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

**CWP-4002-2022 (O&M)
Date of Decision:02.03.2022**

Vijay Kumar and others

.......Petitioners

Versus

The Financial Commissioner (Appeals), Punjab, Chandigarh and others

......Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

HON'BLE MR. JUSTICE LALIT BATRA

Present:- Mr. Sumeet Goel, Senior Advocate with
Mr. Samir Rathaur, Advocate for the petitioners.

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TEJINDER SINGH DHINDSA J.

Instant writ petition is directed against the order dated 23.2.2015 (Annexure P-8) passed by the Administrator, New Mandi Township, Punjab, whereby shop No.17, New Grain Market, Dhuri, was resumed and 10% of the total sale price was directed to be forfeited. Further challenge is to the orders dated 29.08.2018 (Annexure P-10) and dated 27.08.2021 (Annexure P-15) passed by the appellate and revisional authorities affirming the action of resumption.

Learned Senior counsel has argued that by virtue of the petitioners having participated in auction proceedings and the shop-plot having been purchased by them, certain civil rights had come to vest in their favour. The step of resumption ought to have been resorted to by the respondents only as a matter of last resort. Further contended that the action of resumption is extremely harsh inasmuch as against a total sale consideration amount of Rs.9,10,000/-, an amount of Rs.7,30,000/- had already been deposited by the petitioners. Still further it has been asserted that the respondent-authorities were obligated in making available to the petitioners the site in question with all necessary amenities and infrastructure for its optimum utilization since the basic amenities at the site in question were lacking, the petitioners were not able to maintain the schedule of payment as per terms and conditions of the auction and as such, such extreme penalty of resumption cannot sustain. In the same breath it is argued that it was the respondent-authorities by virtue of not providing the necessary amenities, the working conditions at the site were denied and on account of which petitioners suffered loss in business and as such were not in a sound financial position to make good the outstanding auction money. Learned Senior counsel has attempted to impress upon this Court that it was on account of the inaction of the respondent authorities that the petitioners could not utilise the plot in a proper and efficient manner which led to huge business losses and for which the petitioners cannot solely be made to suffer. Yet another argument raised is that every executive authority while initiating and finalizing any coercive step, is bound to pass a reasoned order which in the present case is lacking. It has been submitted that each and every executive action must be informed by reasons and since the respondent-Administrator, New Mandi Township, Punjab, was acting in the capacity of a state instrumentality, such action would be open to judicial scrutiny and particularly in a case where reasons forming the basis of an extreme penalty of resumption are lacking.

We have heard learned Senior Counsel at length and have perused the pleadings on record.

The first issue that arises for consideration is whether at the stage of conducting the public auction in which the petitioners/their authorized representatives had participated, any assurance had been held out by the respondent authorities as regards a specific or particular amenity being provided? Senior counsel has not been able to draw our attention to any such assurance held out by the respondent authorities at the stage of auction of the plot/site in question. To the contrary Clause 13 of the Letter of Allotment dated 18.10.1996 at Annexure P-1 was coined in the following terms:-

> ***13 The Government will not be responsible for levelling any uneven surfaces."***

The clear inference drawn is that the shop/site in question had been auctioned on an as-is-where-is basis. A prospective purchaser who participates in an auction process after having an opportunity of examining the site, would make a bid by keeping in view the existing situation/position and condition of the site on the ground. If all the amenities are available, he would offer a higher amount. On the other hand if the amenities are lacking or if the site suffers from any dis-advantage(s), he would offer a lesser amount or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/premium or the stipulated interest on the delayed payment or any applicable penalty on the ground that the site suffers from certain disadvantages or on the ground that amenities were not provided.

In ***M/s Shantikunj Investment Pvt. Ltd. Versus UT***

Administration, Chandigarh, reported in ***AIR 2001 P&H 309 (CWP No.959/1999 decided on 02.02.2001),*** the issue related to an auction of lease hold rights of a site by UT Chandigarh. In such matter, the lessee found large number of *Jhuggies,* adjacent to the plot which were not removed inspite of his repeated requests. He also found no amenities such as road, water, landscaping etc. Under such circumstances lessee had filed the afore-mentioned writ petition before this Court seeking relief. This Court declared that UT Chandigarh having failed to provide the basic amenities, its order of resumption and forfeiture could not sustained. This Court had further directed that all amenities should be provided within three months and no interest would be charged from the allottees in case they deposit the entire outstanding amount within three months from the date of providing amenities. The decision of this Court in **M/s *Shanti Kunj Investments (supra)*** was challenged by the Chandigarh Administration as also Municipal Corporation of Chandigarh. The Hon'ble Supreme Court in ***Municipal Corporation Chandigarh and ors. Versus M/s Shanti Kunj Investments Pvt. Ltd. 2006 (4) SCC 109*** rejected the contentions of the lessee and held that the view taken by the High Court cannot sustain. Relevant observations made by the Apex Court are extracted hereinbelow:-

