

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

**CWP No. 28556 of 2017**

**Date of decision : 02.12.2019**

**Haryana Urban Development Authority**

*.....Petitioner*

*Versus*

**State of Haryana and another**

*...Respondents*

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY  
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present : Mr. Deepak Sabherwal, Advocate for the petitioner.

Mr. Ankur Mittal, Addl. A. G., Haryana.

Mr. Gaurav Bakshi, Advocate for respondent No.2.

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**DAYA CHAUDHARY, J.**

Petitioner - Haryana Urban Development Authority, Panchkula (for short - "HUDA") and now known as Haryana Shehri Vikas Pradhikaran, has approached this Court by way of filing the present writ petition for quashing of impugned order dated 15.12.2015 (Annexure P-14) passed by the Additional Chief Secretary to Govt. of Haryana, Town and Country Planning & Urban Estates Department, Chandigarh (Revisional Authority), whereby revision petition filed by respondent No.2 was allowed and the Estate Officer, HUDA was directed to communicate all the outstanding dues to the allottee on or before 31.01.2016, which were to be deposited by him on or before 29.02.2016.

Briefly, the facts of the case as made out in the present petition are that respondent No.2 Vikramjit Singh was allotted Booth No.240, Sector

4, Mansa Devi Complex, Panchkula vide allotment letter dated 03.04.2000. Initially, payment of 25% of the total consideration was made but thereafter, the remaining payment through instalments was not paid. A notice under Section 17(1) of the Haryana Urban Development Act, 1977 (for short – “HUDA Act”) was sent to him. Subsequently also, notices were sent on various dates but the due instalments were not paid. Ultimately, order of resumption (Annexure P-3) was passed on 05.03.2003 on the ground of non-payment of instalments. Being aggrieved by the order of resumption dated 05.03.2003, an appeal was filed by respondent No.2 before the Appellate Authority *i.e.* the Administrator, HUDA, Panchkula. Said appeal was allowed vide order dated 01.05.2008 subject to deposit of entire amount of instalments by the appellant within a period of 30 days from the date of demand by the Estate Officer, HUDA along with penalty of Rs.5000/-. In compliance of said order, petitioner-HUDA communicated respondent No.2 vide letter memo dated 26.06.2008 to pay amount of Rs.3,03,000/-. Respondent No.2 deposited an amount of Rs.40,000/- on 07.07.2008. However, no amount was deposited thereafter. For not complying with the direction to deposit the total outstanding amount, the order of resumption came into force, because the outstanding amount was not deposited as per the directions given by the Appellate Authority.

Thereafter, one Mr. V. K. Mehta, filed civil suit No.38 of 2012 for permanent injunction restraining the original allottee (respondent No.2) from alienating the booth in dispute and further restraining the petitioner-HUDA from passing order of transfer of booth in favour of any other person except the plaintiff. As per the plea raised in the plaint by said V.K. Mehta,

an agreement to sell was executed with the original allottee (respondent No.2) for a sale consideration of Rs.8,00,000/-. However, said suit filed by V.K. Mehta was dismissed as withdrawn on 02.09.2014.

The original allottee (respondent No.2) deposited an amount of Rs.2,00,000/- with the petitioner-HUDA by way of demand draft but the same was not encashed. The amount deposited by respondent No.2 was refunded by the petitioner-HUDA vide letter dated 22.01.2015. Thereafter, the original allottee (respondent No.2) filed revision petition which was allowed vide order dated 15.12.2015 with the direction to the concerned Estate Officer, HUDA to communicate the outstanding dues, which was to be deposited by respondent No.2. A review application was also filed before the Revisional Authority for reviewing/recalling of order dated 15.12.2015, which was dismissed being not maintainable vide order dated 25.07.2017. Thereafter, CWP No.15701 of 2017 was filed by respondent No.2 before this Court seeking direction to the petitioner-HUDA to communicate the outstanding amount, which was disposed of vide order dated 21.07.2017 with the direction to the petitioner-HUDA to comply with order dated 15.12.2015. When said order was not complied with, respondent No.2 also filed COCP No.2884 of 2017 for non-compliance of order dated 21.07.2017.

Petitioner has challenged impugned order dated 15.12.2015 (Annexure P-14) in the present petition by raising various grounds.

Learned counsel for the petitioner-HUDA submits that impugned order dated 15.12.2015 (Annexure P-14) is not only illegal, unlawful but the same has also been passed without taking into consideration the facts and circumstances of the case. The Appellate Authority while allowing the appeal

has not taken into consideration the material fact that the amount was deposited without any demand and after passing of the order of resumption. There was an agreement to sell the booth in dispute between respondent No.2 and one V.K. Mehta for a sale consideration of Rs.8,00,000/-. Learned counsel also submits that the appeal was allowed subject to condition that respondent No.2 was to pay the entire balance amount as per the HUDA policy within a period of 30 days from the date of demand by the Estate Officer, HUDA. It was also a condition that in case he failed to comply with the directions, the order of resumption would come into force without any notice. The outstanding amount was conveyed to respondent No.2 vide letter dated 26.06.2008 but he failed to deposit the said amount.

