

102 CM-12736-CWP-2023 IN/AND CWP-7144-2003 (O&M) -1-
2023:PHHC:111657-08
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-12736-CWP-2023 IN/AND
CWP-7144-2003 (O&M)

Reserved on: 08.08.2023

Date of Decision: 24.08.2023

SHANTI LAL SETHIA

.....PETITIONER

VS.

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

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

Present: Mr. Abhishek Sharma, Advocate,
for the applicant-petitioner.

Mr. Arun Beniwal, D.A.G., Haryana.

HARPREET KAUR JEEWAN, J.

CM-12736-CWP-2023

This application has been filed for fixing actual date of hearing
in the main case, which is on regular Board at serial No. 399.

In view of the averments made in the application, the same is
allowed. Hearing of the main case is pre-poned to today itself.

CWP-7144-2003 (O&M)

1. The present petition has been filed under Article 226/227 of
the Constitution of India for quashing communications and orders
Annexures P-6, P-15, P-16, P-27, P-29, P-35 and P-36 and seeking a writ in
the nature of '*mandamus*' directing the Estate Officer, Haryana Urban
Development Authority (respondent No. 3) to issue a transfer letter in
favour of the petitioner in respect of Plot No. 410, Industrial Area Phase-I,

Panchkula (Haryana).

2. The petitioner has challenged the letter, dated 18.12.1995 (Annexure P-6) issued by the Project Manager, District Industries Centre, Panchkula, to the Estate Officer (respondent No. 3), whereby apart from seeking a guarantee, the transfer of the plot was ordered to be allowed subject to the condition that building be completed by 30.06.1996 and further a guarantee was sought and condition was put to start production before 31.12.1996. The challenge has also been made to the resumption order, dated 08.08.1997 (Annexure P-15) and the conditional order of the Chief Administrator, HUDA passed in appeal on 17.03.1998 (Annexure P-16). Further challenge has also been made to the order dated 20.10.2000 (Annexure P-27), whereby the appeal against the order of resumption was dismissed, as well as against the order dated 10.04.2001 (Annexure P-29) whereby conditions were imposed to deposit all the outstanding dues within 15 days and to start production at the site within a period of 06 months while allowing the revision petition, whereby the order of resumption was set aside. Challenge has also been made to the office order, dated 12.04.2002 (Annexure P-35), whereby resumption order dated 08.08.1997 (Annexure P-15) was ordered to be revived, on account of the non-compliance of the conditions in the order dated 10.04.2001 (Annexure P-29) passed in revision. The challenge has also been made to the issuance of the notice dated 29.08.2002 (Annexure P-36) under Section 18 (2) of the Act, whereby a direction was given to the petitioner to vacate the possession of the plot in question.

3. It is the case of the petitioner that the said Plot No. 410 was

originally allotted to Sh. Gulshan Rai Mehta, vide allotment letter dated 29.02.1980. The petitioner purchased the said plot and applied for transfer of the plot in his favour through a General Power of Attorney of the original allottee and deposited a sum of ₹15,000/- as extension fee and ₹5,000/- as transfer fee, vide proforma application, dated 14.02.1991 (Annexure P-1).

3.1 The petitioner received a communication from the Estate Officer, HUDA (respondent No. 3) to complete the paper formalities vide letter dated 16.03.1995 (Annexure P-3), as such, the petitioner submitted the requisite documents vide letter dated 23.06.1995 (Annexure P-4). The request of the petitioner was referred to the General Manager, Industries and the petitioner submitted a detailed letter, dated 20.11.1995 (Annexure P-5) to the General Manager, Industries, giving an assurance that he would start the construction in the plot in question very soon and requested for transfer of the plot on his name as he required the plot in question for expansion of his existing unit which is located in Industrial Plot No. 409, Phase I, Panchkula.

3.2 The Project Manager, District Industries Centre, Panchkula, vide communication dated 18.12.1995 (Annexure P-6) allowed the transfer of the plot in question subject to the condition that the transferee shall complete the building by 30.06.1996 and would start production before 31.12.1996 and also furnish a guarantee of a sum of ₹50,000/- in favour of the Estate Officer, HUDA within 15 days. It was further communicated that in the event of failure to comply the conditions, the plot shall be deemed to have been resumed automatically without affording any further opportunity

or assigning any reason and even the bank guarantee would be forfeited.

