IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1637 of 2013 (O&M)
Date of decision : 02.05.2018

Haryana Urban Development Authority, Panchkula

...Appellant

Versus

Braham Bhushan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Som Nath Saini, Advocate for the appellant.

Mr. Pawan Kumar, Sr. Advocate with
Mr. Abhimanyu Batra, Advocate for the respondents.

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ANIL KSHETARPAL, J.

The defendant-appellant is in the Regular Second Appeal against the judgment passed by the First Appellate Court reversing the judgment passed by the learned trial Court.

In the considered opinion of this Court, following substantial questions of law arise in the present case:-

1. Whether in the absence of any finding, either with respect to violation of the principles of natural justice or the mandatory procedure laid down in the Act or the Rules, the jurisdiction of the Civil Court to examine the validity of the order of resumption in view of the bar created under Section 50 of the Haryana Urban Development Authority Act, 1977 (for short "the Act of 1977") shall stand

excluded/barred?

2. Whether an order passed by the authority under Section 17 of the Act of 1977 is required to be challenged by the aggrieved person within a period of three years from the date of the order?

The defendant-appellant invited general public to participate in the auction of the commercial sites. In the advertisement, the main terms and conditions of the auction were given, which are extracted as under:-

> *"1. 10% of the money shall be payable at the fall of hammer in cash or by bank Draft in favour of the Estate Officer, HUDA, Panchkula.*
>
> *2. Another 15% shall be payable within 30 days from the acceptance of the bid.*
>
> *3. Balance 75% either in lump-sum without interest within 60 days from the date of issue of allotment letter or in 10 half yearly equal instalments in case of built up booths sites and 8 half yearly equal instalments in case of show room sites/S.O.F. sites with 10% interest.*
>
> *4. The Presiding Officer reserves the right to withdraw any property from auction or reject any bid without assigning any reason.*
>
> *5. Detailed terms and conditions of auction/sale will be announced at the time of auction.*
>
> *6. The Estate Officer, HUDA, Panchkula may be contacted for any further details and site plan etc."*

The plaintiff-respondents were declared highest bidder at ₹3,32,000/- with respect to the property i.e. Booth site No.81, Sector-11, Panchkula in a public auction held on 31.05.1988. The plaintiff-respondents deposited a sum of ₹33,200/- being 10% of the total sale consideration on the same day. The offer made by the plaintiffs in the public auction was accepted and allotment letter was issued to the plaintiffs-respondents on 15.06.1988. The plaintiffs were required to further deposit ₹49,800/- in order to complete the payment of 25% of the price of the plot within 30 days. The amount is alleged to have been deposited within the aforesaid time.

As per the allotment letter, the plaintiffs-respondents had two options, either to deposit the balance price in lump sum without any interest or deposit the remaining amount in 10 half yearly installments alongwith interest. As per the allotment letter, each half yearly installment were due and payable on 15th December and 15th June, every year. The relevant part of the allotment letter is extracted as under:-

"23. Half yearly instalments as below will fall due on 15 Dec. & 15th June every year, as under:-

24. Possession of the site is hereby offered.

Sr. No.	***Due Date***	***Principle***	***Interest***	***Total***
1		*24900/-*	*12450/-*	*37350/-*
2		*24900/-*	*11205/-*	*36105/-*
3		*24900/-*	*9960/-*	*34860/-*
4		*24900/-*	*8715/-*	*33615/-*
5		*24900/-*	*7470/-*	*32370/-*
		24900/-	*6225/-*	*31125/-*
7		*24900/-*	*4980/-*	*29880/-*
8		*24900/-*	*3735/-*	*28635/-*
9		*24900/-*	*2490/-*	*27390/-*
10		*24900/-*	*1245/-*	*26145/-*

Sd/-Estate Officer
HUDA, Panchkula"

