

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

**CWP No.20584 of 2022 (O&M)
Date of decision: November 17, 2022**

Hari Om

... Petitioner

Versus

Haryana Shehri Vikas Pradhikaran and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Dinesh Saini, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

This petition has been filed assailing the order dated 22.06.2022 (Annexure P-6) passed by respondent No.1, whereby, the order dated 16.09.2021 (Annexure P-4) passed by respondent No.2 was set aside and the order dated 04.12.2017 (Annexure P-2) of the Estate Officer, HSVP Sirsa for resumption order of Plot No.166 Sector-19P-1, Sirsa, was restored.

In brief, facts of the case are that vide allotment letter dated 01.10.2008 the petitioner was allotted Plot No.166, Sector-19P-1, HUDA, Sirsa for a tentative price of Rs.7,35,075/-. 10% of the price of the plot i.e. Rs.73600/- was deposited as earnest money along with the application form. The petitioner also deposited Rs.1,10,169/- being 15% of the tentative price of the plot within the time as stipulated in condition No.5 of the allotment

letter. As per clause 6 of the allotment letter the balance 75% i.e. Rs.5,51,306/- was either to be paid in lump sum without interest within 60 days from the date of issue of the allotment letter or in six annual instalments with interest @ 9% per annum on the remaining amount. The petitioner however did not pay any instalment. He was issued show cause notices under Section 17 of the Haryana Sehri Vikas Pradhikaran Act, 1977 (the Act) but neither he appeared nor made the payment. Finally, vide order dated 04.12.2017 passed by the Estate Officer, HUDA, Sirsa the plot was ordered to be resumed and 10% of the consideration money was ordered to be forfeited.

On 13.08.2021 the petitioner sent a communication Annexure P-3 to the Administrator- respondent No.2, wherein, it is stated that in the year 2009 he had started residing in Uchana Kalan, District Jind. Due to some family problems he could not communicate the new address to the department due to which he did not receive any notice. Hence, he could not deposit the instalments in time. He was ready and willing to deposit the outstanding amount with penalty. He requested that the plot be restored to him. When he failed to get any response, he filed appeal before respondent No.2, which was allowed vide order dated 16.09.2021 (Annexure P-4). The resumption order dated 04.12.2017 was set aside and the plot in question was restored in favour of the petitioner, subject to his depositing all the outstanding dues within 60 days from the date of order.

The respondent HSVP (the then HUDA) filed revision before respondent No.1, which was allowed vide impugned order dated 22.06.2022

(Annexure P-6), whereby, the order dated 16.09.2021 of the Administrator was set aside and, thus, order dated 04.12.2017 of the Estate Officer was restored.

Ld. Counsel for the petitioner has argued that the petitioner had no intention to delay the balance payment of the plot. His father had fallen ill and he had to shift his residence to village Uchana Kalan. Due to family problems, he could not inform the respondents about the change of address and for this reason, he did not receive any notice for payment of dues. He is still ready to deposit all the dues along with penalty.

Having heard Ld. Counsel for the petitioner, we find there is no merit in this petition.

In the present case, it is admitted position that the petitioner has paid only 25% of the price of the plot. Thereafter, he has not paid any amount. As per clause 6 of the allotment letter, the balance 75% i.e. Rs.5,51,306/- was either to be paid in lump sum without interest within 60 days from the date of issue of the allotment letter or in six annual instalments with interest @ 9% per annum on the remaining amount. As per Clause 10 of the allotment letter in case of default of payment, the Estate Officer could take action for imposition of penalty and resumption of the plot in accordance with Section 17 of the Act. Clauses 10 and 11 are reproduced below:

“10. In case the instalment is not paid by the 10th of the month following the month in which it falls due (on in case the additional price is not paid within time) the Estate Officer shall proceed to take action for imposition of penalty and

resumption of plot in accordance with the provisions of Section 17 of the Act.

11. In the event of breach of any other condition of transfer, the Estate Officer may resume the land in accordance with the provisions of Section 17 of the Act.”

It has been noticed in the impugned order that on account of the failure of the petitioner to deposit the amount, show cause notices under Section 17 of the Act dated 24.06.2016, 17.08.2016, 11.11.2016, 14.02.2017 and 30.05.2017 were issued to the petitioner. However, neither he appeared nor deposited the penalty. Only then the resumption order was passed on 04.12.2017. Against this order of resumption, the petitioner at first filed a representation on 13.08.2021 i.e. after more than three years and eight months. He filed appeal on 17.08.2021. His explanation that he was not aware of the proceedings does not appear to be genuine. If the petitioner had changed his residence it was for him to inform the respondents. He cannot take the benefit of his failure to communicate the changed address to the concerned authorities. In any case, there is no justification for his not depositing any instalment.

It is well-settled that where an allottee persistently defaults in payment of instalment the respondents are justified in resuming the plot as per the conditions (*ibid*) of the allotment letter.

Hon'ble Supreme Court in ***Smitra Jain v. HUDA, (2020) 13 SCC 465***, observed as under:

“15. We also agree with the High Court that the Estate Officer did not commit any illegality by resuming the booth site

because the petitioner had persistently failed to pay the instalments of price despite the notices issued to her under Sections 17(1), (2) and (3). A ranked defaulter like the petitioner is not entitled to relief under Articles 226 or 227 of the Constitution. This is also the ratio of the judgments of this Court in Municipal Corpn., Chandigarh v. Shantikunj Investment (P) Ltd. [Municipal Corpn., Chandigarh v. Shantikunj Investment (P) Ltd., (2006) 4 SCC 109] , State (UT of Chandigarh) v. Amarjeet Singh [State (UT of Chandigarh) v. Amarjeet Singh, (2009) 4 SCC 660 : (2009) 2 SCC (Civ) 273] and Haryana State Agricultural Mktg. Board v. Raj Pal [Haryana State Agricultural Mktg. Board v. Raj Pal, (2011) 13 SCC 504 : (2012) 4 SCC (Civ) 122].”

The contention of the petitioner that he is ready and willing to make the entire balance payment along with penalty amount also cannot be accepted. Such contention was dealt with by a Division Bench of this Court in **CWP No.19503 of 2010 titled Suresh Chand vs The State Of Haryana And Others decided on 10.01.2013**, wherein it has been held-

“Merely because on the contention of the petitioner that he is now ready to make payment of the entire outstanding amount with penalty and interest, the order of resumption cannot be set aside. If in the facts and circumstances of the case the said contention is accepted, it will totally paralyze the functioning of the authorities under the HUDA Act. In these days the allottees after getting the allotment in public auction do not pay the instalments due in time with an intention that they will pay the dues along with penalty and interest after many years in order to earn huge profit in case the prices of the property increased. In this way, they want to enjoy the fruits of the

property at the cost of the public exchequer. In such cases, the order of the authorities in resuming the site/booth in question should not be interfered. In the present case, for a long period the petitioner did not show his bona fide in making the payment. Therefore, the authorities were fully justified in passing the order of resumption.”

Thus, there is no merit in the petition.

Dismissed.

(LALIT BATRA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

November 17, 2022

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No