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

RSA No.3661 of 2012 (O&M)
Date of decision: 18th May, 2018

Surinder & others

… Appellants

Versus

The Haryana Urban Development Authority & another

… Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sanjeev Sharma and Mr. Shekhar Verma, Advocates for the appellants.

Mr. Som Nath Saini, Advocate for the respondents.

FATEH DEEP SINGH, J.

The Haryana Urban Development Authority (for short, 'HUDA'), respondent in this regular second appeal, had allotted to Pran Nath Sikri, Asha Rani Sikri, Sunil Kumar and Esha Sikri, defendants No.3 to 6 in the main suit, premises consisting of a booth bearing No.35 situated in Sector 15, Panchkula, regarding which allotment letter was duly issued wherein terms and conditions of the allotment were spelled out. The plaintiff Surinder claiming to be the sole proprietor of M/s Haryana Departmental Store and claiming to be a tenant in this booth has sought to challenge through instant suit for declaration the orders passed by HUDA whereby allotment of the booth was cancelled and the same was ordered to be resumed. The plaintiff challenged the same through the instant suit challenging the very legality of the orders of resumption as well as eviction from the booth in question and charging of interest on the delayed payment being installments of the sale price. The defendants, besides taking usual preliminary objections as to lack of jurisdiction of the Civil Court, the plaintiff having no locus standi to challenge the order as the owner has not come forward claiming further that HUDA has initiated action fully in accordance with law and the provisions of The Haryana Urban Development Authority Act, 1977 (in short, 'HUDA Act') and that before passing resumption orders they had issued notice under Section 17(1), 17(2), 17(3) & 17 (4) as well as special opportunity too was afforded to the owners but they failed to make payment of the outstanding amount in respect of the premises in question and hence the premises stood resumed.

Upon pleadings, the trial Court framed following issues:

1. Whether the order dated 17.7.2001, passed by defendants No.1 and 2 against the plaintiffs are illegal, null and void and are liable to be set aside? OPP.
2. Whether the defendants cannot charge interest on the amount claimed more than the rate of 10% p.a. (simple)? OPP.
3. Whether the suit of plaintiffs is within limitation of time? OPD
4. Whether the suit of plaintiffs is not maintainable in the present form? OPD
5. Whether the Civil Court has no jurisdiction to try and entertain the present suit? OPD

6. Relief.

The plaintiff in his evidence, examined Sita Ram, Assistant Estate Officer, HUDA as PW1; Prem Singh, Dealing Assistant in the office of Administrator, HUDA as PW2; plaintiff No.1 Surinder himself stepped into the witness box as PW3 and Krishna, attorney holder of plaintiffs No.2 to 5 appeared as PW4 and in the process proved documents Ex.P1 to Ex.P12. The defendants examined Umesh Sharma, SO, Estate Office, HUDA as DW1 and proved documents Ex.D1 to Ex.D5 and Mark B and thereafter, closed the evidence.

The Court of learned Civil Judge (Senior Division), Panchkula through judgment and decree dated 23.02.2010 decreed the suit of the plaintiffs. The defendants filed an appeal and the Court of learned District Judge, Panchkula through impugned judgment dated 20.07.2012 allowed the appeal thereby setting aside the findings of the trial Court as well as upholding the orders of resumption of the premises. That is how the present appeal has come about by the aggrieved plaintiffs.

Heard Mr. Sanjeev Sharma and Mr. Shekhar Verma, Advocates for the appellants; Mr. Som Nath Saini, Advocate for the respondents and perused records of the case.

The first and the foremost argument that is sought to be raised by the appellants, revolves around the very non-service of notices prior to passing of the impugned orders and thus, canvassing that the order of resumption is bad in law, contrary to the principles, *audi alteram partem*, and which is opposed tooth and nail by Mr. Som Nath Saini, Advocate representing the respondents.

