of forfeiture of 10% of the amount cannot sustain. Accordingly, the respondents are directed to refund the amount of 10% and the 15% later deposited by him (if not already refunded to him) to the petitioner along with interest @ 10% per annum from the date of deposit till payment.

The petition is disposed of in the above terms.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

August 30th, 2017

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Whether speaking	: Yes/No
Whether reportable	: Yes/No