IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 24941 of 2014 (O&M)
Date of decision: 15.02.2018

Shri Prabha Rani and others

……Petitioners

Vs.

Chandigarh Administration and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Vikas Jain, Advocate with Mr. Alok Kumar Jain, Advocate for the petitioner.

Ms.Tarunpreet Kaur, Advocate for the Improvement Trust.

Ajay Kumar Mittal,J.

CM No. 1266 of 2016

1. This is an application under order 22 Rule 4 read with Section 151 of the Code of Civil Procedure for bringing on record the legal representatives of the petitioner Smt. Prabha Rani who has since expired during the pendency of this petition.

2. After hearing learned counsel for the parties, the application is allowed subject to all just exceptions. The legal representatives as mentioned in Para 3 of the application are allowed to be taken on record. The memo of parties be corrected accordingly.

CWP No. 24941 of 2014

3. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing the orders dated 27.05.2009, 7.9.2010 and 25.5.2012, passed by respondent Nos. 4, 2 and 1, Annexures P.5, P.7 and P.15 respectively whereby allotment of Booth No.117, Sector 46, Chandigarh has been cancelled and thereafter the order dated 27.05.2009 has been upheld in appeal and revision. Further prayer has been made for staying the operation of orders Annexures P.5, P.7 and P.15 during the pendency of the petition.

4. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners were the successful auction purchasers of the free hold commercial site bearing Booth no. 117, Sector 46-C, Chandigarh measuring 25.093 square yards at a premium of ₹ 30.85 lacs. The petitioners deposited ₹ 7,71,250/- being 25 per cent of the premium and were accordingly issued the allotment letter on 09.02.2004, Annexure P.1. The remaining amount was to be deposited in three annual installments of ₹ 9,30,382/- each. The petitioners were duly put in possession of the said property and the first installment was duly paid. The petitioners had already paid 50 per cent of the total auction price within the stipulated period. However, the remaining two installments could not be paid at the time they had fallen due, on account of unforeseen circumstances beyond the control of the petitioners. Petitioner No.3 who is son of Sh. Som Raj Khanna and Smt. Prabha Rani, namely Gulshan Kumar, had started business under the name and style of M/s Honey Jewellers in the year, 2004. In the meantime, the adjoining Booth no.116 was also purchased by Sh. Som Raj Khanna. Accordingly, the allottee, Rupesh Gilhotra had executed GPA in favour of Sh. Som Parkash Khanna, considering the fact that petitioner No.3 had already

started business in Booth No. 117, Sector 46-C, Chandigarh and with the prospects to expand the business in the adjoining booth. The said adjoining booth i.e. Booth No.116 was not put to use till date due to circumstances beyond the control of the petitioners and their family members. The business which was started in Booth No.117, Sector-46-C, Chandigarh, by petitioner No.3 had suffered huge losses due to theft in the year 2006. Further, petitioner No.3 had met with an accident in 2009 and remained confined to bed for about 8-9 months due to which the business was affected badly. Petitioner No.3 was unable to run the business regularly which resulted into closure of the said business. Respondent No.4 presuming that the registered notices were deemed to be served if not received back undelivered, passed the impugned ex-parte order dated 27.05.2009 resuming the said property. According to the petitioners, no show cause notice was served on them. No opportunity of hearing was given to them before passing the impugned resumption order. After passing the impugned order dated 27.05.2009 and after impugning the said order in the appeal, the petitioners deposited a sum of ₹ 22 lacs on 19.03.2010 by way of Bank Drafts to show their bonafide. Vide order dated 07.09.2010, the Chief Administrator dismissed the appeal on the ground that once the allottee had defaulted in payment and despite several opportunities had been granted to him, the Estate Officer could only resume the property. Aggrieved by the order, petitioner filed a revision petition before the Advisor to the Administrator and prayed for setting aside the resumption order dated 27.05.2009 and the order dated 07.09.2010. After passing of the impugned order dated 07.09.2010, respondent No.3 had returned the bank drafts amounting to ₹ 22 lacs vide order dated 08.06.2011, Annexure P.9. During the pendency of the revision petition, the petitioners had again deposited a sum of ₹ 30 lacs on 10.05.2012 by way of bank drafts. The said bank drafts were again returned by respondent No.3 on 24.05.2012. The petitioners vide their application dated 01.06.2012 again deposited the said demand drafts of ₹ 30 lacs alongwith the administrative instructions issued by respondent No.1. Vide order dated 25.05.2012, Annexure P.15, the revision petition was dismissed. The payment of ₹ 30 lacs was returned by respondent No.3 vide letter dated 04.07.2012, Annexure P.16. The petitioners assert that the respondents had initiated proceedings under the Public Premises Act, 1971 (in short, "the 1971 Act") and had issued a notice for eviction. The Estate Officer had already passed eviction order under Section 5 of the 1971 Act dated 17.10.2013, Annexure P.17. According to the petitioners, they have already filed appeal against the said order which is pending in the Court of District Judge, Chandigarh. Hence the instant petition by the petitioners.

