IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.4255 of 2014 (O&M)
Decided on:-March 14, 2018.

The Haryana Urban Development Authority, Panchkula and others

……Appellants.

Versus

Gian Chand Mittal and others

……Respondents.

CORAM: ***HON'BLE MR. JUSTICE HARI PAL VERMA.***

*****

Present:- Mr. Lokesh Sinhal, Advocate
for the appellants.

Mr. Brijender Kaushik, Advocate
for the respondents.

HARI PAL VERMA, J.

The appellant-defendant Haryana Urban Development Authority (hereinafter referred to as the defendants) and others have filed the present regular second appeal against the judgment and decree dated 11.03.2014 passed by learned District Judge, Panchkula, whereby the appeal filed by the defendants against the judgment and decree dated 03.05.2012 passed by learned Civil Judge (Junior Division), Panchkula, was dismissed.

Vide judgment and decree dated 03.05.2012, learned civil Court had decreed the suit of the plaintiffs and had declared that the resumption order dated 13.05.2002 passed by defendant No.3 and the order dated 15.04.2004 passed by defendant No.2 are illegal, null and void and in violation of the principles of natural justice. However, liberty was granted to

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the appellate authority to pass a fresh order as per law after affording an opportunity of being heard to the plaintiffs and during this process, the plaintiffs would not be forcibly dispossessed from the suit property.

Briefly stated, the respondent-plaintiffs participated in an open auction held by HUDA and being the highest bidders, the plaintiffs purchased the suit property i.e. Booth No.124 situated in Sector 11, Panchkula for a total sale price of Rs.6 lakhs. The allotment letter dated 15.06.1988 was issued in favour of the plaintiffs subject to various terms and conditions as contained in the allotment letter. The plaintiffs were required to deposit 10% amount of the total bid money at the time of auction, whereas another 15% was to be deposited within 30 days from the date of issuance of the allotment letter. Being the successful bidders, the plaintiffs deposited an amount of Rs.67,500/- at the time of auction, whereas another 15% was deposited within 30 days from the date of issuance of the allotment letter.

Since the defendants failed to develop the market by providing necessary infrastructure/amenities, the plaintiffs could not raise construction over the suit property and the site could not be put to its use. Accordingly, in the year 1991 and thereafter, the plaintiffs approached the defendant No.3 many a times and enquired about the remaining outstanding amount along with rate of interest, which the defendant No.3 did not pay any heed and told the plaintiffs that the compound interest had been charged wrongly and exorbitantly though there is no such provision to charge such interest. In the month of September 2001, the plaintiffs again visited the office of defendant No.3 so as to ascertain the necessary outstanding amount, at this stage it was

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informed that an amount of Rs.30 lakhs has become due against the plaintiffs upto September 2001 despite the fact that as against the total sale price of Rs.6 lakhs, the plaintiffs had already paid an amount of Rs.2,17,500/-. Though there was some delay on part of the plaintiffs in depositing the instalments due as per the terms and conditions of the allotment letter and the plaintiffs were ready to pay the remaining outstanding amount along with simple interest @ 10% per annum on the delayed payment, but ignoring this, the defendant No.3 ordered resumption of the suit property and forfeiture of the amount so deposited by the plaintiff. The order of resumption and forfeiture dated 13.05.2002 was passed by defendant No.3 without any notice to the plaintiffs, which was not legally valid. Accordingly, the plaintiffs filed an appeal against the order of resumption dated 13.05.2002, but the same was dismissed by defendant No.2 being the appellate authority vide order dated 15.04.2004.

There being an arbitration clause in the allotment order, the plaintiffs requested the defendants to refer the dispute to the sole Arbitrator as per the clause referred in the allotment letter, but the defendants refused to do so. Accordingly, the plaintiffs moved an application under Section 11 of the Arbitration and Reconciliation Act, 1996 before the Court of learned Additional District Judge, Panchkula, which was allowed vide order dated 07.06.2005. However, the order dated 07.06.2005 was challenged by the defendants before this Court by way of Civil Revision No.5455 of 2005, but the plaintiffs withdrew their application filed under Section 11 of the Arbitration and Conciliation Act, 1996 with liberty to challenge the

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resumption order dated 13.05.2002 and the order dated 15.04.2004 passed in appeal. Hence, the suit.

