

CWP-12637-2021

Date of Decision: 14.07.2021

BIMLA DEVI

... PETITIONER

V/S

FINANCIAL COMMISSIONER HARYANA AND ANOTHER
... RESPONDENTSCORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE VIVEK PURIPresent: Mr. Ankit Grewal, Advocate for
Mr. Vaibhav Jain, Advocate
for the petitioner.

* * *

TEJINDER SINGH DHINDSA, J. (ORAL)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

As per pleadings on record petitioner purchased Plot No. 22, Yojna No. 41, Patel Nagar, Hisar pursuant to an auction process conducted by the Improvement Trust, Hisar in the year 2012.

Challenge in the instant petition is to the order dated 27.12.2018 (Annexure P-7) passed by the Commissioner, Municipal Corporation, Hisar in terms of which the plot in question stands resumed. Furthermore, the amount deposited by the petitioner along with the security amount also stands forfeited.

Further challenge is to the order dated 3.7.2019 (Annexure P-10) passed by the Financial Commissioner-cum-Principal Secretary, Government of Haryana, Urban Local Bodies Department declining the

statutory appeal that had been preferred by the petitioner against the order of resumption. It may be noticed that the appeal has not been dealt with on merits but has been dismissed in default.

Counsel has primarily contended that the respondent-Trust was obligated to develop the area in question and to provide all necessary amenities which were not provided and it is on account of such situation that installments had not been deposited in time. It is asserted that under such circumstances, petitioner ought to have been refunded the amount deposited after forfeiting the initial deposit of 10%. Even such request has not been acceded to.

Having heard counsel at length and having perused the pleadings on record, we are of the considered view that the validity and legality of the resumption order passed by the Commissioner, Municipal Corporation vide order dated 27.12.2018 need not be gone into at this stage. We are taking such a view as a case for remand back to the Appellate Authority is made out under the facts and circumstances of the case.

The order passed by the Appellate Authority is dated 3.7.2019 at Annexure P-10 dismissing the appeal in default. Placed on record at Annexure P-9 is the notice that had been issued to the petitioner for appearance which is dated 28.6.2019 but endorsed only on 2.7.2019. Contention advanced by counsel that sufficient time has not been granted cannot be said to be without merit. Even though the order passed by the Appellate Authority reflects that the petitioner or her counsel had not appeared on a number of previous dates but still we are of the view that the statutory appeal ought to have been decided on merits rather than being dismissed in default.

It has also been pointed out to us that the petitioner had preferred an application under Order 41 Rule 17 CPC seeking restoration of the appeal but the same has been declined vide memo dated 15.1.2021 (Annexure P-12) by a cryptic order stating that since the appeal has already been decided, the application is being filed.

In view of the discussion hereinabove, we partly allow the writ petition. The orders dated 3.7.2019 (Annexure P-10) and 15.1.2021 (Annexure P-12) are set aside.

Matter is remanded back to the Appellate Authority to consider the statutory appeal preferred by the petitioner against the order of resumption on merits.

A date in this regard giving sufficient notice for hearing of the appeal be conveyed to the petitioner and a final order be passed within a period of eight weeks thereafter.

We, however, clarify that we have not examined the issues on merits.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

(VIVEK PURI)
JUDGE

14.07.2021
Janki

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No