5. In the written statement filed on behalf of respondent nos. 1 to 4 by Assistant Estate Officer exercising the powers of Estate Officer, U.T., Chandigarh, it has been inter alia stated that the petitioners failed to make the payment of 2nd and 3rd installments which fell due on 09.12.2005 and 09.12.2006, resumption proceedings were initiated under Rule 8-A of the Capital of Punjab (Development Regulation) Act, 1952 and a show cause notice was issued by the respondents on 09.07.2007. The petitioners were afforded opportunity of hearing to make the payment of Government dues on 22.08.2007, 26.09.2007 and 07.11.2007. They neither cleared the dues nor joined the recovery proceedings on account of non-payment of Government dues initiated by the respondents. The Estate Officer vide order dated 07.11.2007 imposed 10 per cent penalty on the due amount. Thus, the office of the respondents was left with no other alternative except to resume the site. Ultimately, the site was resumed vide order dated 27.05.2007 as a last resort

which was conveyed to the petitioner on 17.05.2009. The appeal and the revision filed by the petitioners also met with the same fate. On these premises, prayer for dismissal of the petition has been made.

6. We have heard learned counsel for the parties.

7. It is the admitted position that the petitioners were the successful auction purchasers of the free hold commercial site bearing Booth No. 117, Sector-46-C, Chandigarh measuring 25.093 square yards at a premium of ₹ 30.85 lacs. The petitioners deposited ₹ 7,71,250/- and after depositing 25 per cent of the premium, the petitioners were issued allotment letter on 09.02.2004. The remaining amount was to be deposited in three installments of ₹ 9,30,382/- each. After the payment of first installment by the petitioners, they were put in possession of the property in question. The petitioners had already paid 50 per cent of the total auction price within the stipulated period. However, the remaining two installments could not be paid at the time they had fallen due on account of unforeseen circumstances which were beyond the control of the petitioners. Perusal of the record shows that even inspite of adverse family circumstances beyond the control of the petitioners, they deposited the amount during the pendency of the revision and the appeal but the said amounts were returned by the authorities to the petitioners. This showed bonafide on the part of the petitioners. The petitioners were ready to pay the amount. Even before this Court learned counsel for the petitioners submitted that the petitioners were ready to make the entire payment.

8. Moreover, it was not disputed by learned counsel for the respondents that this case is covered by the decision rendered by this Court in identical petition i.e. CWP No. 19626 of 2014 ***(Rupesh Kumar Gilhotra Vs. Chandigarh Administration and others)*** decided on 01.08.2017, wherein

after examining the matter the petition was allowed and the impugned orders were set aside. The respondents were directed to inform the petitioner therein about the amount payable by him in writing.

9. In view of the above, the present writ petition is allowed and the impugned orders dated 27.05.2009, 07.09.2010 and 25.05.2012, Annexures P.5, P.7 and P.15 respectively are quashed and it is directed that the respondents shall inform the petitioner about the amount payable in writing. The petitioner shall pay all the arrears together with interest and penalty in accordance with law within four weeks of the receipt of the intimation. The petitioner shall, however, be entitled to challenge the same and seek recovery of any part thereof in accordance with law but only after payment. The petitioner shall execute the conveyance within two weeks of being asked to do so by the respondents. The petitioner's undertaking to make good any loss or damage to the respondents on account of the conveyance deed not having been executed within the time stipulated is recorded and it is so ordered. In the event of the petitioner failing to comply with any part of this order, the order of resumption shall stand without further reference to the Court.

(Ajay Kumar Mittal)
Judge

February 15, 2018 **(Anupinder Singh Grewal)**
'gs' **Judge**

Whether speaking/reasoned **Yes**

Whether reportable **Yes**