The appellant-defendants filed their joint written statement taking preliminary objections regarding maintainability and jurisdiction. It was never in dispute that the suit property was purchased by the plaintiffs through public auction held on 31.05.1988 for a total sale consideration of Rs.6 lakhs and after depositing 10% of the bid money, the allotment letter was issued to the plaintiffs on 15.06.1988. The allottees were authorised to take possession of the suit property. Further, as per condition No.4 of the allotment letter, the plaintiffs were required to deposit another 15% of the bid money to make the entire deposit as 25% of the total auction price within 30 days of the date of allotment. The remaining 75% amount was further required to be deposited in lump sum without interest within 60 days from the date of issuance of allotment letter or in 10 half yearly instalments on the balance price along with interest @ 15% per annum. The plaintiffs failed to deposit the amount as per the schedule given in the allotment letter along with interest despite being issued various show cause notices under Section 17 of the Haryana Urban Development Authority Act, 1977. Thus, on the date of resumption order dated 13.05.2002, an amount of Rs.29,55,896/- was due against the plaintiffs and the suit property was ordered to be resumed along with building constructed thereupon on account of violation of the terms and conditions of the allotment letter. The appeal was filed by the plaintiffs against the resumption order dated 13.05.2002, but the same was dismissed vide order dated 15.04.2004.

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The plaintiffs filed replication controverting the averments made in the written statement and reiterating the facts mentioned in the plaint. On the basis of pleadings of the parties, the civil Court formulated the following issues:

1. Whether the plaintiff is entitled for decree of declaration along with consequential relief of permanent injunction as prayed for? OPP

2. Whether the suit is not maintainable in the present form and plaintiffs have no locus standi to file the same? OPD

3. Whether any cause of action has arisen in favour of the plaintiffs to file the present suit? OPD

4. Whether the jurisdiction of this Court is barred by Section 50(2) of the HUDA Act? OPD

5. Relief.

The civil Court vide judgment and decree dated 03.05.2012 had decreed the suit with a finding that neither any notice was ever issued to the plaintiffs nor any notice was proved to have been received by the plaintiffs or to have been delivered to the plaintiffs as per law. The notices Ex.D3 to Ex.D12 are some other notices and these notices were not mentioned in the pleadings of the defendants. Therefore, the same are beyond pleadings. While decreeing the suit, the civil Court has observed as under:

"20. In the case in hand, the suit property was allotted to the plaintiffs vide allotment letter dated 15.6.1988 and thereafter the plaintiffs admittedly deposited 25% of the purchased money and the possession of suit property was also delivered to the plaintiffs, but thereafter plaintiffs could not deposit remaining amount. Thereafter, vide resumption order Ex.P3 dated 13.5.2002 passed by defendant No.2, the suit property was

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> *ordered to be resumed. No notice was ever issued to the plaintiffs nor any notice is proved to have been received by the plaintiffs nor proved to have been delivered to the plaintiffs as per law. The notices mentioned in the resumption order Ex.P3 as well as in the written statement of defendants in para No.3 of the written statement have not been placed on file nor it has been proved that the same were actually received by the plaintiffs or ever delivered to the plaintiffs. The notices Ex.D3 to Ex.D12 are some other notices. These notices are not mentioned in the pleadings of the defendants and thus the same are beyond pleadings. Even these notices are not proved to have been delivered to or received by the plaintiffs. No postal receipts have been placed on file. Thus, the resumption order Ex.P3 is totally in violation of the principle of natural justice and the same is liable to be set aside. Another order dated 15.4.2004 Ex.P4 passed by defendant No.2 is also illegal as in that order also the defendant No.2 has not decided the plea of violation of principle of natural justice and thus the defendant No.2 has failed to exercise the jurisdiction in it and it amounts to violation of the principles of natural justice as per the dictum laid down in Mohan Ram's case (supra). Even during the course of arguments the learned counsel for plaintiffs has made a genuine submission that the plaintiffs are also ready to pay the entire outstanding amount, which also shows the bonafide intention on the part of plaintiffs*."