Thus, the first installment fell due on 15.12.1988 and second installment fell due on 15.06.1989 and thus similarly in the subsequent years also. The plaintiffs deposited following amounts:-

12.01.1989	₹37,350/-
16.12.1991	₹36,105/-
23.06.1992	₹17,000/-

The defendant in the written statement with respect to various opportunities given to the plaintiffs stated as under:-

> *"The Estate Officer, HUDA issued notice u/s 17(1) of the HUDA Act vide letter memo No.15572, dated 19.11.1991 for payment of sum of Rs.2,51,531/- to the plaintiffs, but the plaintiffs had neglected the above said notice and have only deposited a sum of Rs.36,105/- on 16.11.1991 and a huge amount was remain outstanding. Again, the Estate Officer, HUDA issued notice u/s 17(II) vide memo No.3379, dated 12.02.1992 for Rs.2,23,504/- and again after taking lenient view the estate Officer, HUDA issued following notices to the plaintiffs:-*
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> *a) Notice u/s 17(2) vide letter No.8368 dated 21.05.1992 for Rs.2,33,280/-.*
>
> *b) Notice u/s 17(3) vide letter No.10074, dated 24.06.1992 for Rs.2,88,854/-.*
>
> *c) Notice u/s 17(4) vide letter No.14352 dated 25.09.1992 for Rs.2,82,559/-.*
>
> *And even again other opportunity was granted to the plaintiffs vide office letter memo No.17996 dated 02.11.1992 to apt the new policy and to give their undertaking after making the payment of 25% amount of the over dues. Even then the plaintiffs have failed to make the payments and ultimately after taking lenient view, the Estate Officer, HUDA again give final opportunity by issuing notice u/s 17 (4) of the HUDA Act dated 05.01.1993 and after considering*

the above said facts & circumstances of the case, the Estate officer, HUDA was compelled to pass the resumption order dated 01.02.1993 and the Estate Officer, HUDA pass the resumption order No.2902, dated 01.02.1993 and also ordered to forfeit of Rs.51,005/- out of the amount deposited by the plaintiffs."

The plaintiffs challenged the order of resumption passed by the Estate Officer in appeal. The appeal was dismissed vide order dated 04.02.1997. The plaintiffs filed the present suit on 13.09.2001 seeking declaration that the Haryana Urban Development Authority can charge only 10% simple interest and the order dated 01.02.1993 is against law. The plaintiffs also challenged notice dated 29.08.2001. The order dated 01.02.1993 passed by the Estate Officer is in detail. Learned Estate Officer has noticed that the repeated opportunities have been given to the plaintiffs to pay the amount, however, the amount has not been deposited. The Estate Officer has also noted that the plaintiffs have only been indulging in correspondence but did not deposit the amount, although, various opportunities were given vide notices noted above. The plaintiffs had also challenged the communication dated 29.08.2001 in the suit. The aforesaid communication is only calling upon the plaintiffs to hand over the possession of the booth consequent upon the resumption of the Booth.

Learned trial Court on appreciation of the evidence available on the file, dismissed the suit filed by the plaintiffs on merits as well as on the question that the jurisdiction of the Civil Court is barred under Section 50 of the Act of 1977. The plaintiffs filed first appeal alongwith an application for condonation of delay. The application for condonation of delay was dismissed. Regular Second Appeal was filed in the High Court. By interim order, the High Court permitted the plaintiffs to deposit the amount and accordingly ₹15,60,000/- was deposited with Haryana Urban Development Authority on 14.05.2012. Thereafter, appeal was allowed. Delay in filing the appeal was condoned and the case was remitted back to the First Appellate Court for decision on merits.

Learned First Appellate Court after noticing that the amount has been deposited and the Haryana Urban Development Authority could not charge more than 10% interest whereas 18% was being demanded, accepted the appeal.

