

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

CWP No.9668 of 2017

Date of Decision: 19.02.2020

Vidya Devi

....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Vijay pal, Advocate,
for the petitioner.

Mr. P.P.Chahar, Deputy Advocate General, Haryana.

Mr. Deepak Sabherwal, Advocate,
for respondent Nos.2 and 3-HUDA.

KARAMJIT SINGH, J.

The petitioner has filed this writ petition for issuance of a writ of certiorari seeking quashing of letters dated 21.07.2016 (Annexure P-20) and 21.02.2017 (Annexure P-23) issued by respondent No.2. Further prayer has also been made for issuance of a writ in the nature of mandamus directing the respondents to take action on letters/representations dated 12.01.2017 and 30.01.2017 (Annexures P-22 Colly), which were sent by the petitioner to the respondents.

The brief facts of the case of the petitioner are that she was allotted Plot no.290-P in Sector 15A, Hisar, on freehold basis by respondent No.2- Haryana Urban Development Authority (hereinafter called, 'the HUDA'), vide allotment letter No.5507 dated 15.09.1982 (Annexure P-1) and its tentative price was Rs.53,900/-. 25% of the price of the said plot was paid on 13.10.1982. The balance sale price was also deposited by the petitioner. As

per the HUDA, letter of offer of possession of the said plot was issued on 02.05.1987. But the same was never received by the petitioner. No letter was ever sent to the petitioner by the HUDA through registered post, as has been provided in Section 42 of the Haryana Urban Development Authority Act, 1977. The HUDA also raised demand of enhanced price and, accordingly, petitioner deposited the enhanced amount of Rs.20,000/- on 11.05.1993 and another Rs.10,000/- on 20.07.1993 against receipts, Annexures P2 and P3 respectively. Vide letter dated 15.03.1994 (Annexure P-4), the petitioner informed the HUDA that possession of the plot was not handed over to her. On this, the authorities, vide notice No.5591 dated 04.04.1994 (Annexure P-5) informed the petitioner that the letter for possession of plot was already issued on 02.05.1987. The petitioner sent reply to the said notice, vide letter dated 05.05.1994 (Annexure P-6). In the meantime, the HUDA raised further demand of enhanced price, which was challenged by the Residents' Welfare Association. On 23.04.1996, the HUDA passed order (Annexure P-7) regarding resumption of the plot of the petitioner. In the appeal preferred by the petitioner, she was given 30 days' time to deposit all the outstanding amount, vide order dated 11.07.1996 (Annexure P-8).

The petitioner filed Civil Suit No.71 of 1996 at Hisar, challenging the order dated 11.07.1996 (Annexure P-8). The suit as well as appeal were dismissed holding that the jurisdiction of Civil Court was barred under Section 50 of the HUDA Act. Even, the Regular Second Appeal was dismissed by the High Court with the observations that the findings recorded on the other issues by the Civil Court are only for the purpose of deciding the issues raised in the present proceedings and such findings cannot be taken into consideration in proceedings before the competent court of law. At the time of filing of the

aforesaid suit, the petitioner deposited Rs,35,000/- with the HUDA on 27.11.1997, against the receipt (Annexure P-10) as per the directions of the Civil Court. The another amount of Rs.25,000/- was deposited by her on 07.10.2004 against the receipt (Annexure P-11), in compliance of the order of the High Court.

The petitioner approached the High Court by way of CWP No.5231 of 2007 dated 29.04.2009 and the following order was passed by the High Court:-

“The writ petition is accordingly disposed of with a direction that in case the petitioner deposits the balance amount as calculated by the respondent i.e. Rs.2,15,491 before 31.07.2009, the resumption order shall be deemed to have been set aside and the allotment of the plot shall stand restored in her favour. In the event of the petitioner's failure to do so, the resumption order shall be deemed to have been upheld.

However, after the deposit of the due amount, as directed above, nothing shall preclude the petitioner to approach the respondent authorities to point out any mistake in the calculation of the due amount and if such a representation is made, the same shall be objectively considered by the authorities.”

The Special Leave to Appeal (Civil) No.1405 of 2010 filed against the said order was dismissed by the Hon'ble Supreme Court, vide order dated 15.02.2010 (Annexure P-13). In the meantime, the petitioner sent letters dated 21.12.2009 and 18.01.2010 to the HUDA. But there was no response from the side of the respondents. On this, an application for initiating Contempt of Court proceedings was filed by the petitioner, vide COCP No.1286 of 2010. The same was disposed of being rendered infructuous, vide order dated 18.08.2010 (Annexure P-15) with the observations that the plot has been restored on deposit of the said amount and the possession has been delivered to the petitioner on 28.07.2010 and non-encumbrance certificate was issued to the

petitioner.

The petitioner time and again asked the authorities for issuance of offer of possession and No Dues Certificate regarding the plot in question. On this, the petitioner received letter No.30528 dated 21.07.2016 (Annexure P-20) directing her to deposit Rs.22,84,530/- and she was also informed that offer of possession of the plot was issued by the authorities, vide letter No.6672 dated 02.05.1987. However, no such letter was ever received by the petitioner. The petitioner also received letter No.32130 dated 21.02.2017, wherein, respondent No.2 again reiterated that letter regarding offer of possession was issued on 02.05.1987 and fresh demand of Rs.45,07,131/- was raised by it. The said demand was totally illegal and is contrary to the order dated 18.08.2010 passed by the High Court in COCP No.1286 of 2010, as per which, the possession was delivered to the petitioner only on 28.07.2010. Hence, this writ petition was filed.

