

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

RSA-3091-1994(O&M)

Date of decision:-19.12.2022

Estate Officer, Haryana Urban Development Authority, Karnal and
others

...Appellants

Versus

Rajwanti Devi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Deepak Sabharwal, Advocate
for the appellants.

Mr.Sachin Mittal, Advocate
for the respondents.

H.S. MADAAN, J.

1. In nutshell, the facts of the case are that plaintiff Rajwanti Devi widow, Om Parkash Mittal and Rattan Lal Mittal – sons of Sh.Gita Ram Mittal had brought a suit for declaration and permanent injunction against defendants i.e. Estate Officer, Haryana Urban Development Authority (hereinafter referred to as HUDA), Karnal, Chairman, HUDA, Chandigarh, Chief Administrator, HUDA, Faridabad and Dr.Ram Bilas Mittal son of Sh.Gita Ram Mittal.

2. As per the case of the plaintiffs, Sh.Gita Ram Mittal predecessor-in-interest of plaintiffs and defendant No.4, was allotted

a plot bearing No.1054 in Sector 13, Urban Estate, Karnal vide office letter No.1338 dated 13.3.1974; he had made the entire payment of the plot and nothing remained due; the demand notice was also received at the address at Hissar beginning from the year 1975 and going up to 12.3.1980; in July 1980 Sh.Gita Ram Mittal had suffered an attack of paralysis, as such he shifted to Jind, however, defendant No.1 – Estate Officer, HUDA, Karnal had been intimated regarding change of address of Sh.Gita Ram Mittal; Sh.Gita Ram Mittal however died on 18.2.1982 at Jind; the plaintiffs and defendant No.4 being LRs of Sh.Gita Ram Mittal had no intimation that any outstanding dues were there against the plot in question since they had not received any notice of demand; in February 1986 when the plaintiffs went to Narnaund to clean the house, they found some papers lying there with regard to allotment of plot in question; the plaintiffs No.2 and 3 went to Karnal and made inquiries, which revealed that the plot had been resumed by defendant No.1, since the enhanced price was not paid by the plaintiffs despite alleged issuance of many notices; the plaintiffs came to know that allotment had been cancelled and plot had been resumed; the plaintiffs had then preferred an appeal before Chief Administrator, HUDA, Faridabad on 3.3.1986, which was declined on 5.8.1986; the plaintiffs had applied for supply of copy of resumption order but it was not given to them. Terming the act of resumption of the plot as illegal, null and

void ineffective qua the rights of the plaintiffs and defendant No.4, the plaintiffs had brought the suit in question.

3. On getting notice, defendants No.1 to 3 filed a joint written statement contesting the suit raising preliminary objections that suit was not maintainable in the present form; no cause of action arose to the plaintiff to bring the suit; the Civil Court lacked jurisdiction to entertain and try the suit; the suit was time bared; suit was liable to be dismissed for want of notice under the provisions of HUDA Act and CPC. On merits, the answering defendants submitted that deceased allottee Sh.Gita Ram Mittal was required to deposit the regular annual installments as per the terms and conditions of the allotment letter, though the installments had been deposited by the allottee but subsequently a huge amount became outstanding on account of additional price and levy of other charges, against the allottee. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

4. The plaintiffs had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint.

5. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff and defendant No.4 are the legal heirs and intermeddlers of the estate of Sh.Gita Ram Mittal

(deceased) OPP.

2. Whether Shri Geeta Ram was allotted one plot as mentioned in para No.2 of the plaint? OPP.
3. Whether the entire payment of the said plot has been duly made by the late Sh.Gita Ram if so, to what effect? OPP.
4. Whether no letter was received at Jind address at Narnaud or any letter was redirected at Jind given address in the plaint? OPP.
5. Whether the act of resumption of the above said plot is illegal, ultra-vires, void and not binding upon the plaintiffs and defendant No.4 on the grounds mentioned in the plaint? OPP.
6. Relief.

6. Both the parties were afforded adequate opportunities to lead their evidence.

7. During the course of evidence of plaintiffs, they examined Sh.Harnarayan as PW1, Sh.Ram Niwas Garg as PW2 and Sh.Om Parkash as PW3. They relied upon documents Ex.P1 to Ex.P8.

8. In rebuttal, defendants examined two witnesses and tendered in evidence documents Ex.D1 to Ex.D33.

9. After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiffs against defendants No.1 to 3, issue No.2 was decided in favour of the

plaintiff and against defendants No.1 to 3, issues No.3, 4 and 5 were decided against the plaintiffs and in favour of defendants No.1, 2 and 3.

Resultantly vide judgment and decree dated 26.11.1990 the suit of the plaintiffs was dismissed with costs by the trial Court.

10. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Karnal, which was assigned to Additional District Judge, Karnal, who vide judgment and decree dated 21.5.1994 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiffs declaring the resumption of plot and subsequent order in appeal passed by respondent No.3 as illegal, null and void not binding upon the rights of the plaintiffs and defendant No.4 in respect of the plot in question holding that they are deemed to be allottees of the plot.

11. Being dissatisfied with the judgment and decree passed by Additional District Judge, Karnal, the defendants have filed the present regular second appeal before this Court, notice of which was issued to the respondents, who put in appearance through counsel.