3.3 The petitioner could not furnish the bank guarantee and again requested for transfer of the plot in his name, vide letter dated 12.08.1997 (Annexure P-14). Ultimately, vide office order dated 08.08.1997 (Annexure P-15) the plot in question was ordered to be resumed under Section 17 (4) of the HUDA Act, 1977, (for short 'the Act') and the consideration amount of 10% was ordered to be forfeited, on the ground that sufficient opportunities have been given to the owner of the plot to start the construction/production but inspite of that, they failed to start the construction/production.

3.4 The petitioner challenged the order of resumption dated 08.08.1997 (Annexure P-15), by way of filing an appeal, which was allowed conditionally vide order dated 17.03.1998 (Annexure P-16) and the order of resumption was set aside. The plot was ordered to be restored with a direction to deposit a penalty of ₹30,000/- for non-compliance of the order dated 18.12.1995 (Annexure P-6) and it was further ordered that the production should be started within six months from the date of the said order after construction of at least 50% of minimum permissible area which should be completed as per the industrial policy. The petitioner was further directed to submit a bank guarantee of ₹1,00,000/- valid for 08 months and the Estate Officer, HUDA, was required to sanction the building plan within seven days on submission of building plans. The petitioner was further directed to submit the bank guarantee to the Estate Officer, HUDA, Panchkula, within 07 days of receipt of intimation and to clear all the dues. In the event of failure to bring the unit into production within six months,

the plot stood resumed automatically, without any further notice to the petitioner and also there was a condition of forfeiture of the Bank guarantee.

3.5 The petitioner submitted a communication, dated 26.05.1998 (Annexure P-17) sending the bank guarantee, as per the aforesaid order and also deposited a sum of of ₹30,000/- on account of penalty for non-compliance of the order of the SWS Committee, dated 18.12.1995 (Annexure P-6).

3.6 Thereafter, vide communication, dated 14.03.2000 (Annexure P-25), the Estate Officer, HUDA, (respondent No. 3), communicated to the petitioner that he had failed to comply with the order dated 17.03.1998 (Annexure P-16), as such, it was informed that the order dated 08.08.1997 (order of resumption, Annexure P-15) comes in operation.

3.7 The petitioner challenged the communication, dated 14.03.2000 (Annexure P-25) by way of filing an appeal on 28.03.2000 (Annexure P-26), which was decided, vide order dated 20.10.2000 (Annexure P-27) and it was observed that the petitioner did not pay the outstanding dues of ₹85,945/- and the extension fee of ₹1,85,000/- for non-construction of the building in time, as per the demand raised by the Estate Officer, HUDA, vide communication dated 17.08.1998. It was further observed that there is no provision of review under the HUDA Act, 1977. The appeal was dismissed being non-maintainable.

3.8 The petitioner filed a revision petition on 06.11.2000 (Annexure P-28) against the said order, dated 20.10.2000 (Annexure P-27), and vide order dated 10.04.2001 (Annexure P-29), the Commissioner and

Secretary to the Government of Haryana, Town and Country Planning Department, ordered for restoration of the site to the petitioner with a condition to deposit all the outstanding dues within 15 days from the date of the order and to start production at site after completing the construction within six months. The said order was also conditional as it was specifically mentioned that in case of default, the resumption order would prevail.

3.9 The petitioner sought further extension of time for construction and for compliance of the order dated 10.04.2001 by making an application dated 24.04.2001 (Annexure P-30), application dated 28.07.2001 (Annexure P-33) and application dated 19.11.2001 (Annexure P-34).

3.10 Vide office order, dated 12.04.2002 (Annexure P-35), the Estate Officer, HUDA (respondent No. 3) communicated to the petitioner that he has not complied with the conditional order dated 10.04.2001 (Annexure P-29) by way of starting the construction within a stipulated period, therefore, informed that resumption order, dated 08.08.1997 (Annexure P-15) stands revived.