No doubt, the civil Court has declared the resumption order dated 13.05.2002 (Ex.P3) and the order dated 15.04.2004 (Ex.P4), whereby the appeal filed against the resumption was dismissed, as illegal, null and void and in violation of the principles of natural justice, still the appellant-defendants were granted a liberty to pass a fresh order as per law, but after providing an opportunity of being heard to the plaintiffs. But till then, the

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defendants were ordered not to forcibly dispossess the plaintiffs from the suit property. In this manner, the interest of the defendant-HUDA was duly protected so far as outstanding recoverable amount is concerned.

Aggrieved against the aforesaid judgment and decree dated 03.05.2012 passed by the civil Court, the defendants had preferred an appeal, but the lower appellate Court dismissed the appeal vide judgment and decree dated 11.03.2014 and had observed as under:

> "*18. Admittedly, the impugned order of resumption, copy of which is Ex.P-3, is allegedly passed showing that as many as ten notices as detailed in the impugned order itself had been issued to the respondent-plaintiffs before passing the impugned order but during the trial, it is admitted fact that in para No.2 of the written statement, memo numbers of the notices allegedly given to the respondent-plaintiffs were different from the numbers mentioned in the impugned order and then there is no evidence on record to prove that any of those notices were actually issued or posted to the respondents or ever received or delivered to the plaintiffs. DW-1, Prithvi Singh, who has been examined by the appellant-defendant to prove this aspect, alleged that about nine notices as per the provisions of Section 17 (1) to 17(4) were issued to the respondent-plaintiffs from 1991 to 1997 having different memo numbers as detailed in para 17 of the impugned judgment but those are not so mentioned in the impugned order of resumption as per the details mentioned in para 3 of the affidavit submitted by DW-1 as Ex.DW-1/A and copies of which are Ex.D-3 to Ex.D-11. Thus, it is proved that the very basis of the passing of the impugned order has not been established and it comes out that the entire records of the appellant-defendant is manipulated and the documents were created to show that some notices were issued before passing of*

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the impugned order. Thus, it is a clear cut case where the impugned order has been passed without affording an opportunity of hearing to the respondent-plaintiffs as required under the provisions of HUDA Act itself and thus the same is again the statutory requirement of the Act and also in violation of principles of natural justice. Thus, as held by the learned lower court and as per the law down in ***Mohan Ram and Co. Vs. Haryana Urban Development Authority and another, 1999(1) PLJ 2 (P&H) (DB)****, it is a case where the impugned order has been passed in violation of the procedure established by law and was rightly declared to be illegal, as such, the impugned judgment is based on well founded reasons, which are duly supported by the proposition of law and it is a case where the civil court has rightly intervened as the bar created under Section 50 of the HUDA Act has not attracted as per legal position discussed above. Thus, resultantly the findings recorded by the learned lower court are affirmed on all the issues including issue No.4.*"

Dissatisfied with the findings of the lower appellate Court, the appellant-defendants have filed the present regular second appeal.

Following substantial questions of law have been raised by the appellant-defendants:

i. Whether the Courts below have erred in misreading the evidence on record, which has resulted into a perverse finding?

ii. Whether once the plaintiff-respondents have chosen the remedy of filing the appeal under Section 17(5) of the HUDA Act, whether the jurisdiction of the civil Court is barred?

iii. Whether the evidence of the General Power of Attorney can be taken into consideration, when he has no personal knowledge about the delivery of the notices issued before passing the orders of resumption?

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iv. Whether the suit was not maintainable in view of the fact that the jurisdiction of the civil Court is barred?

v. Whether the suit was liable to be dismissed on ground of it being barred by limitation?

vi. Whether the suit was liable to be dismissed on the ground that the plaintiff-respondents allotted site in question did not step into the witness box?

