IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12835 of 2023 (O&M)
Date of Decision:05.06.2023

Charan Kaur ... Petitioner

Versus

New Mandi Township Punjab and others ... Respondents

CORAM : HON'BLE MR. JUSTICE SANDEEP MOUDGIL
HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Suvir Sidhu, Advocate
for the petitioner.

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SANDEEP MOUDGIL, J. (ORAL)

1. The petitioner has approached this Court under Article 226/227 of the Constitution of India seeking quashing of the impugned order dated 30.03. (year not mentioned) (Annexure P-10) passed by respondent No.1-Administrator, New Mandi Township, Punjab, Chandigarh whereby the shop-plot bearing No.80 situated at the grain market Garhshankar, District Hoshiarpur allotted to the petitioner has been resumed as well as the impugned order dated 10.03.2023 (Annexure P-14) passed by the learned Financial Commissioner (Appeals), Punjab, Chandigarh and order dated 23.01.2017 (Annexure P-12) passed by the Commissioner, Jalandhar Division, Jalandhar vide which the appeal and the revision petition respectively filed against the aforesaid impugned order also stand dismissed.

2. The facts as emerged from the petition are that on 23.10.1969, shop-plot No.80 situated at the grain market Garhshankar, District Hoshiarpur was purchased jointly by two brothers namely Gurdas Ram and Mohinder Singh from respondents in an open auction by giving highest bid of ₹4500/-. The allottees were issued allotment letter bearing No.7657 dated 17.12.1969 (Annexure P-3). On 28.05.1970, notice (Annexure P-4) was issued to the allottees for payment of

balance sale price in six half yearly installments including the schedule of payment and date of installments due. The ledger of account (Annexure P-5) indicates that an amount of ₹3020.14 was paid till 09.07.2013. Thereafter, one of the allottees namely Mohinder Singh had died bachelor and his brother Gurdas Ram, being the only surviving heir became the exclusive owner of the plot in question. On 25.02.2015 (Annexure P-6), Deputy General Manager, Jalandhar Circle issued a letter to respondent No.3 seeking certain information along with list of defaulters wherein name of Gurdas Ram was also mentioned. The petitioner-Charan Kaur, being widow of Hardesh Singh Basra, who was one of the legal heirs of the original allottees namely Gurdas Ram, moved an application dated 02.03.2016 (Annexure P-7) for depositing the balance amount of ₹1834/- in the shape of demand draft dated 02.03.2016 (Annexure P-8). However, respondent No.2 did not accept the balance amount tendered by the petitioner and respondent No.1 passed order (Annexure P-10) to resume the plot in question and forfeit the amount paid by the allottees vide letter bearing endorsement No.1533 dated 29.03.2016 (Annexure P-9). Thereafter, the petitioner had filed an appeal (Annexure P-11) against the impugned order of resumption of the shop-plot in question and forfeiture of the amount before the learned Commissioner, Jalandhar Division, Jalandhar, which was dismissed vide order dated 20.01.2017 (Annexure P-12). Aggrieved against the said order, a revision petition was preferred by the petitioner before the learned Financial Commissioner (Appeals), Punjab on 21.09.2017 (Annexure P-13) under Section 15 (3) of the Punjab New Townships (Development & Regulations) Act, 1960 (hereinafter referred to as the Act of 1960), which was also dismissed vide order dated 10.03.2023 (Annexure P-14). Thus, the petitioner, being one of the surviving legal heirs of one of the original allottees, has approached this Court for quashing the impugned orders (Annexures P-10, P-12 & P-14).