3.11 The Estate Officer, HUDA (respondent No. 3) issued a notice dated 29.08.2002 (Annexure P-36) requiring the petitioner to vacate the possession of the plot in question.

4. Respondents No. 2 and 3 have filed a reply through Sh. Ashwani Sharma, the Estate Officer, HUDA, Panchkula, dated 03.11.2003, whereby submitted that the petitioner had failed to comply with the terms of the letter dated 18.12.1995 (Annexure P-6), the

conditions imposed vide order dated 17.03.1998 (Annexure P-16), and the order passed in the revision dated 10.04.2001 (Annexure P-29), as such, the order of resumption dated 08.08.1997 (Annexure P-15) came into force.

4.1 It was further submitted that Sh. Arun Partap Singh, General Power of Attorney holder of Sh. Gulshan Rai Mehta, the original allottee and the petitioner did not complete the formalities of transfer and even they did not submit the project report. The requisite documents were received on 13.06.1994 but these were also incomplete and even the condition for depositing ₹5,000/- which was communicated to the General Power of Attorney, vide letter dated 26.07.1994 was not complied with. The payment of dues of ₹70,000/- as communicated vide letter dated 23.06.1995 (Annexure P-4) was also not deposited. It was submitted that neither the payment of dues were made, nor the conditional order was complied with as such the petitioner has rightly asked to hand over the possession on the basis of resumption order, dated 08.08.1997.

5. Learned counsel for the petitioner has submitted that the petitioner had been throughout willing to deposit the dues but he could not start the construction as the site plan was not approved by the authorities. Since the site plan was not approved, therefore, he could not deposit the payment and could not start the construction/production, as such, the order of resumption, dated 08.08.1997 (Annexure P-15), as well as the subsequent orders putting such conditions which could not have been complied with, are illegal and hence, liable to be quashed. Since the transfer of the plot was not allowed on the name of the petitioner, therefore he could not complete construction and start production.

6. We have considered the aforesaid submissions.

7. It is an admitted case that the petitioner is not the original allottee. The order of resumption, dated 08.08.1997 (Annexure P-15), indicates that various notices were issued to the original allottee under Section 17 (3) of the Act for non-construction of the plot. It is not disputed that the original allottee has neither made the payment except the original payment of consideration amount of 10%, as referred in the resumption order, dated 08.08.1997 (Annexure P-15) nor completed the construction in the stipulated period.

8. The petitioner had failed to show any document whereby he has stepped into the shoes of the original allottee. The petitioner has failed to show any legal right in the plot in question. Neither he has shown that he has stepped into the shoes of the original allottee, nor the allotment was transferred on his name. Though the petitioner had submitted request for transfer of the plot in question on his name by way of filing an application dated 14.02.1991 (Annexure P-1) but the allotment has not been transferred on his name. The said letter of request dated 14.02.1991 (Annexure P-1), was made through Sh. Arun Partap Singh Chauhan being the General Power of Attorney of Sh. Gulshan Rai Mehta, who was the allottee of the plot in question. The paper-book further transpires that there was another General Power of Attorney of the original allottee and the Estate Officer, HUDA (respondent No. 3) had issued a communication dated 16.03.1995 (Annexure P-3) to Sh. Arun Partap Singh Chauhan, who filed the application dated 14.02.1991 (Annexure P-1) being the General Power of Attorney of the allottee. Three documents were sought to be produced,

including an affidavit that other General Power of Attorney (GPA) Smt. Kamla Devi had expired and that she had not alienated the plot during her lifetime. The petitioner had sent a reply to the Estate Officer (respondent No. 3) that he does not know the present address of the original allottee, vide letter dated 23.06.1995 (Annexure P-4).