Mr. Lokesh Sinhal, learned counsel for the appellant-defendants has argued that not only the suit filed by the plaintiffs was barred by limitation, the Courts below have also erred in law in deciding the very crucial issue No.1 regarding maintainability of the suit against the defendants. The Courts below have granted a decree of declaration despite the fact that the plaintiffs did not pay any instalment of the bid amount after paying 25% of the total amount. The Courts below have wrongly held that the resumption order dated 13.05.2002 was passed without notice to the auction purchasers/allottees. Further, none of the plaintiffs had appeared in the witness box. Therefore, the averments made in the plaint have not been proved. Dr. Ashok Kumar Gupta has appeared as PW1, who is the attorney of the plaintiffs and has no personal knowledge about the non-serving of the notices. Therefore, the evidence adduced by Dr. Ashok Kumar Gupta (PW1) could not have been relied upon and the Courts below have committed error in holding that the order of resumption was passed without providing an opportunity of hearing to the plaintiffs. Even otherwise, so far as the issue No.1, as to whether the plaintiffs are entitled for a decree along with consequential relief of permanent injunction as prayed, is concerned, the onus to prove this issue was on the plaintiffs, but they have not discharged this onus by appearing in the witness box. The notices Ex.D3 to Ex.D11 were

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issued under the registered post vide dispatch register Ex.DA to Ex.DQ and once it is held that the notices were sent at the correct addresses and have not been received back by the defendants, the same are deemed to have been received by the plaintiffs. The defendants were not legally bound to issue show cause notice to the plaintiffs before issuing the resumption order.

He has further vehemently argued that in view of Section 50 of the HUDA Act, 1997, the order of resumption dated 13.05.2002 (Ex.P3) has merged with the order dated 15.04.2004 (Ex.P4) passed by the appellate authority, whereby appeal of the plaintiffs was dismissed. He argued that even if it is assumed that the order of resumption has been passed in violation of the principles of natural justice, the opportunity should have been granted to the HUDA to pass a fresh order in accordance with law, as after depositing 25% of the amount, the plaintiffs have not deposited any instalment, which is sufficient enough to disentitle the plaintiffs to file the suit.

On the other hand, learned counsel for the respondent-plaintiffs has argued that once the order has been passed without adhering to the principles of natural justice, the order is a nullity having no force of law. Therefore, the suit filed by the respondent-plaintiffs has rightly been decreed by learned civil Court. The notices Ex.D3 to Ex.D11, as being claimed by the defendants were actually not received by the plaintiffs as the notices mentioned in resumption order dated 13.05.2002 and in the written statement filed by the appellant-defendants do not at all matches with the notices mentioned in paragraph No.3 of the affidavit Ex.DW1/A furnished by DW1 Prithvi Singh in his examination-in-chief. No copy of postal receipt has been

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placed on the file. Therefore, it is not explained as to how these notices were received or delivered to the plaintiffs. So once it is not proved that notices Ex.D3 to Ex.D12 were actually delivered or received by the plaintiffs at any point of time, it led to a conclusion that no such notices were ever served to the plaintiffs.

He has further argued that the argument as raised by the appellant-HUDA that the plaintiffs have only deposited 25% amount, is contrary to the record. Rather, as against the total amount of Rs.6 lakhs, the plaintiffs have already deposited an amount of Rs.2,17,500/- i.e. more than 1/3rd of the allotment price. But still further, the plaintiffs are ready to pay the outstanding amount as per the terms and conditions of the allotment letter and the law.

I have heard learned counsel for the parties.

The primary argument raised by learned counsel for the appellant-defendants that under Section 50 of the HUDA Act, 1977 jurisdiction of a civil Court is barred against the order of resumption dated 13.05.2002, cannot be accepted for the reason that there is a concurrent finding of fact recorded by the Courts below that no notices were ever served to the plaintiffs and it has not been proved that the plaintiffs ever actually received such notices or such notices were delivered to the plaintiffs. The notices Ex.D3 to Ex.D12 are some other notices which have different contents and these notices were not mentioned in the pleadings of the defendants. Therefore, the Courts below have found that reference of such notices was beyond pleadings.

