

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

RSA No.3112 of 2015
Date of decision : 17.07.2017

D.K. Garg

...Appellant

Versus

Haryana Urban Development Authority and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. C.B. Goel, Advocate for the appellant.

ANIL KSHETARPAL, J.

This Regular Second Appeal has been filed by the plaintiff challenging the judgment and decree passed by the Courts below dated 31.07.2013 confirmed in appeal vide judgment and decree dated 18.04.2015.

The detailed facts have been given in the judgment of the Courts below. However, to complete narrative, the brief facts are being noticed. The plaintiff's claims to be allottee of Booth No.10, Sector-15A, Faridabad. He claims that aforesaid booth was allotted to him vide allotment letter dated 22.01.1982. He claims that he has further deposited the certain amount. On the other hand, defendants have pleaded that no doubt plaintiff was allotted a booth vide allotment letter dated 22.01.1982 but plaintiff has failed to deposit 15% of the bid amount within the time prescribed. Anyhow, it has been claimed that on the request of the plaintiff, the plaintiff

was permitted to deposit 15% of the amount amounting to ₹22,050/- on 08.12.1982. Thereafter, once again the plaintiff did not deposit the remaining amount, although the amount was payable either lumpsum within 60 days or in 10 half yearly equated installments alongwith interest. It has further been pleaded by the defendants that since the plaintiff failed to pay the amount, he was given show cause notices dated 09.12.1993, 21.11.1994, 01.02.1995 and 26.08.1996. The plaintiff further made a request for grant of some more time to deposit the arrears. Thereafter once again another request was made by the plaintiff to the defendants vide letter dated 07.05.1997 to deposit the amount. Plaintiff did deposit certain amount which was much less than due. Plaintiff was again notice issued on 14.08.1995 to deposit the balance amount. However, he failed to deposit the same.

The trial Court after appreciating the evidence available on the record dismissed the suit filed by the plaintiff. It was noticed by the Court that the defendants had issued notice to the plaintiff to deposit the entire balance amount of ₹10,70,025/- vide letter dated 22.04.1997 but plaintiff only deposited a sum of ₹1,00,000/- on 07.05.1997. It was in these circumstances the defendants ordered the resumption of the property. It was further found that against the order of resumption although statutory appeal was maintainable but the plaintiff rather than filing of appeal chose to file the suit that also after a period of approximately 10 years as the suit was instituted on 01.09.2007. Appeal filed by the plaintiff was also ordered to be dismissed vide judgment dated 18.04.2015.

I have heard learned counsel for the appellant and with his assistance, have gone through both the judgments.

The judgment passed by both the Courts below are well reasoned and detailed. Counsel for the appellant has submitted that resumption of the immoveable property is to be resorted as a matter of last resort and, therefore, the order of resumption is bad in law.

The facts stated above would show that enough opportunity was given to the plaintiff to pay the amount. The allotment in favour of the plaintiff was in the year 1982. He was given repeated opportunities upto the year 1997. In other words, the respondents waited for almost 15 years and gave opportunity to the appellant to deposit the amount. However, the appellant failed to deposit the entire amount. Mere deposit of ₹1,00,000/- in May, 1997 would not cloath the appellant with any right and title in the property. As pleaded by the defendants in 1997, the amount due was more than ₹10,00,000/-. However, the appellant chose to deposit the amount of ₹1,00,000/- only.

As noticed above, the property was resumed on account of non-payment of amount. Under Section 17 of the Haryana Urban Development Authority Act, 1977, an appeal is maintainable to the Chief Administrator. However, no appeal was preferred. Sub-Section 8 of Section 17 further permits the filing of the revision to the Secretary to Government of Haryana against the order of the Chief Administrator. However, the appellant did not chose to file an appeal or revision. The appellant filed the present suit in 2007 challenging the orders passed by the Estate Officer dated 24.09.1997 and 10.10.1997. The suit is for declaration. The suit was obviously barred by time.

Still further, Section 50 of the Haryana Urban Development

Authority Act, 1977 provides for finality of the orders and create bar of jurisdiction of Civil Courts. Both the Courts have found that Civil Court does not have jurisdiction. On reading of Section 50, it is clear that jurisdiction of the Civil Court is barred to entertain any suit or proceedings in respect of matters, cognizance whereof can be taken by any authorities empowered by this Act. Against the order of resumption, the appeal was maintainable before the Chief Administrator. This was a statutory appeal. The appellant failed to file an appeal. The authority under the Act i.e. Chief Administrator has been empowered to take cognizance and dispose of the appeals. Since appellant failed to file any appeal, therefore, also the suit filed by the plaintiff was not maintainable.

There is a concurrent findings of fact against the plaintiff by both the Courts below which is not shown to be erroneous or perverse.

Counsel for the appellant has failed to show either any substantial question of law is involved in the present case or there is any scope for interference as per Section 41 of the Punjab Courts Act.

Hence, finding no merit in the present appeal, the same is ordered to be dismissed.

17.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No