NOW THE STAGE IS SET FOR CONSIDERING THE QUESTIONS OF LAW FRAMED:-

1. Whether in the absence of any finding, either with respect to violation of the principles of natural justice or the mandatory procedure laid down in the Act or the Rules, the jurisdiction of the Civil Court to examine the validity of the order of resumption in view of the bar created under Section 50 of the Haryana Urban Development Authority Act, 1977 (for short "the Act of 1977") shall stand excluded/barred?

Section 50 of the Act of 1977, reads as under:-

> *"50. Finality of orders and bar of jurisdiction of Civil Court.*
>
> *(1) Save as otherwise expressly provided in the Act, every order passed or direction issued by the State Government or order passed or notice issued by the Authority or its officer under this Act shall be final and shall not be questioned in any suit or other legal proceedings.*
>
> *(2) No Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter the cognizance*

of which can be taken and disposed of by any authority empowered by this Act or the rules or regulation made thereunder."

On careful reading of Section 50 of the Act of 1977, it is apparent that the jurisdiction of the Civil Court has been excluded to examine the orders passed by the authorities constituted under the Act. No doubt, if the Civil Court while examining the evidence available on the file arrives at a conclusion that either the mandatory provisions of the Act under which the orders were passed have been violated or the orders passed by the authorities depriving the allottee of its immoveable property have been passed without following the principles of natural justice or the orders are without jurisdiction, the Civil Court would be entitled to entertain the suit.

As per Section 9 of the Code of Civil Procedure, the Courts have jurisdiction to try all Civil Suits unless specifically barred. Section 9 is extracted as under:-

> ***"9.Courts to try all civil suits unless barred****.-*
>
> *The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*
>
> ***Explanation(I).****—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.*
>
> ***Explanation II-*** *For the purposes of this Section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place."*

However, it is settled that the bar to the jurisdiction of the Civil Court cannot be interfered easily and ordinarily unless there is specific provision barring the jurisdiction of the Civil Court. The Civil Court shall have jurisdiction to try all civil suits. In the present case, both the Courts below does not record any such finding. In the plaint, the plaintiffs have not even asserted that the principles of natural justice have not been followed or the order is in violation of the mandatory provisions of the Haryana Urban Development Authority Act, 1977. No evidence has been led by the plaintiffs to this effect.

Learned counsel for the plaintiffs-respondents has relied upon a judgment passed by this Court reported as *2010 (1) PLR 577, Haryana Urban Development Authority through its Chief Administrator and another Vs. Kedar Nath*, to contend that the Civil Court has the jurisdiction. From a careful reading of the aforesaid judgment, it is clear that this Court had in fact relied upon the judgment reported as *1994 (1) Recent Revenue Reports 498, G.M. Wordsted Spinning Mills (P) Ltd. Vs. Haryana Urban Development Authority*.

On careful examination of the judgment in the case of G.M. Wordsted (Supra), it is apparent that in that case, the Court has, as a matter of fact, found that the mandatory provisions of Section 17 of the HUDA Act, 1977 have been violated. Hence, the aforesaid judgment would not come to the rescue of the respondents-plaintiffs.

Learned counsel has further relied upon the judgment reported as *2011 (4) Punjab Law Reporter 774, titled as Haryana Urban Development Authority Vs. R.C. Gupta*. In this judgment, there is no discussion on Section 50 of the Act of 1977 in the operative part of the judgment.

Learned counsel has further relied upon the judgment passed by this Court reported as *2016 (1) PLR 390 titled as Haryana Urban Development Authority and another Vs. Shyam Sunder Mangla*, to contend that the Civil Court has the jurisdiction. On careful reading of the aforesaid judgment, it is found that the Court, as a matter of fact, found that the principles of natural justice have been violated.

On the other hand, learned counsel for the appellant has relied upon the judgment passed by the Coordinate Bench in RSA No.2934 of 2007 decided on November 16, 2010, wherein a Coordinate Bench concluded that the jurisdiction of the Civil Court is barred, once, it is established that the statutory provisions have been complied with and the order of resumption has been passed after following the principles of natural justice.