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The provisions of Section 50 of the HUDA Act, 1977 read as under:

> *"50. **Finality of orders and bar of jurisdiction of civil Courts**: (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."*

A bare perusal of the aforesaid provision shows that no doubt, Section 50 of the HUDA Act, 1977 bars the jurisdiction of the civil Court, but as the impugned orders dated 13.05.2002 (Ex.P3) and 15.04.2004 (Ex.P4) were passed in violation of the principles of natural justice, and having recourse to the judgment passed by the Full Bench of this Court in ***1986 AIR (Punjab) 407*** titled as ***State of Haryana and others Versus Vinod Kumar and others***, this Court finds that when no opportunity of hearing has been provided to the respondent-plaintiffs, the order of resumption dated 13.05.2002 is a nullity and, therefore, the civil suit to challenge the validity of such an order is maintainable despite there being an exclusion of the jurisdiction of civil Court. The relevant observations made by the Full Bench of this Court in ***State of Haryana and others Versus Vinod Kumar and others' case (supra)*** are reproduced as below:

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"6. Even if for the sake of arguments it may be accepted that the impugned order is only voidable and will be binding on the respondent unless it is got declared void or set aside can it be said that the only remedy open to them is to approach the authorities under the Punjab Act and the remedy of a regular suit would be barred by the provisions of Section 25 of the Punjab Act. The laws been well-established in this regard and was enunciated by the Privy Council in Secretary of State v. Mask & Co., AIR 1940 PC 105, thus:

> *"xx xx xx*
>
> *xx xx xx it is settled law that the exclusion of the jurisdiction of the civil Courts is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.*
>
> *xx xx xx"*

The said rule was reiterated by the Supreme Court in ***Katikara Chinamani Dora v. Guatreddi Annamanaidu, AIR 1974 Supreme Court 1069*** *in the following words:*

> *"There is an express bar to the jurisdiction of the civil Court to adjudicate upon the question whether 'any in am village' is an 'in am estate or not, and to the extent of the question stated in Section 9(1), Madras Act 26 of 1948, the jurisdiction of the Settlement Officer and of the Tribunal are exclusive. But this exclusion of the jurisdiction of the civil Court would be subject to two limitations. First the*

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civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. The second is as regards the exact extent to which the powers to statutory tribunals are exclusive."

7. The most authoritative pronouncement by the Supreme Court in this regard was made in ***Kamala Mills Ltd. v. State of Bombay, AIR 1965 Supreme Court 1942*** *by a 7 Judge Bench as under:*

"xx xx xx

Whenever it is urged before a civil Court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the Court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by a special statute is sufficient or adequate. In cases where the exclusion of the civil Courts' jurisdiction is expressly provided for, the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it may be relevant but cannot be decisive. But where exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and in conceivable circumstances, might even become decisive. If it appears that a statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with by tribunals specially constituted in that behalf and it further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, it becomes pertinent to enquire whether

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> *remedies normally associated with actions in civil Courts are prescribed by the said statute or not."*

The matter was again considered at a great length by 5-Judge Bench of the Supreme Court in ***Ram Swarup v. Shikar Chand, AIR 1966 Supreme Court 893****. In this case the provisions of Sections 3(4) and 16 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 were under consideration. Although the provisions of the said section expressly barred the jurisdiction of the civil Courts still it was held that if the order was passed in violation of the statutory provisions or the principles of natural justice the order would be open to challenge in civil Court. Paragraphs 12 and 13 which contain the ratio and the precise rule laid down, read as under:*

