

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(116)

CWP-13561-2023

Decided on : 26.07.2023

Partap Singh

.....Petitioner(s)

Versus

State of Haryana & others

.....Respondent(s)

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

Present: Mr.Divyam Singh, Advocate for the petitioner (s).

Mr.Aman Bahri, Addl.A.G., Haryana.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India is to the order dated 02.05.2023 (Annexure P-8) wherein the representations filed in respect of restoration of plot No.270, Sector 30, Pinjore was dismissed.

2. The revisional authority being the Addl.Chief Secretary, Town & Country Planning noticed that the allotment letter was dated 25.01.2015 and the due date for deposit of 5th instalment expired and the surrender had been allowed by the Estate Office on 22.03.2021, however, refund was only ordered on 08.06.2021 after more than 2 months. During the intervening period, the request for withdrawal of the surrender option had been made on 05.04.2021 (Annexure P-3).

3. Resultantly, respondent No.1 came to the conclusion that since the surrender had already been accepted on an earlier date, the request for reallocation could not be considered. Reliance was placed upon the Division Bench judgment of this Court in **Haryana Urban Development Authority Vs. M/s Zuari Industries, 2009 (3) RCR (Civil) 104**. Similarly, reliance was also placed upon the judgment passed by a Three Judge Bench of the Apex Court in **Smitra Jain Vs. Haryana Urban Development Authority & another, 2020 (13) SCC 465** that the petitioner is duty bound to pay the instalments within time.

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4. Counsel for the petitioner has tried to convince us that prior to the refund, he had already applied for re-allotment and therefore, his application should be duly considered sympathetically. It is submitted that on account of poor health, the petitioner had opted to surrender at that point of time and since the refund had not been received, he was entitled for reallotment. It is further submitted that development work was also not complete and possession had never been offered.

5. A perusal of the paperbook would go on to show that the allotment was made for a sum of Rs.37,26,000/-. The petitioner had only deposited the initial 25% and the balance amount of Rs.27,94,500/- was payable in 6 equal annual instalments of Rs.4,65,750/- each. Apparently, none of the instalments was paid as per the terms of the allotment letter. The instalments were also recoverable with interest @ 12% per annum and the plot was liable to be resumed as per Clause 11 in accordance with the provisions of Section 17 of the Haryana Urban Development Authority Act, 1977 if there was any breach of condition of the transfer. The respondents apparently also did not act on the same but processed the application for surrender as noticed which was finalized on 22.03.2021. Merely because the refund was made thereafter on 08.06.2021 of Rs.4,40,000/- the petitioner would not have any vested right to seek reallotment. His offer of surrender had been accepted and duly processed and therefore, he could not claim right of reallotment as he himself had opted to surrender the plot. The application for surrender dated 22.07.2020 would go on to show that the instalments could not be deposited due to family circumstances and he had asked for the refund immediately. In appeal, the Administrator had also noticed the fact that surrender application was accepted by the Estate Officer on 22.03.2021 and that the basic principle of offer of acceptance was complete.

6. In M/s Zuari Industries (supra) it has also been held that once the surrender had been made and the allottee had been saved from the resumption proceedings and having received 90% of the refund amount, he could not claim the return of the property.

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7. In Smitra Jain (supra) as referred by the revisional authority it was also noticed that person who is a defaulter and does not pay the instalments, would not be entitled to any relief under Articles 226/227 of the Constitution of India, while referring to the judgment in **Municipal Corporation Chandigarh Vs. Shantikunj Investment (P) Ltd., (2006) 4 SCC 109, U.T.Chandigarh Administration Vs. Amarjeet Singh (2009) 4 SCC 660 and Haryana State Agricultural Marketing Board Vs. Raj Pal, (2011) 13 SCC 504.**

8. Keeping in view the above, we are of the considered opinion that the authorities below have not acted with any illegality which would warrant any interference by this Court in extraordinary writ jurisdiction. The argument now raised that the development works were not complete and possession had never been offered was never raised in the application for surrender. Therefore, it is apparent that the surrender was only a voluntary act and on account of circumstances in which the petitioner was having at that point of time and was not interested in depositing the balance amount of 75%.

9. Resultantly, in view of the above discussion, the present writ petition stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

26.07.2023
Sailesh

Whether speaking/reasoned :	Yes	
Whether Reportable :		No