9. The petitioner has not filed copy of allotment letter in favour of Sh. Gulshan Rai Mehta and copy of the power of attorney in favour of Sh. Arun Partap Singh Chauhan, through whom he was seeking transfer of allotment. Despite that the respondents have considered the requests of the petitioner for transfer of the allotment and vide communication dated 18.12.1995 (Annexure P-6), the transfer was conditionally ordered to be allowed provided that he completes the building by 30.06.1996 and bring in production before 31.12.1996 and for compliance of the said undertakings, bank guarantee for a sum of Rs. 50,000/- in favour of the Estate Officer, HUDA, was sought to be furnished within 15 days. The said order was conditional and it was specifically mentioned that in case the said conditions are not fulfilled, no further opportunity or reasons would be assigned and the plot shall deem to have been resumed automatically and also the guarantee amount would be forfeited. There is nothing on record to show that the petitioner had complied with the aforesaid conditions within the stipulated period of time. We have also observed that instead of complying with the said conditions, the petitioner had been sending various letters requesting for transfer of the allotment on his name and giving explanations for not completing the construction and for non-compliance the said order.

10. Section 17 (1) of the Act provides that where any transferee makes default in the payment of any consideration amount or any installment, the Estate Officer may by notice in writing call upon the transferee to show cause as to why a penalty equal to 10% of the dues may not be imposed. Sub-Section (2) of Section 17 of the Act provides that after giving the reasonable opportunity of hearing, the Estate Officer may impose the penalty whereas sub-Section (3) of Section 17 of the Act provides that where the transferee fails to pay the amount due together with the penalty as imposed under Sub-Section (2) of Section 17 of the Act or commits a breach of any other condition of sale etc., a show cause notice for resumption of the land or the building can be issued. Sub-Section (4) of Section 17 of the Act provides that after considering the cause, if any, in pursuance of the notice issued under sub-section (3) and considering the evidence, if any, the Estate Officer may pass an order of resumption after recording reasons. The impugned order dated 08.08.1997 (Annexure P-15) clearly indicates that before passing the order of resumption, 06 notices were issued and it was observed that the allottee did not start the construction.

11. A transfer of the plot through GPA was sought in the name of the petitioner. The matter was referred to the SWS Committee and a conditional order of transfer was passed. However, the conditions imposed while permitting the transfer were not complied with. Thereafter, notice under sub-Section (3) of Section 17 of the Act, vide memo dated 28.11.1996 was issued to the allottee, as well as to the proposed transferee and in response to the said notice, the reply dated 05.12.1996 was

considered. The petitioner had also given a representation, dated 04.11.1996, seeking a waiver of the condition of payment of restoration of fee and furnishing the bank guarantee. The said representation was considered and rejected and thereafter, a notice under Section 17 (4) of the Act was issued, vide memo dated 24.01.1997. The allottee, GPA of the allottee and proposed transferee were given an opportunity of hearing. Sh. Sudharshan Mehta appeared on behalf of the allottee and could not give any concrete reason for non-construction of the plot. Thereafter, the order of resumption was passed on the ground that the owner of the plot failed to start the construction/production inspite of sufficient opportunities granted. The impugned order indicates that the necessary compliance of issuance of notice and consideration of the reply as required to be done under sub-Section (3) and sub-Section (4) of Section 17 of the Act has been done.

12. A remedy of appeal has been provided in the Act to challenge the order of resumption under sub-Section (5) of Section 17 of the Act. The petitioner has also availed the said remedy. Despite that no illegality was found in the order of resumption, the appeal was allowed keeping in view the undertaking given by the petitioner, subject to the condition that he would deposit a penalty of ₹30,000/- for non-compliance of the order dated 18.12.1995 (Annexure P-6) and would start production within a period of 06 months and further he would construct at least 50% of the permissible area. He was also required to give a bank guarantee, failing which it was ordered that the plot would stand automatically resumed without further notice.

13. The petitioner has not complied with the said conditions upon

which the order of resumption was set aside.

14. Thereafter, the petitioner was issued a communication dated 14.03.2000 (Annexure 25), whereby it was intimated that he had failed to comply with the order in appeal and therefore, the order dated 08.08.1997 (Annexure P-15, order of resumption) comes in operation.

