

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4940 of 2023
Decided on 14.03.2023.

Suresh Chander

...Petitioner

Versus

Haryana Shahri Vikas Pradhikaran and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. A.P. Bhandari, Advocate
for the petitioner.

VIKRAM AGGARWAL, J.

1. Challenge in the present writ petition is to the order dated 12.12.2017 (Annexure P-10), vide which plot No.184, Urban Estate, Sector-3 Hisar (hereinafter referred to as 'the plot') was resumed, order dated 29.06.2022 (Annexure P-15) vide which appeal against the resumption order was dismissed and order dated 27.12.2022 (Annexure P-17) vide which the revision preferred by the petitioner against the order passed by the Appellate Authority was dismissed.
2. The pleaded case of the petitioner is that the plot was initially allotted to one Virender Gupta vide allotment letter dated 04.08.2009 (Annexure P-1). The total tentative cost was ₹11,27,304/- @ ₹6800/- per square meter. 10% of the amount was to be initially deposited and 15% was to be deposited within 30 days. The balance 75% was to be deposited either in lump sum or in six annual installments. The plot was purchased by the petitioner and re-allotment letter dated 19.11.2009 (Annexure P-2) was issued. The petitioner was supposed to pay six annual installments of ₹1,40,913/- each w.e.f 04.08.2010 to 04.08.2015. The petitioner deposited ₹1,41,000/- on 20.10.2010. In 2011, enhanced cost @ ₹2,971.82/- per sq. meter was demanded, taking the total enhanced amount to ₹4,92,668/- which was to be paid either in lump sum or in five installments with 15% interest. On 01.08.2013, a show-cause-notice (Annexure P-6) was issued

show-cause-notice dated 08.09.2017 (Annexure P-7) under Section 17 (3) of the Haryana Urban Development Authority Act, 1977 (now HSVP Act 1977) (hereinafter referred to as '1977 Act') was issued calling upon the petitioner to pay a sum of ₹25,04,784.55/- which was pending up to 04.09.2017 along with extension fee of ₹19,687/-. It was stated that in case of failure to pay, resumption order would be passed. Another notice dated 17.11.2017 (Annexure P-8) was issued. Opportunity of hearing was granted on 30.11.2017 in which the petitioner stated that he was facing financial hardship. However, vide order dated 12.12.2017 (Annexure P-10), the order of resumption was passed. Appeal was filed, which was dismissed vide order dated 27.12.2022 (Annexure P-17). Revision petition was also dismissed vide order dated 10.08.02022.

3. The case of the petitioner is that the impugned orders are illegal and that the petitioner had not been able pay the dues on account of his financial condition. It has been averred that the petitioner is willing to deposit the dues calculated by the respondents along with penalty and extension fee, but still authorities have not considered his request.

4. We have heard the learned counsel for the petitioner and have perused the record.

5. Learned counsel has submitted that the orders passed by the authorities are illegal and arbitrary. It has been contended that it is settled law that resumption should be the last resort and where the petitioner is willing to pay all the dues, an opportunity should be granted to the petitioner so that he does not lose the plot. Learned counsel has referred to a judgment of the Hon'ble Supreme Court of India in ***Green S. Jacob and another Vs. HUDA and another, Civil Appeal No. 7890 of 2011 (arising out of SLP(C) No. 34408 of 2010), decided on 15.09.2011*** and has submitted that the said judgment covers the case of the

6. We have considered the arguments addressed by the learned counsel for the petitioner but are unable to agree with the same. The plot was initially allotted to one Virender Gupta vide allotment letter dated 04.08.2009 (Annexure P-1). The tentative price was ₹11,27,304/-. ₹110200/- was paid along with the application. As per Clause 5 of the allotment letter, ₹1,71,626/- was to be paid within 30 days and the balance 75% was to be paid either in lump sum without interest within 60 days from the issuance of the allotment letter or in six annual installments.

7. The plot was subsequently purchased by the petitioner and re-allotment letter dated 18.11.2009 (Annexure P-2) was issued. It lays down the schedule of payment as per which six annual installments of ₹140912/- each, were made. The first installment was due on 04.08.2009 and the last installment was due on 04.08.2015. As per Clause 5, in the event of breach of any condition, the plot was liable to be resumed. The petitioner, as per his own case, paid only the first installment amounting to ₹1,41,000/- on 20.10.2010 (Annexure P-3). Offer of possession was issued on 24.06.2011 vide Annexure P-4. Subsequently, notice dated 05.09.2011 (Annexure P-5) was issued for payment of enhanced compensation and five installments were made for the total amount of enhanced compensation w.e.f. 04.10.2011 to 05.09.2013.

8. Since the petitioner did not pay the outstanding amount, show-cause notice dated 01.08.2013 (Annexure P-6) was issued as per which a sum of ₹9,54,688/- was due till 22.07.2013. However, no payment was made. Subsequent notices also did not yield any result. Ultimately, the plot was resumed vide order dated 12.12.2017 (Annexure P-10). The order referred to five notices and the fact that a sum of ₹2065442.05/- was due as on 04.09.2017. The appeal was also dismissed vide order dated 29.06.2022 (Annexure P-15) primarily on the ground

was filed on 22.12.2020. It was also noticed by the Appellate Authority that only 37% of the price of the plot had been paid. The revision petition also met with the same fate vide order dated 27.12.2020 (Annexure P-17).

9. We do not find absolutely any illegality in either of the impugned orders because of the persistent default made by the petitioner. After 2010, not even a single penny was paid. The plot was ultimately resumed in 2017 and even after that the petitioner did not bother to file an appeal for three years. It appears that with the rise in prices after ten years, the petitioner woke up from his slumber and offered to pay the outstanding amount. This would not be acceptable as the petitioner was bound by the terms and conditions of the re-allotment letter dated 18.11.2009 (Annexure P-2). No doubt, resumption should be a weapon of last resort. In the present case, it has been used as a last resort only after giving sufficient opportunities to the petitioner to pay the amount due towards him. Equity cannot be stretched to an extent that it becomes inequitable for the other side. We have gone through the judgment of the Hon'ble Apex Court. In that case, many similarly situated persons had been granted relief by the Haryana Urban Development Authority. It was on account of this reason that the Hon'ble Apex Court granted the same relief to the petitioner therein. The facts of the present case being entirely different, the judgment would not come to the rescue of the petitioner.

10. In view of the aforementioned facts and circumstances, we do not find any merit in the present writ petition and the same is, therefore, dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

14.03.2023

rekha sharma

REKHA SHARMA
2023.03.18 14:13
I attest to the accuracy and
integrity of this document

Whether speaking/reasoned : *Yes/No.*
Whether reportable : *Yes/No.*