

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

Neutral Citation No. 2023:PHHC:081474-DB

(1)

CWP-2262-2022

M/s Aggarwal & Company

.....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

(2)

CWP-8461-2022

Haryana Sehri Vikas Pradhikaran

.....Petitioner(s)

Versus

State of Haryana and another

.....Respondent(s)

Decided on: 30.05.2023

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr.Tejas Bansal, Advocate
for the petitioner in CWP-2262-2023
and for respondent No.2 in CWP-8461-2023.

Mr. Ankur Mittal, Advocate
and Ms.Kushaldeep Kaur, Advocate
for the petitioner in CWP-8461-2023
and for respondent Nos.3 to 5 in CWP-2262-2023.

G.S. Sandhawal, J.

1. The present judgment shall dispose of CWP-2262 & 8461-2023 since the facts arise out of common background.

2. In CWP-2262-2023, the petitioner seeks direction under Article 226/227 of the Constitution of India, for complying with the order dated 17.02.2020 (Annexure P-6) passed by respondent No.2-Principal Secretary whereby respondent No.5-Estate Officer, Haryana Shehri Vikas Pradhikaran (HSVP) was directed to communicate the dues to the petitioner within one month from the receipt of copy of the said order since the Revision Petition of respondent No.6 had been dismissed and the plot in question had been directed to be restored to the petitioner as per the

present reserve price. Resultantly, the dues were to be communicated to the petitioner within one month from the receipt of copy of the order so that it could be paid by the petitioner within 2 months. The order was conditional that if the amount was not paid, the resumption order would stand revived forthwith.

3. The second writ petition bearing CWP-8461-2023 titled *Haryana Sehri Vikas Pradhikaran Vs. State of Haryana & another* seems to have been filed by the Pradhikaran after considerable delay and only after its counsel in CWP-2262-2023 accepted notice on 06.02.2023. The said authority-HSVP thus seeks to challenge the said order whereby its Revision Petition was dismissed. The same was only filed on 11.04.2023 which is after a period of 3 years when the impugned order had been passed. The writ petition does not show any ground or justification for the delay and it is only as a counter-blast to negative the directions which the allottee was seeking and therefore we do not find any ground to entertain the writ petition filed by the HSVP at this belated stage.

4. The brief background for necessary discussion is that on 11.11.1998, the petitioner was allotted SCO No.43, Sector-55, Faridabad measuring 137.5 sq.yards for Rs.19,31,000/- on freehold basis on certain terms and conditions and subject to the provisions of the Haryana Urban Development Authority Act, 1977. The petitioner had paid 25% of the amount on 17.12.1998 and thereafter, deposited an amount of Rs.2,00,000/- on 16.02.2001, Rs.1,30,000/- on 12.09.2001 and Rs.40,000/- on 05.10.2001. Show cause notice had been issued to him in between on 25.05.1999 on account of not depositing the instalment in due time. Eventually, his plot was resumed on 06.03.2001 (Annexure P-2) since there was a default of Rs.13,30,171/-. He was unsuccessful in appeal on

30.04.2002 since it was dismissed in default. In the intervening period, he filed a suit on 23.01.2002 for declaration and consequential relief with permanent injunction which was decreed by setting aside the resumption order on 22.07.2009. The same was set aside in appeal before the Addl.District Judge on 10.11.2009. Regular Second Appeal No.2264 of 2010 was disposed of on 14.01.2016 by the learned Single Judge of this Court with liberty to file a Revision Petition before the appropriate authority by directing that the ground for condonation of delay for the period for which the litigation had been pending would be reason to condone the delay. Resultantly, the revision was accepted on 30.10.2017 and the matter was remanded to the Administrator for deciding the same on merits.

5. On 05.11.2018, the Appellate Authority decided the appeal in favour of the allottee by noticing the amounts deposited and the fact that 44% of the sale consideration of the site had been deposited and construction had been raised as a Atta Chakki was running there. The petitioner was directed to clear all the dues as per HSVP policy along with a penalty of Rs.1 lakh from the date of issue of the demand notice of the respondent, failing which the resumption order would come into force automatically. The allottee then filed a representations dated 01.02.2019 and 28.02.2019 to deposit the said amounts. The HSVP filed a belated Revision Petition delay of which was condoned but the revisional authority did not interfere in the order of the Appellate Authority by noticing that physical possession was never taken back by the authority and construction was allowed to be raised by it. The resumption being a very harsh step was a factor which weighed with the revisional authority and that the same should be resorted to only in exceptional circumstances.

Resultantly, the petitioner was directed to make payment of the plot as per the present reserve price and the order was thus modified to that extent.

6. The law is settled on the said aspect that resumption should not be resorted to at the first instance since immoveable property of a person is being taken back and in the present case, petitioner has improved upon it by raising construction. In such circumstances, reliance can be placed upon the Full Bench judgment of this Court in **Shri Ram Puri Vs. Chief Commissioner, Chandigarh, AIR 1982 (P&H) 301** wherein it was held that the power of resumption is a weapon of last resort to be used with great caution. The said view was approved by a Three Judge Bench of the Apex Court in **Babu Singh Bains Vs. Union of India & others, 1997 (1) PLR 250** wherein it was noticed that resumption was only a weapon of last resort to be used where there is violation of the conditions of sale and rules and regulations. The matter came up again for consideration before the Apex Court in **Teri Oat Estates Pvt. Ltd. Vs. U.T.Chandigarh & others, 2004 (4) PLR 899** wherein it was held that the power of resumption and forfeiture is a drastic power which has to be used as a last resort. The said power of resumption has repeatedly been held by this Court as akin to using a hammer to swat a fly.

7. Accordingly, we are of the considered opinion that the Appellate Authority and Revisional Authority had rightly interfered with the order of resumption by directing the payment which was eventually paid on the present reserve price. In such circumstances, once the petitioner is willing to comply with the said order, we do not find any plausible reason to interfere with the same once the petitioner had raised construction. No exceptional ground is made out to interfere in the extraordinary writ jurisdiction in the writ filed by the authorities which

was anyway barred by over a period of 3 years. Resultantly, direction is issued to the Estate Officer to intimate to the allottee the payment which is due as per the directions of the revisional authority within one month from receipt of certified copy of this order and the said amount be paid within a period of 2 months thereafter.

8. In view of the above, CWP-2262-2023 is allowed and CWP-8461-2023 stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

30.05.2023
sailesh

Whether speaking/reasoned	Yes	
Whether Reportable :		No