On notice of motion, the writ petition was contested by the respondents. Respondent Nos.2 and 3 filed joint written statement, in which, it was pleaded in the preliminary objections that offer of possession was issued to the petitioner vide letter No.6672 dated 02.05.1987 (Annexure R-3) and lateron, the petitioner was duly intimated, vide letter memo No.5591 dated 04.04.1994, that offer of possession had already been given on 02.05.1987. Despite that the petitioner had not constructed the building within stipulated time period of two years from the offer of possession and was also asked to deposit Rs.38,799/- within 15 days failing which the plot would be resumed. It was admitted that the order of resumption dated 23.04.1996 was modified by the Administrator, HUDA, vide order dated 11.07.1996. The fact regarding the filing of the Civil Suit, which was dismissed upto High Court was also

admitted. The Civil Court while deciding the said matter gave specific finding that the petitioner was offered possession, vide letter dated 02.05.1987. The authorities were time and again asking the petitioner to deposit the extension fees as she failed to raise construction within the stipulated period. The impugned demand notices are legal and valid. No action requires to be taken on behalf of the authorities with regard to letters/representations dated 12.01.2017 and 30.01.2017, sent by the petitioner.

We have heard learned counsel for the parties and also gone through the record of the case file.

Learned counsel for the petitioner while assailing the impugned letters (Annexures P-20 and P-23) submitted that the final demand of Rs.45,07,131/- raised by the respondents is totally illegal. The said amount was claimed by the respondents on the ground that the petitioner was offered possession of the plot on 02.05.1987. Actually, no such offer was given by the respondents to the petitioner. While referring to order dated 18.08.2010 (Annexure P-15), it is contended that the respondents themselves admitted that the possession was delivered to the petitioner on 28.07.2010. As per rules, the construction was to be raised in the said plot within two years from 28.07.2010 and the extension fee was to be calculated only after the expiry of the said stipulated period. However, respondents had wrongly calculated the extension fees by presuming that the possession was delivered on 02.05.1987.

Learned counsel for the petitioner further argued that any findings given by the Civil Court in the Civil Suit filed by the petitioner, are irrelevant. The High Court, while deciding RSA No.3462 of 2004, specifically held that the findings recorded on other issues are only for the purpose of deciding the issues raised in the present proceedings and such findings cannot be taken into

consideration in the proceedings before the competent Court of law. It is further contended that actually the said Civil Suit was dismissed for want of jurisdiction of the Civil Court. Learned counsel for the petitioner, while summing up his arguments, urged that the impugned letters deserve to be set aside.

On the other hand, learned counsel for the respondents contended that the demand raised by the respondents, vide Annexures P-20 and P-23, is legal and valid. The possession of the plot was offered to the petitioner for the first time on 02.05.1987, vide letter No.6672 dated 02.05.1987 (Annexure R-3). Even, the Civil Court gave similar findings, while dismissing the suit of the petitioner. The Regular Second Appeal filed by the petitioner was also dismissed by the High Court. It is further contended that the petitioner cannot take any benefit of the order (Annexure P-15). No other document is available to show that the possession of the plot was offered to the petitioner for the first time on 28.07.2010, as has been alleged by her. It is further contended that extension fees was properly calculated for the period beyond two years from 02.05.1987, onwards. While concluding his arguments, learned counsel for the respondents submitted that the writ petition deserves to be dismissed.

We have considered the submissions raised by the learned counsel for the parties.

Plot No.290-P in Sector 15-A, Hisar, was allotted to the petitioner, vide allotment letter (Annexure P-1) dated 15.09.1982. The entire sale price was deposited by the petitioner.

The dispute is regarding quantum of extension fees. As per the respondents, offer of possession of the said plot was given to the petitioner on 02.05.1987, vide letter (Annexure R-3). However, the plea of the petitioner is

that she was not given any such offer by the respondents and, rather, she got the possession of her plot on 28.07.2010. As per the petitioner, the extension fees is to be calculated for the period beyond two years from 28.07.2010, onwards. The impugned letters (Annexures P-20 and P-23) have been challenged only on this very ground by the petitioner.

As per Clause 18 of the allotment letter (Annexure P-1) dated 15.09.1982, the allottee was to complete the construction within two years of the date of offer of possession after getting the plan of the proposed building approved from the competent authority. It is the case of the respondents that the said offer of possession was given to the petitioner, vide Annexure P-21/R3 dated 02.05.1987. The petitioner has denied that she received any such letter dated 02.05.1987. However, in the petition, she admitted that she had written letter (Annexure P-4) dated 15.03.1994 to the respondents and in its response, the department sent letter (Annexure P-5) dated 04.04.1994. Even in the letter (Annexure P-5), which was received by the petitioner, it was clearly mentioned that offer of possession was given to her by the respondents, vide letter dated 02.05.1987. It means that even in 1994, the petitioner was made aware of the fact that offer of possession with regard to plot in question had already been given to her. Despite this, she failed to take the possession of the plot in question. Rather, she filed one Civil Suit, which was finally disposed of on 12.01.2007 as the Regular Second Appeal filed by her was dismissed. So, it appears that the petitioner was fully knowing about the offer of possession dated 02.05.1987, since beginning. As per the terms and conditions of the allotment letter dated 15.09.1982, she was to complete the construction within two years of the said offer of possession. However, the petitioner had not raised any construction till the date of filing of this writ petition. So, she was

liable to pay extension fees, as per the rules and regulations of HUDA. There is no illegality in the demand raised by the HUDA, vide letters (Annexures P-20 and P-23) dated 21.07.2016 and 21.02.2017, respectively. Sequel to this writ petition is dismissed being devoid of merits. However, the petitioner, if eligible, is at liberty to avail the benefit of One Time Settlement Scheme of 2019, which has been launched on 06.03.2019 by the HUDA, with regard to deposit of dues including extension fees.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

19.02.2020

adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No