> *"One of the points which is often treated as relevant is dealing with the question about the exclusion of civil Courts' jurisdiction is whether the special statute which, it is urged, excludes such jurisdiction, has used clear and unambiguous words indicating that intention. Another test which is applied is: does the said statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions: Applying these two tests it does not appear that the words used in Section 3(4) and Section 16 are clear. Section 16 in terms provides that the order made under this Act to which the said section applies shall not be called in question in any Court. This is an express provision excluding the civil Courts' jurisdiction. Section 3(4) does not expressly exclude the jurisdiction of the civil Courts but in the context, the inference that the civil Courts' jurisdiction is intended to be excluded, appears to be inescapable. Therefore, we are satisfied that Mr. Goyal*

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> *is right in contending that the jurisdiction of the civil Courts is excluded in relation to matters covered by the orders included within the provisions of Section 3(4) and Section 16.*"

Similarly, in the case of ***Devi Dayal Versus Rajesh Kumar Duggal and others 2009 (33) RCR (Civil) 195***, this Court has considered the provisions of Section 50 of the Haryana Urban Development Authority Act, 1977 and held that when the authorities act in violation of the provisions of the Act, jurisdiction of the civil Court is not barred as the authorities under the Act cannot be allowed to violate the provisions thereof.

Therefore, when the principles of natural justice have not been adhered by the appellant-defendants, the plea of learned counsel for the appellant-defendants that the suit is not maintainable as the jurisdiction of civil Court is barred, cannot be accepted.

As regards the argument advanced by learned counsel for the appellant-defendants that the suit filed by the respondent-plaintiffs was barred by limitation is concerned, learned lower appellate Court has dealt with this issue specifically. Against the order of resumption dated 13.05.2002, an appeal was preferred by the respondent-plaintiffs, which was dismissed vide order dated 15.04.2004 passed by defendant No.2. Thereafter, the plaintiffs requested the defendants to refer the dispute to the sole arbitrator as the allotment letter contained an arbitration clause, but the defendants refused to do so, which led the respondent-plaintiffs to file an application under Section 11 of the Arbitration and Conciliation Act, 1996. That application was

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allowed vide order dated 07.06.2005 passed by learned Additional District Judge, Panchkula.

The said order dated 07.06.2005 was challenged by the appellant-defendants by way of Civil Revision No.5455 of 2005 before this Court, but the respondent-plaintiffs withdrew their application filed under Section 11 of the Arbitration and Conciliation Act, 1996 on 23.08.2007, however, with liberty to avail their remedies against the dismissal of their appeal against the order of resumption dated 13.05.2002. Interestingly, this withdrawal of application and liberty to contest the resumption was never contested/objected by the appellant-defendants and the permission was granted to the respondent-plaintiffs as such. It is thereafter on 31.03.2008 as per the liberty so granted in the civil revision on 23.08.2007, the suit was filed by the respondent-plaintiffs. Therefore, the limitation is required to be reckoned from the date of withdrawal of the petition i.e. 23.08.2007 and as such, the suit filed by the respondent-plaintiffs on 31.03.2008 was well within the limitation.

Further, a bare perusal of the order dated 13.05.2002, whereby the Estate Officer, HUDA-defendant No.3 had ordered resumption of the site with forfeiture of 10% of the concession money shows that the first notice under Section 17(1) the Haryana Urban Development Authority Act, 1977 asking the plaintiffs to deposit the instalment was statedly issued on 30.11.2000 and thereafter. The detail as referred in the notices are as under:

"1. Notice U/S 17(1) vide memo No.23553 dated 31.11.2000
2. Notice U/S 17(2) vide memo No.2419 dated 22.2.2001
3. Notice U/S 17(3) vide memo No.4310 dated 30.3.2001

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> 4. *Notice U/S 17(4) vide memo No.11230 dated 11.9.2001*
> 5. *Notice U/S 17(4) vide memo No.7944 dated 15.4.2002*
> 6. *Notice U/S 17(4) vide memo No.5150 dated 6.5.2001*"