15. The petitioner started another round of litigation and again filed an appeal against the said communication. Despite the fact that it was specifically mentioned in the order dated 17.03.1998 (Annexure P-16) passed in the appeal, that in case the condition of starting the production, raising the construction of 50% and furnishing the bank guarantee are not complied with, the plot would stand resumed automatically without any further notice to the petitioner. The communication, dated 14.03.2000 (Annexure P-25) was not a separate order but it was merely in the shape of an intimation to the petitioner that the order of resumption has come in operation since he had not complied with the order passed in appeal. The communication dated 14.03.2000 (Annexure P-25) was not a separate order but it was merely a communication in continuation of the order passed in appeal (Annexure P-16). Despite that the petitioner started another round of litigation and filed an appeal even against the communication dated 14.03.2000 (Annexure P-25), which was dismissed vide order dated 20.10.2000 (Annexure P-27) and it was observed that the conditions laid down in the order of appeal have not been complied with and there is no provision for review of the previous order and the appeal was found not maintainable. There is no illegality in the said order.

16. The petitioner again challenged the communication dated 20.10.2000 (Annexure P-27) by way of filing a revision which was also considered and the petitioner was given another 'golden chance' by way of order dated 10.04.2001 (Annexure P-29), whereby the site in question was ordered to be restored to the petitioner subject to the condition that he would deposit all the outstanding dues within 15 days from the date of the order and would start production after completing the construction within 06 months. The petitioner did not comply with the said condition and it was specifically mentioned in the order dated 10.04.2001 (Annexure P-29) that in default of resumption order dated 08.08.1997 (Annexure P-15) passed by the Estate Officer would prevail. The petitioner had failed to show that he had complied with the said conditions as mentioned in the order dated 10.04.2001 (Annexure P-29). By way of a notice dated 24.04.2001 (Annexure P-30) issued by respondent No. 3, a demand of a sum of ₹1,38,540/- as outstanding dues for extension of the time limit for construction of the building upto 30.06.2001 and for a sum of ₹2,92,500/- towards extension fee was made from the petitioner. The said payment was though made by the petitioner as mentioned in his request letter, dated 09.05.2001 (Annexure P-31) but he again sought extension of the time for construction, vide letter dated 28.07.2001 (Annexure P-33) and the letter dated 19.11.2001 (Annexure P-34).

17. As per the order dated 04.03.2014 passed by the co-ordinate Bench, it was observed that the dispute relates to resumption of the plot on account of non-construction of the building thereon within stipulated period. It was pointed out by the applicant Smt. Ranjit Kaur that the

applicant had earlier filed an application stating that the construction had been complete and the respondent-HUDA was directed to get the latest report with regard to site in dispute. As per the order dated 03.04.2014, counsel for the respondent-HUDA after seeking instructions from Sh. Ghandhi Ram, Junior Engineer, HUDA, stated that there is no construction raised on the plot in dispute except a small '*Khoka*'. He also produced a communication receipt from the Estate Officer, HUDA, which was taken on record. Counsel for the petitioner was directed to produce the photographs of the site in question. On 08.08.2023, counsel for the petitioner has produced the photographs which are ordered to be taken on record as Annexures C-1 to C-8. A perusal of the said photographs indicate that there is no construction at the spot except a small temporary '*Khoka*'.

18. Though the petitioner has been granted various opportunities to complete the construction and start production; and the transfer of allotment on his name was subject to the various conditions but there is nothing on record that the petitioner had complied with the said conditions. As such it was rightly mentioned in the communication issued by the Estate Officer on 12.04.2002 (Annexure P-35) that neither the construction has been completed nor the production had been started. As such the conditions imposed in the order dated 10.04.2001 (Annexure P-29) were not complied with. The resumption order dated 08.08.1997 has been rightly revived.

19. In view of the aforesaid circumstances, we are of the considered opinion that the petitioner is not having any legal right in the plot in question as he is neither the original allottee nor the plot in question has been transferred on his name, nor did he comply with the conditional

order of transfer of allotment on his name. As such, the petitioner has failed to show that he has stepped into the shoes of the allottee. Despite various indulgences granted at various stages, the petitioner did not raise the construction nor did he start the production, which were the pre-conditions for setting aside the order of resumption. Non-compliance of the said conditions indicates that the order of resumption has been rightly revived. The petitioner has failed to show any legal right in the plot in question. As such, the present petition has no merits and is accordingly dismissed.

Pending miscellaneous applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

August 24, 2023
nitin

Whether Speaking	Yes
Whether Reportable	Yes