Appreciating the submissions, though the plaintiffs' witnesses namely, Sita Ram, Assistant Estate Officer PW1 and Prem Singh PW2 have tried to state that though notices were duly issued by HUDA for initiation of action but they did not have any receipt regarding despatch of the same however, in the testimony of Umesh Sharma, Dealing Assistant of HUDA as DW1 has testified that the allottees were sent notices under registered cover and has proved the notices as Ex.D1 to Ex.D5. The plea that is sought to be raised with much elance by the counsel that there is no evidence of due service upon the allottees of the notices, is rendered inconsequential in the light of unrebutted evidence led by the official of HUDA that notices were despatched through registered post and by virtue of Section 27 of the General Clauses Act, 1897, a natural presumption arises that service has been deemed to have been effected by properly addressing, pre-paying and posting by registered post, a letter containing the document. The same though is rebuttable but contrary has to be proved to negate the same and for which this Court seeks support from **'Sunil Kumar Sambhudayal Gupta and others v. State of Maharashtra' 2010(13) SCC 657,** where similar proposition of law was answered by their Lordships of the Hon'ble Supreme Court holding that a presumption of service of letter sent under registered cover is to be made though the same is rebuttable and it is open to the party concerned to place evidence before the Court to rebut the presumption by showing that the address mentioned on the cover was incorrect, but nothing has come to this effect nor could be argued by learned counsel for the appellants and therefore, this argument certainly is highly fallacious and falls to the ground.

The next argument raised by the two sides revolves around the very penal interest that the appellants claim HUDA has charged upon non-payment of dues. It is not displaced by learned counsel for the appellants during his arguments that full and final payment in respect of this unit, which is of commercial nature, has not been made and by virtue of Section 16 of the HUDA Act, the authorities are well within their rights, after giving and affording reasonable opportunity of being heard, to impose penalty upon the defaulter which can be recovered as arrears of land revenue. More so, it is the allottee who is aggrieved over it and not his tenant and whose locus standi to challenge the same certainly is questionable. Furthermore, in case of delayed/non-payment of the dues by virtue of Section 15 of the HUDA Act, the authority is well within its right to recover the entire money together with the interest and other amount so found due.

Section 17 of the HUDA Act lays down the procedure of resumption and forfeiture for breach of conditions of transfer and which is reproduced as below to lay emphasis:

*"**17. Resumption and forfeiture for breach of conditions of transfer**:-*

(1) Where any transferee makes default in the payment of any consideration money, or any instalment, on account of the sale of any land or building, or both, under section 15, the Estate Officer may by notice in writing, call upon the transferee to show cause within a period of thirty days, why a penalty which, shall [be equal to] ten per cent of the amount due from the transferee, be not imposed upon him.

(2) After considering the cause, if any, shown by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order imposing the penalty and direct that the amount of money due along with the penalty shall be paid by the transferee within such period as may be specified in the order.

(3) If the transferee fails to pay the amount due together with the penalty in accordance with the order made under Sub-section (2), or Commits a breach of any other condition of sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the land or building, or both, should not be made.

(4) After considering the cause, if any, shown by the transferee in pursuance of a notice under subsection (3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer, may for reasons to be recorded in writing, make an order resuming the land or building or both, as the case may be, and directing the forfeiture as provided in sub-section(3) of the whole or any part of the money paid in respect of such sale.

(5) Any person aggrieved by an order of the Estate Officer under section 16 or under this section may, within a period of thirty days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner, as may be prescribed.

Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(6) The Chief Administrator may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit.

(7) The Chief Administrator may, either on his own motion or on an application received in this behalf, at any time within a period of six months from the date of the order, call for the record of any proceedings in which the Estate Officer has passed an order for the purpose of satisfying himself as to

the legality or propriety of such order and may pass such order in relation thereto as he thinks fit:

Provided that the Chief Administrator shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

(8) Any person aggrieved by an order of Chief Administrator under sub-section (6) may within a period of ninety days of the date of the communication to him of such order, prefer a revision petition to the Secretary to Government, Haryana, Town and Country Planning Department, in such form and manner as may be prescribed:

Provided that the Secretary to Government, Haryana, Town and Country Planning Department, may entertain the revision petition after the expiry of the said period of ninety days, if he is satisfied that the petitioner was prevented by sufficient cause from filing the revision petition in time.