Learned counsel for the petitioner-HUDA further submits that the revision petition was filed after an unexplained delay of 7 years. An amount of Rs.2,00,000/- was deposited by V. K. Mehta, not by respondent No.2 and that too without any demand. Said amount was also returned. Learned counsel also submits that the order passed by the Appellate Authority as well as Revisional Authority are liable to be set aside as respondent No.2 had no right on the booth in dispute as the order of resumption had already been passed and respondent No.2 was not in possession of the booth. In support of his arguments, learned counsel for the petitioner has also relied upon judgment of Division Bench of this Court in case *Smt. Kasturi Devi Vs. State of Haryana & Ors., CWP No.10171 of 2011* decided on **28.03.2012**. In said judgment it has been held that while depositing the amount in the bank account of HUDA unilaterally, no benefit can be granted. Under the similar circumstances, the claim of the petitioner in

that case was rejected finding that no irregularity and illegality in the order of resumption and no interference was required. Learned counsel also submits that in that case also, the allottee did not deposit the outstanding amount in spite of giving opportunity but subsequently without asking or raising any demand, the amount was deposited unilaterally.

Learned counsel for respondent No.2 has opposed the submissions made by learned counsel for the petitioner-HUDA. He submits that respondent No.2 deposited the amount. He also submits that the balance amount to be paid by the answering respondent was not communicated and only under the directions issued in the writ petition, the outstanding amount was communicated. Respondent No.2 was to deposit the outstanding amount within a period of 30 days from the date of demand made by the Estate Officer but no such intimation was given. Learned counsel also submits that total amount of Rs.6,14,750/- was deposited along with the penalty amount. Learned counsel further submits that in view of ratio of judgment of the Apex Court rendered in case ***Jasbir Singh Bakshi Vs. Union Territory, Chandigarh 2005 (2) RCJ 235***, the resumption is the last resort and by considering this fact, the petitioner was allowed to deposit the amount. The circumstances were beyond the control of respondent No.2 as the outstanding amount was not communicated. Case of the petitioner is squarely covered by judgment in ***Jasbir Singh Bakshi's*** case (supra).

Heard arguments of learned counsel for the parties. We have also perused impugned order dated 15.12.2015 (Annexure P-14) and other documents available on the file.

Facts relating to allotment of booth No.240, Sector 4, Mansa

Devi Complex, Panchkula, mode of payment and conditions in the allotment letter are not disputed. As per condition of the allotment letter, the allottee was required to deposit an amount of Rs.41,850/- within a period of 30 days from the date of issue of allotment letter. The balance amount of 75% was to be paid either in lump sum without interest within a period of 60 days from the date of issuance of allotment letter or in 10 half yearly instalments. It was also the condition that in case the instalments were not paid by 10<sup>th</sup> of each month, then the allottee was to be imposed penalty in view of the provisions of the HUDA Act. There was a schedule for payment of instalments to be paid w.e.f. 03.10.2000 and was to be ended on 03.04.2005. Admittedly, respondent No.2 (original allottee) did not pay the instalments as per the schedule. Various notices were issued to him but still he did not make payment of the outstanding amount. Ultimately, order of resumption was passed on 05.03.2003. Against order of resumption dated 05.03.2003, respondent No.2 filed appeal which was allowed by the Appellate Authority on 01.05.2008 and he was directed to pay the entire balance amount within a period of 30 days from the date of demand made by the Estate Officer concerned. A penalty of Rs.5000/- was also imposed. Petitioner-HUDA communicated respondent No.2 to pay Rs.3,03,000/-, but only an amount of Rs.40,000/- was deposited. Thereafter, no amount was deposited. During this period, petitioner and one V.K. Mehta entered into an agreement to sell for the booth in dispute for a consideration. A civil suit was also filed by said V.K. Mehta but subsequently, that suit was also dismissed as withdrawn on 02.09.2014. The amount deposited by the original allottee (respondent No.2) as well as said V.K. Mehta was also refunded. Thereafter, respondent No.2

filed revision petition, which was allowed.

It is apparent that respondent No.2 did not deposit the total amount outstanding against him and whatever amount deposited by him as well as V.K. Mehta, was also returned. After passing of order of resumption, no right accrued to respondent No.2. The Appellate Authority as well as the Revisional Authority have not taken into consideration all these facts and direction has been issued to pay the amount in instalments in spite of passing the order of resumption. The controversy in the present case is squarely covered by the Division Bench judgment of this Court rendered in ***Kasturi Devi's*** case (supra). In that case, the booth was allotted. The allottee was to deposit 25% of the total sale price within a period of 30 days from the date of issue of allotment letter and the balance 75% was to be deposited in 10 half yearly instalments. The allottee did not deposit the balance amount of 75% and the order of resumption was passed. Subsequently, the original allottee died and his legal heir, claiming her right on the basis of Will, filed revision petition before the State Government, which was dismissed. The amount outstanding was unilaterally deposited without any demand after passing of order of resumption. It was held that the conduct of the petitioner in that case while depositing the amount in bank unilaterally did not accrue any right and the petition filed by the petitioner was dismissed finding no illegality or irregularity in the order of resumption passed by the authority.

In the present case also the amount was deposited after passing the order of resumption and the amount was also returned. The order passed by the Revisional Authority is not sustainable under law. Moreover, there is

no conscious acceptance of the amount by the petitioner-HUDA as the same was deposited without any permission or any demand. Respondent No.2 has no right over the property in dispute after passing of order of resumption. The conduct of the petitioner in depositing the amount in a unilaterally manner, without raising any demand by petitioner-HUDA and also in entering into agreement to sell with third person and accepting the amount after passing of order of resumption, is also bad in the eye of law.

Accordingly, the present writ petition is allowed and impugned order dated 15.12.2015 (Annexure P-14) passed by the Revisional Authority is set aside.

**( DAYA CHAUDHARY )  
JUDGE**

**Dated : 02.12.2019**  
*sunil yadav*

**( MEENAKSHI I. MEHTA )  
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No