3. Learned counsel appearing for the petitioner, *inter alia,* contends that the petitioner was not aware of the factum of non-payment of the remaining instalment and therefore, period of limitation will not begin to run. In support of his argument, he relied upon the judgment passed by the Hon'ble Supreme Court in ***Sharanpal Kaur Anand Vs. Praduman Singh Chandhok and others (2022) 8 SCC 401.***

4. It is further contended that issuance of letter dated 25.02.2015 (Annexure P-6) by the Deputy General Manager, Jalandhar Circle would revive the limitation period as it indicates that the amounts deposited by the allottees have not been forfeited as yet and their rights to allocation of plots in question still survive. Learned counsel for the petitioner argues that the authorities below have failed to appreciate that provisions of the Act of 1960 create a charge on the property which forbids creation of third party right by the allottee until the sale consideration is paid in full. Further, the demand notice was issued in the name of Gurdas Ram, which was never communicated to the petitioner nor any speaking order was passed by the respondents while ordering forfeiture of the amount paid and resumption of the plot in question. In this regard, reliance has been placed on the judgment rendered by the Hon'ble Supreme Court in ***Legal Representative of Bhagwani Devi, Bharat Bhushan Vs. State of Rajasthan and others, Civil Appeal No.2729 of 2023 decided on 11.04.2023*** and the judgment passed by this Court in ***Yogesh Goel and sons Vs. State of Haryana and others (2020) 2 RCR (Civil) 281.***

5. We have heard learned counsel for the petitioner and have perused the pleadings of the case with his able assistance as well as the case laws cited.

6. It is admitted case of the petitioner as discernible from the pleadings in para 2 (g) & (h) that Gurdas Ram, one of the allottees, went abroad and the other allottee Mohinder Singh had already died. As such, there was no one present in the town to deposit the remaining installments in time and unfortunately, allottee-Gurdas Ram also died in the year 1988 leaving behind his two sons namely Hardesh Singh Basra and Paramjit Singh Basra. They were also settled abroad and were unaware of the allotment of the plot in question as well as about the non-payment of balance three half yearly installments. Unfortunately, Hardesh Singh Basra also died abroad in the year 2007 and his brother Paramjit Singh Basra did not visit India for a long period. Since the allottee-Gurdas Ram along with his family had settled abroad, therefore, they never received any intimation/show cause notice for payment of outstanding dues qua remaining three half yearly installments.

7. The present writ petition is filed by Charan Kaur widow of Hardesh Singh Basra through attorney-cum-authorized representative Mr. Nirmal Singh. It is no longer *res integra* that terms and conditions of the allotment letter are sacrosanct and bind both the parties. It was specifically provided in clause 6 of the allotment letter that the allottee is bound to pay six half yearly installments along with interest @5% per annum accruing from the date of issuance of said letter and in case of non-payment of any installment on or before the due date, the allottee is liable to pay a penalty which may extend upto 10% in accordance with law Rule 8 of the New Mandi Township Rules, 1960. Clause 20 of the allotment letter clearly stipulates that in case the allottee fails to observe or comply with any of the conditions of allotment, the plot in question will be resumed and his deposits shall be forfeited to the State Government. The impugned order of resumption of the plot in question (Annexure P-10) clearly indicates that 4th installment towards

the plot in question was due on 17.12.1971 and it is only after a delay of 45 years, the petitioner herein being the legal heir of the original allottee came forward to pay the balance installments. The order (Annexure P-12) passed by the Ld. Commissioner, Jalandhar Division, Jalandhar indicates that several notices were given to the allottees requesting them to deposit the balance amount and in fact, resumption order was passed on 30.03.1973 by respondent No.1. As such, the finding returned by the Ld. Commissioner, Jalandhar Division, Jalandhar that the appeal is hopelessly time barred for over 43 years without any cogent and satisfactory explanation.

8. We find that the delay of about 43 years in challenging the order of resumption has not been properly explained and the explanation offered for the said delay is not *bona fide* and plausible. The petitioner has miserably failed to put forth the compelling and extenuating circumstances, which prevented her from approaching the Ld. Commissioner, Jalandhar Division, Jalandhar for challenging the resumption order dated 30.03.1973. This Court in the judgment passed in CWP No.4798 of 1982 titled as ***Girdhari Lal Vs. State of Punjab*** on 23.03.1993 has upheld the order of resumption passed under Section 8 and 13 of the Punjab New Mandi Townships (Development and Regulation) Amendment and Validation Act, 1981 on account of failure to pay six half yearly instalments. The relevant extract of the judgment is reproduced as under:-