(9) The Secretary to Government Haryana, Town and Country Planning Department, may, after hearing the revision, confirm, vary or reverse the order appealed from and may pass order as he deems fit.

Provided that the Secretary to Government, Haryana, Town and Country Planning Department, shall not pass an order under this section without hearing the parties."

In the present case, upon allotment of the booth, the owners/allottees were issued due notices from time to time calling upon them to make the payment so due from time to time but they failed to do so and therefore, a natural consequence ensues as to the cancellation of allotment leading to resumption of the premises. Though, under the provisions of Section 17 of the HUDA Act, option of filing appeals against allotment and resumption have been made, but the allottee has failed to get any relief and as has been observed in the impugned findings of the Court below, that the allottee had filed appeals under Section 20 of the HUDA Act and challenging eviction order dated 18.12.2000 and at that point of time, the authorities had given an offer to pay Rs.5.00 lacs within 15 days and conditional order was passed that if the payment was made within time then booth shall stand restored and in case the amount was not paid then the appeal would be treated as rejected. In spite of that, learned counsel for the appellants could not satisfy the Court how the appellants have availed off this special concession so meted out to them by the authorities as a sympathetic and lenient gesture. Since the defendant HUDA has duly proved service of notices under Section 17 of the HUDA Act as Ex.D1 to Ex.D5, therefore by virtue of Section 50 of the HUDA Act bars jurisdiction of Civil Court and since the HUDA authorities have resumed the premises as the allottee has failed to make payment of balance amount of Rs.5.00 lacs in prescribed period and has not adhered to the special concession being meted out to him by the authorities as the HUDA through its competent authority though had given a sympathetic treatment, but the appellants have failed to perform their part by making good the payment so due and rather coming and challenging the order of resumption before a Civil Court, certainly is barred by virtue of the provisions of Section 50 of the HUDA Act. The Court below has rightly drawn a conclusion that the plaintiffs have totally failed in their endeavour to prove that there has been violation of the principles of natural justice and has rightly concluded in consonance with the records and the evidence that after due service of notice and opportunity of fair hearing, the impugned orders have been passed.

Though on behalf of the appellants, reliance is sought to be placed on ratios of our own High Court in **'Haryana Urban Development Authority and another v. Sat Pal and others' (RSA 2879 of 2009 decided on 05.02.2018), 'Veena Rani v. State of Haryana and others' (CWP 19132 of 2014 decided on 10.02.2016); 'Haryana Urban Development Authority, Panchkula v. Niranjan Singh' (RSA 1266 of 2001 decided on 30.10.2014); and 'Haryana Urban Development Authority v. Anita through Manjeet Singh' 2012(4) PLR 709;** however, no benefit can be drawn out of these ratios on account of factual disparity from the case in hand. Even in another view of our own High Court laid down in **'Haryana Urban Development Authority and another v. Shishu Pal and others' (RSA 2934 of 2007 decided on 16.11.2010),** similar proposition of law was laid down that Section 50 of the HUDA Act bars jurisdiction of Civil Court. Further it was held that where a conditional order has been passed by the authorities regarding setting aside the resumption order on conditional payment of outstanding amount with interest as per the HUDA policy, even then the plaintiff is supposed to pay the amount even if compound interest is sought to be charged under its rules.

Since there has been due service of notices under Section 17(1), 17(2), 17(3) & 17(4) of the HUDA Act, a natural corollary ensues that there has been due adherence of the principles of law. Thus, learned counsel for the appellants could not impress upon this Court how there has been wrong interpretation of the evidence and law by the Court below. The impugned findings certainly do not suffer from any illegality or perversity and need to be upheld. The instant appeal being devoid of any merit, stands dismissed. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

May 18, 2018
rps

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