In view of the aforesaid, question No.1 is answered in favour of the appellant.

2. Whether an order passed by the authority under Section 17 of the Act of 1977 is required to be challenged by the aggrieved person within a period of three years from the date of the order?

The suit filed by the plaintiff was barred by limitation. The order passed by the authority resuming the plot was passed on 01.02.1993. The suit came to be filed on 13.09.2001. It is the contention of the learned counsel for the respondents that even the appeal filed by the plaintiffs against the resumption order passed by the Estate Officer, was dismissed on

04.02.1997. Even taking the cause of action to challenge the order to have arisen on 04.02.1997, still the suit filed by the plaintiffs would be barred by time.

As per Article 58 of the Limitation Act, the limitation begins to run when the right to sue first accrues and the limitation for filing the suit is three years. Examining the present case on the basis of Article 58, it is found that the suit is barred by time.

Although, learned counsel for the plaintiff made serious attempt to convince this Court that in fact the plaintiff had also challenged the communication dated 29.08.2001, however, as noticed above, the communication dated 29.08.2001 is only informing the plaintiff to hand over the possession. The detailed resumption order was passed in the year 1993. Appeal was also dismissed in the year 1997. The plaintiffs did not challenge the order of resumption within the time prescribed under the law. The communication dated 29.08.2001 was only consequential in nature. Hence, question No.2 is also answered in favour of the appellant.

Learned counsel for the respondents-plaintiffs also submitted that the demand of Haryana Urban Development Authority was illegal.

In the considered opinion of this Court, this question would not arise for adjudication as the plaintiffs have failed to prove that the plaintiffs ever made an attempt or made an offer to pay the amount alongwith interest as stipulated in the allotment letter. The plaintiffs have never sent any payment by way of draft or cheque to the Haryana Urban Development Authority apart from what has been noticed above. The booth was purchased in the year 1988 but as noticed above, after payment of 25% of the amount, the plaintiffs did not pay the amount regularly.

Learned counsel for the respondents has also submitted that the amount as required has been deposited by the plaintiffs in the year 2012 pursuant to the interim order passed by the High Court during the pendency of the second appeal. He submitted that once the amount has been deposited under the order of the Court, the Booth can now be cannot be permitted to be resumed on the ground of non-payment.

In the considered opinion of this Court, the argument has no force as the order passed by this Court was only an interim order while entertaining the Regular Second Appeal. Such order passed does not automatically result in setting aside of the order of the resumption.

Learned counsel for the plaintiffs has further submitted that the resumption of the immoveable property should not be normally resorted by the public authorities. It can only be resorted as a last resort. He submitted that the order of resumption was passed without first imposing penalty for late payment or forfeiture of the amount.

On careful examination of the file, it is proved that the plaintiffs were given first notice on 19.11.1991. Thereafter, again notice was given on 12.02.1992. Once again notice under Section 17(2) was given on 21.05.1992. Thereafter notice under Section 17(3) was given on 24.06.1992 and thereafter notice under Section 17(4) was given on 25.09.1992. Even thereafter, plaintiffs were granted opportunities to deposit the amount vide communication dated 02.11.1992. Even further a notice to the plaintiffs granting them final opportunity vide communication dated 05.01.1993 was provided. Hence, it cannot be said that the plaintiffs were not forewarned.

The Authorities under the Act of 1977 gave sufficient opportunities to the plaintiffs before taking action.

In view of the aforesaid, the Regular Second Appeal filed by the appellant is accepted. The judgment passed by the learned First Appellate Court is set aside and the judgment passed by the learned trial Court is restored. However, taking note of the fact that in the year 2012, under the interim order, certain amount has been deposited, the Haryana Development Authority shall take steps to refund the same alongwith any other amount found refundable to the plaintiffs.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

Appeal allowed.

02.05.2018 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**