> *"8. The fact that Section 13 had been declared ultra vires by a Division Bench of this Court in Dharam Pal etc.'s case (supra) would hardly make any difference as the Act had been amended by Punjab Act 61 of 1981 and as a result of amendment, existing provisions of Section 12 had been omitted. Section 13 as reframed had been made operative with retrospective effect from 1.11.1966 and by the provisions of Section 8 of the Amending Act, the Legislature validated all actions taken under existing provisions of Section 13 non-with-standing any judgment etc. The*

*effect of amendment came to be noticed by a Division Bench of this Court in **The State of Punjab and others Vs. Shri Ram Kishan, 1986 PLJ 456: 1987 R.R.R. 111: 1986 R.R.R. 218** and it was observed as follows:-*

> *"There is, of course, no doubt that the amendments effected in the Act by Punjab Act No.16 of 1981, had knocked down the very basis of the judgment under appeal but the question that next has to be seen is as to whether the action of the State Government, which has impugned in the aforesaid writ petition, is in conformity with the amending provisions of Section 13 of the Act."*

9. A Division Bench of this Court in ***Ravinder Singh Vs. Union Territory, Chandigarh and others 2023 (3) RCR (Civil) 104*** has laid down the ratio that delay and laches are relevant factors for exercising jurisdiction under Article 226 of the Constitution of India. The relevant paragraphs of the judgment are reproduced as under:-

> "8. *We find that the petitioner did not pursue his case with due diligence. The conduct of the petitioner in sleeping over his rights for such a long period would disentitle him to the discretionary relief under Article 226 of the Constitution of India. It has been reiterated by the Hon'ble Supreme Court that the discretionary jurisdiction cannot be exercised in favour of such a party who approaches the Court after an inexplicably long time. The delay and laches are relevant factors for exercising jurisdiction under Article 226 of the Constitution of India. A reference in this regard can be made to **New Delhi Municipal Council vs. Pan Singh and others , (2007) 9 SCC 27, Karnataka Power Corpn. Ltd. vs. K.Thangappan, (2006)4 SCC 322, Chennai Metropolitan Water Supply and Sewerage Board vs. T. T. Murali Babu, 2014(2) S.C.T. 193 and Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati AIR 1969 SC 329**.*
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> *11. The learned counsel for the petitioner further contended that the order of resumption is an ultimate civil sanction and it must be used as a last resort. It is a trite law that if an allottee continues to violate the terms and conditions of the allotment letter, the power of resumption can be exercised by the authority concerned. Reliance in this regard is placed*

*upon **Dalip Singh and others vs. State of Haryana and others, 2019(11) SCC 422, Smitra Jain vs. Haryana Urban Development Authority and another, 2020 (13) SCC 465, Municipal Corporation Chandigarh vs. Shantikunj Investment (P) Ltd., (2006)4 SCC 109, UT Chandigarh Administration v. Amarjeet Singh, (2009)4 Supreme Court Cases 660 and Haryana State Agricultural Marketing Board v. Raj Pal (2011) 13 Supreme Court Cases 504.***

12. In ***Sukhpal Singh Kang vs. Chandigarh Administration, AIR 1999 P&H 156***, the Division Bench of this Court considered a somewhat similar issue and observed:

> *" ....the petitioners cannot avoid their liability to pay the instalments of premium and ground rent. That apart, after having taken in part in the auction with full knowledge of the terms and conditions notified by the respondents and having accepted the leases of the sites on the basis of terms and conditions incorporated in the letters of allotment without any protest, the petitioners will be deemed to have agreed to pay the amount of premium along with interest and ground rent in terms of Rules 12 and 13 of the 1973 rules. In our considered opinion, the petitioners cannot seek intervention of the court for getting themselves relieved of their obligation to pay the amount due to the respondents in accordance with the terms of contract."*

10. In view of the aforesaid facts and circumstances, we do not find any ground to interfere with the impugned orders (Annexures P-10, P-12 & P-14) in writ jurisdiction under Article 226 of the Constitution of India. Accordingly, the instant writ petition stands dismissed. There shall be no order as to costs.

11. Pending application(s), if any, shall also stand disposed of.

(SANDEEP MOUDGIL)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

June 05, 2023
Pankaj*

Whether speaking/reasoned Yes/No
Whether reportable Yes/No