12. I have heard learned counsel for the parties besides going through the record.

13. I find that the judgment and decree passed by the trial Court were rightly set aside by learned Additional District Judge,

Karnal since the trial Court had misappraised the evidence and wrongly interpreted the law, justifying the resumption of plot by HUDA on account of non-payment of the additional fees etc. Learned Additional District Judge, Karnala has adopted a judicious approach by properly analysing the evidence and correctly interpreting the law on the subject.

14. Here it may be mentioned that Sh.Gita Ram Mittal being allottee of plot No.889 measuring 14 marla in Sector 13 Urban Estate Karnal, which was later on renumbered as plot No.1054 stands established on the record. It is also established on the file that Sh.Gita Ram Mittal had expired and plaintiffs and defendant No.4 are his legal heirs. The case of the plaintiffs is that Sh.Gita Ram Mittal, who was retired Headmaster on account of old age and ill health had shifted to Jind and he had intimated defendant No.1, Estate Officer, HUDA, Karnal in that regard. According to plaintiffs, the entire installments with regard to price of the plot in question had been paid by Sh.Gita Ram Mittal and nothing remained due, whereas the version of the defendants is that a considerable amount towards additional cost was payable by Sh.Gita Ram Mittal, which, he did not pay despite repeated demands, as such the plot was resumed.

15. Learned Additional District Judge, Karnal referred to Section 42 of Haryana Urban Development Authority Act, 1977, which provides mode of service of notice. The relevant portion of

this Section for ready reference is being reproduced as under:

“Service of notice etc.-(1) all notices

(d) in any other case, if the document is addressed to the person to be served and

(i) is given or tendered to him ;or

(ii)is sent by registered post to the person; or

(iii)if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or .business, if within an urban area or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building to which it relates.”

16. It has been found that in the instant case no such mode of service of notice was adopted by respondents, rather respondents No.1 to 3 served notice on the allottee through public notice Ex.D21 published in the newspaper, copy of which being Ex.D30. When such mode of service is nowhere provided in Section 42 of the Act, therefore such service cannot be said to be due service. While saying so, learned Additional District Judge, Karnal had relied upon judgments **Sarup Singh Versus Angrez Singh, 1972 PLJ 443 and Bachittar Singh Versus Harnam Singh 1972 RLR 24.** Learned First Appellate Court has also come to the conclusion that allottee Sh.Gita Ram Mittal was not informed about enhanced price payable by him since the original price stood already paid and in absence of any intimation enhanced price could not possibly be paid by the allottee

to HUDA. It has further been observed in para No.13 that Section 17 of the Act provide mode of resumption and forfeiture for breach of conditions of transfer and as per Sub-Section 4 of Section 17, the Estate Officer may, for reasons to be recorded in writing, make an order resuming the land or building or both, as the case may be after giving the transferee a reasonable opportunity of being heard and he may forfeit whole or any part of the money paid in respect of a sale and in the present case no order in writing for resumption of the plot in question had been passed by the Estate Officer and the plot in question has been resumed only on the basis of public notice. DW1 Ashwani Kumar, Clerk, HUDA, Karnal in his cross-examination had stated that there was no resumption order available on the file and no separate order of resumption of the plot in question was passed. DW2 Sohan Lal Sharma, Head Clerk, HUDA had stated that he did not know whether there was resumption order in the office or not and only publication in the newspaper had been made; further under Section 17 of the Act, there is no provision for resumption of plot by publication in newspaper or by issuing public notice and the Estate Officer was required to pass resumption order after recording reasons in writing. Therefore, in absence of the resumption order, it could not be said that the plot in question had been resumed legally and validly. The First Appellate Court referring to judgment **D.N. Kejriwal Versus The State of Haryana & Others 1987 PLJ, 532** had

observed that the power of resumption of plot should be used with great caution and circumspection and it must be a weapon of last resort. It was observed by the First Appellate Court that what to talk of taking reasonable care and caution, even no formal order of resumption has been passed by the Estate Officer, HUDA and the plot in question has been resumed merely by issuing public notice through publication in the newspaper only, which is not warranted by law. Another judgment by Full Bench of this Court i.e. **Shri Ram Puri Versus The Chief Commissioner, Chandigarh 1982 PLR 388** has also been referred to.

17. With regard to the objection by learned counsel for the respondents that plaintiffs had already availed of the remedy of appeal against resumption order provided under the Act, which had been dismissed and further jurisdiction of the Civil Court in that regard is barred, the learned First Appellate Court has dealt with those contentions in a proper and effective manner observing that resumption of plot had been made by respondents No.1 to 3 in violation of mandatory provisions of the Act, therefore dismissal of appeal by the Appellate Authority cannot cure the initial defect and the jurisdiction of the Civil Court is not barred if the resumption of plot is violative of the provisions of the Act. Reliance was placed upon **M/s G.M. Worsted Spinning Mills (P) Ltd. Faridabad Versus Haryana Urban Development Authority & Other 1994(1) PLR 268**

wherein it was observed that when order of resumption having been passed in violation of the mandatory provisions of Section 17 of the Act, in that eventuality the jurisdiction of Civil Court is not excluded.

18. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Karnal.

19. No substantial question of law or fact arises in this appeal.

20. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

19.12.2022

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No