> ***It is the common experience that for full development of an area it takes years. It is not possible in every case that the whole area is developed first and allotment is served on a platter. Allotment of the plot was made on an as-is-where-is basis and the Administration promised that the basic amenities will be provided in due course of time. It cannot be made a condition precedent.***

This has never been a condition of the auction or of the lease. As per the terms of allotment upon payment of the 25 per cent, possession will be handed over and rest of the 75 per cent of the leased amount to be paid in a staggered manner i.e. in three annual equated installments along with interest at the rate of 10 per cent. If someone wants to deposit the whole of the 75 per cent of the amount he can do so. In that case, he will not be required to pay any interest. But if a party wants to make payment within a period of three years then he is under the obligation to pay 10 per cent interest on the amount of installment. This is the obligation on the part of the allottee as per the condition of lease and he cannot get out of it by saying that the basic amenities have not been provided for enjoying the allotted land, therefore he is not liable to pay the interest."

We asked the learned counsel for the parties to tell us which is the obligation of the lessor in the lease deed which says that they will not charge interest on the installments before providing the amenities. There is neither any condition in the lease nor any obligation under the auction. If the parties have given their bids an with their eyes wide open, they have to blame themselves. It cannot be enforced by any mandamus as there is no obligation contained in the lease deed or in the auction-notice."

Keeping in view the dictum laid down by the Hon'ble Apex Court, the contention raised by learned Senior counsel that the petitioners were justified in not adhering to the payment schedule on account of the ostensible lack of amenities in the area where shop/site was located is without merit.

Even otherwise a finding of fact stands recorded by the appellate as also revisional authorities that the Agriculture Market Yard at Dhuri, is having the requisite and necessary infrastructure and is one of the well-known markets in the State of Punjab, has not been rebutted in any manner in the instant petition. No submission in this regard has been advanced by learned Senior counsel nor any material to demolish such finding has been adverted to.

Next aspect to be examined is whether the respondent-authorities passed an order of resumption in haste and at the very threshold or was such action taken as a matter of last resort?

Condition Nos.6 and 20 of the Letter of Allotment dated 18.10.1996 (Annexure P-1) would be relevant to the issue at hand and the same are re-produced hereunder:-

> ***6. You are requested to either pay the remaining 75% (6,85000/-) of the sale price in 30 days without interest or on issue of this allotment letter 12 (superimposed) @ 6% in 3 annual/6 bi-annual instalments with interest. The first installment will be due within 6 months/1 year of the issue of this allotment letter.***
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> ***In any case if you fail to pay make the deposit on or before the date of installment, then you shall be liable to pay the same with penalty which can be upto @ 10% under Rule 8. The Punjab New Mandi Township Act/Rules 1960.***
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> 20. ***If any purchaser violates any of the above said***

terms or does not construct the building in the stipulated time, then his plot shall be forfeited and the amount deposited by him of the amount of the plot and any building constructed therein, which shall not exceed 10% of the total sale price will be forfeitd in favour of the government. The government can sell this property through a regular auction"

Perusal of the impugned orders would reveal that shop/site No.17, New Grain Market, Dhuri, was allotted to the petitioners by way of auction in the year 1996. At the time of allotment, petitioners had deposited a sum of Rs.2,30,000/- towards earnest money. Remaining amount of 75% was to be deposited within 30 days without interest or in 3 annual/6 bi-annual installments along-with interest. Petitioners thereafter made a further total deposit of Rs.5,00,000/- and that too in installments between the year 1997 to 2005. Thereafter, notices were issued and served upon the petitioners to deposit the outstanding amount alongwith interest as also applicable penalty. Such notices had been served upon the petitioners upto the year 2014. Thereafter vide communication dated 07.07.2014 petitioners were also afforded an opportunity of personal hearing on 13.08.2014. However, since 2005 and upto the date of passing of the impugned order of resumption dated 23.02.2015 by the Administrator, the petitioners chose not to deposit a single penny. In other words for a period of more than a decade, petitioners were in possession of public property and had deliberately failed to adhere to the payment schedule as stipulated in the allotment letter. Under such circumstances this Court would have no hesitation in holding the petitioners to be wilful defaulters insofar as the shop/site in question is concerned. The action of resumption is in consonance with condition No.20 of the allotment letter and as reproduced hereinabove.

The contention raised on behalf of the petitioners that the action of resumption has been taken without assigning any reasons is wholly mis-conceived. Perusal of the impugned orders of resumption passed by the Administrator as also the orders passed by the Appellate and Revisional authorities affirming the action of resumption are well reasoned speaking orders. The action of resumption has been taken on cogent and valid basis after having afforded to the petitioners numerous opportunities to pay the balance sale consideration amount alongwith interest as also penalty. It is a typical case where the respondent-authorities were perhaps left with no other option but to resort to the extreme penalty of resumption.

We find that no procedural infirmity has occurred in the decision making process leading to the passing of the impugned action of resumption. The principles of natural justice have been duly complied with.

No submission has been advanced as regards any provision of the Punjab New Mandi Township Act 1960 or rules framed thereunder having been violated.

The petition sans merit.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(LALIT BATRA)
JUDGE

02.03.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No