However, Prithvi Singh, Assistant Estate Officer, HUDA, while appearing as DW1 has specifically stated that the notices issued as detailed in Ex.P3 on the basis of which the order dated 13.05.2002 had been passed, are not available on the file and has specifically stated that he does not know about the issuance of notices as referred in Ex.P3. However, he stated that as per the file, Ex.D3 to Ex.D12 are the notices issued to the plaintiffs. This issue has specifically been dealt with by the Courts below and has concurrently been observed that the notices, as referred in the order of resumption dated 13.05.2002 (Ex.P3) does not tally with the notices, as detailed in the affidavit of DW1 Prithvi Singh. Therefore, this Court finds that the finding recorded by the Courts below that the notices as required under law were never issued to the plaintiff, are correct. Even otherwise, in the case of ***Chander Kala and another Versus Union Territory Chandigarh through its Chief Commissioner and others 2015 (11) RCR (Civil) 144***, this Court, while dealing with the case of allottee under the Chandigarh Lease Hold of Sites and Building Rules, 1973, whereby lease deed of plot was cancelled along with forfeiture of 10% premium on account of non-payment of balance amount, held that the resumption/cancellation of lease should be resorted as a last resort more particularly when the allottees are continuing with possession and have agreed to deposit all the outstanding amount in one go.

This Court also finds support from the law laid down by Hon'ble Supreme Court in ***Teri Oat Estates (P) Ltd. Versus U.T. Chandigarh and***

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others 2004(1) RCR (Civil) 540, wherein it has been held that the order of resumption should be passed as a last resort. The relevant observations of the Apex Court are reproduced as under:

> *"42. The respondents were entitled to pay interest on the unpaid amount @ 7% p.a. which in the event of non-payment was to be paid at a penal rate of 12% and subsequently enhanced to 15 per cent and then to 24 per cent as well the amount of penalty to be levied thereupon. The entire amount was recoverable through the process of law. In a situation of this nature, having regard to the rival claims made by the parties, if the default is not absolute willful or a dishonest one but occasioned due to situation which may be beyond one's control, the statutory right of the respondent in resuming the land may not be appropriate, if the entire dues stand discharged.*
>
> *43. In terms of the provisions of the Act, the respondents are entitled to, (1) resumption of the land, (2) resumption of the building and (3) forfeiture of the entire amount paid or deposited. Having regard to the extreme hardship which may be faced by the parties, the same shall not ordinarily be resorted to.*
>
> *44. The situation, thus, in our opinion, warrants application of the doctrine of proportionality.*
>
> *45. The said doctrine originated as far back as in 19th century in Russia and later adopted by Germany, France and other European countries as has been noticed by this Court in **Om Kumar v. Union of India, [2001] 2 SCC 386**.*
>
> *46. By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the*

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legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority

'maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve.'

xx xx xx xx

57. We may, however, hasten to add that we do not intend to lay down a law that the statutory right conferring the right of the respondent should never be resorted. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt whatsoever that if the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then Section 8(1) can be taken recourse to."

Similarly, in the case of ***Vandana Budhiraja Versus State of Haryana and others 2016(2) RCR (Civil) 8***, this Court has held that simply for the delayed payment which is quite nominal, the resumption should not be resorted to more particularly when the authorities have the right to claim penal interest over delayed payment.

It is not in dispute that the allottees have made substantial payment i.e. more than 1/3rd payment and have shown their inclination to clear the outstanding dues along with admissible interest. Therefore, in view of the law laid down in ***Vandana Budhiraja's case (supra)***, this Court finds that the Courts below have not committed any illegality.

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In view of the above, this Court finds that there is no illegality in the concurrent finding of facts recorded by the Courts below.

No other point was argued.

Since the controversy involved in the case has duly been considered by the Courts below, no substantial question of law arises in the present regular second appeal.

Thus, affirming the judgment and decree dated 03.05.2012 passed by the civil Court as well as the judgment and decree dated 11.03.2014 passed by the lower appellate Court, the instant regular second appeal, being devoid of any merit, is dismissed.

The interest of appellant-HUDA has duly been protected by the trial Court whereby the authority has been granted liberty to pass a fresh order as per law, after affording an opportunity of being heard.

(HARI PAL VERMA)
JUDGE

March 14, 2018
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No

Yag Dutt
2018.07.09 17:32
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