

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

**RSA No.5429 of 2017 (O&M)
Date of decision:13.05.2019**

Haryana Urban Development Authority and another ... Appellants

Vs.

Rajesh Kumar ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Geeta Sharma, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-defendants-HUDA are in regular second appeal against the judgment and decree of the Lower Appellate Court whereby suit of the respondent-plaintiff for injunction directing them to issue occupation/completion certificate to the plaintiff in respect of plot no.225 situated in P.L.A, Hisar, has been decreed.

The plaintiff alleged that in pursuance to the registered sale deed dated 02.06.2008 and re-allotment letter dated 25.06.2008, sought the mandatory injunction against the defendants on the premise that despite plot having been transferred as per the transfer deed; re-allotment and mortgaged with HDFC Bank, sanction of the building plan and construction thereon, defendants did not issue the completion certificate and sent back the case regarding completion certificate on the ground that compound case of the plaintiff has been cancelled as the plot was already resumed. Many applications were submitted but no action was taken. Even on 16.12.2010, a

request was made for supplying the copy of the concerned documents of the said plot under the Right to Information Act, 2005 but no proper intimation was given constraining him to institute the suit.

Upon notice, the defendants opposed the suit and stated that said plot was resumed but the plaintiff has taken undue advantage of non-availability of the record of resumption of plot.

Both the parties led extensive evidence. The plaintiff examined five witnesses and brought on record Ex.P1 to Ex.P5 whereas, the defendants brought on record Ex.D1 to Ex.D10, Mark A to Mark D by examining Dalbir Singh, Assistant HUDA, office as DW1.

Ms. Geeta Sharma, learned counsel appearing on behalf of the appellants submitted that in pursuance to the order of this Court dated 25.10.2018, completion certificate had been issued without prejudice to the rights of the plaintiff but fact of the matter is that certain pages of the file pertaining to the plot i.e. resumption order was missing, for, there was a default of payment of installments. Even an FIR has been registered. The inquiry proceedings were initiated and completed. The vigilance inquiry has not come to categorical finding in the absence of record but the fresh inquiry is still pending.

I am afraid the aforementioned argument is not sustainable for the simple reason that it was not a first installment in favour of the plaintiff, it was second by way of sale deed, *ibid*, issuance of re-allotment letter and acceptance of transfer fee. The regulations and the provisions of HUDA Act empower it not to issue the aforementioned letter in the absence of default

of installment. The transfer letter is never issued in case of any outstanding dues. The plea of non-issuance of completion certificate on the basis of resumption order remained mystery as no record of relevant period has been placed on record. The alleged inquiry is nothing but a farcical exercise to project the genuineness on their part but alleged *mens rea* has not yet surfaced.

It is a classic case where HUDA officers have not been able to defend their stand in the written statement through direct and cogent evidence and contested the suit before the Lower Appellate Court and even chosen to file the appeal before this Court alongwith an application for condonation of delay of 182 days in filing the appeal and the delay happened due to the reason that vide letter dated 21.3.2017, Administrator has forwarded the case to the Chief Administrator to engage the counsel for filing the appeal and Ms. Geeta Sharma, Advocate was engaged on 12.05.2017. No explanation has come forth in not issuing the letter on time as the judgment and decree of the Lower Appellate Court is of 24.01.2017. Such a callous approach on behalf of HUDA reflects the willful default and cannot be escaped without imposition of the costs of Rs.10,000/- to be recovered from the person who is responsible for filing the appeal and attesting the case without any defence substantiated by the documentary evidence. The costs be paid to the plaintiff. In case of non-compliance, liberty is granted to the plaintiff to avail the remedy in accordance with law.

Resultantly, the appeal is dismissed on the ground of delay as well as on merits.

May 13, 2019

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No