

Sr.No.108

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

**CWP No.14494 of 2023(O&M)
Date of decision:19.09.2023**

Surender Sangwan and another

.....Petitioner

versus

State of Haryana and others

....Respondents

**CORAM: Hon'ble Mr. Justice G.S.Sandhawalia
Hon'ble Ms. Justice Harpreet Kaur Jeewan**

Present: Mr. Sant Lal Barwala, Advocate, for the petitioner.

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

Mr. Deepak Sabherwal, Advocate
for HSVP.

Harpreet Kaur Jeewan, J.

1. Present writ petition has been filed under Article 226/227 of the Constitution of India praying to direct the respondents to restore back Plot No.132 GP Sector-5, Urban Estate Hansi-Hisar to the petitioners by way of quashing the impugned order dated 28.03.2023(Annexure P-5) passed by the Additional Chief Secretary to Government of Haryana, Town & Country Planning Department, Chandigarh-respondent No.1 whereby the revision petition filed by the petitioner was dismissed and the plot in question was ordered to

be put to sale by way of e-auction. Further, the petitioners have also sought a relief of issuance of direction to the respondents not to e-auction the plot in question.

2. It is a case of the petitioners that Haryana Shehri Vikas Pradhikaran (HSVP)-respondent No.2 made allotment of residential plot to Shri Randhir Singh vide allotment letter dated 15.09.2011 (Annexure P-1) for a tentative price of Rs.28,78,419/-. The petitioners purchased the said plot from the original allottee and re-allotment letter dated 22.12.2011 (Annexure P-2) was issued in his favour by respondent No.2. The petitioner deposited 25% amount of the price of the plot and thereafter, he could not pay the balance amount as per the schedule mentioned in the re-allotment letter due to circumstances which were beyond his control as he was suffering from various medical ailments in the year 2015. However, the respondent initiated the proceedings under Section 17 of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as “the Act”) and passed the resumption order dated 29.11.2017 (Annexure P-3). It is the case of the petitioner that he was not aware of the said proceedings, and as when the order of resumption came to his notice he filed an appeal before Administrator, HSVP, Hisar-respondent No.3 challenging the said resumption order. However, the said appeal was also dismissed vide order dated 05.07.2022 (Annexure P-4). The petitioner challenged the order of dismissal of the appeal by way of filing the revision petition before the Additional

Chief Secretary to Government of Haryana, Town & Country

Planning Department, Chandigarh but the same was also dismissed.

As such the impugned order of dismissal of the revision petition (Annexure P-5) has been challenged by the petitioner by way of filing the present writ petition.

3. Learned counsel for the petitioners has submitted that the order of resumption, order of dismissal of the appeal and the order of dismissal of the revision are illegal as the HSVP has framed a De-Resumption policy dated 10.01.2013 (Annexure P-6), whereby the respondent No.1 is adopting pick and choose policy while restoring the plots in similar situated circumstances. Booth No.226, Sector 16, Panchkula was restored vide order dated 11.04.2007 despite the fact that there was a huge delay in filing the appeal in the said case. The act of respondent No.1 in dismissing the revision is a discriminatory order. The authority has not considered that the circumstances were beyond the control of the petitioner, as such, he failed to deposit the balance price within time schedule as per the re-allotment letter.

3.1 Learned counsel has further submitted that petitioner No.1 has spent huge amount on the treatment of his parents who were seriously ill and copy of the medical treatment as well as death certificate of parents are annexed as Annexures P-12 and P-13 respectively. These circumstances were pleaded before the authorities but the same were not considered.

4. Keeping in view the facts and circumstances on record, there is no need to issue notice to the respondents in this case.

5. We have considered the aforesaid submissions. The allotment of the residential plot was made in the year 2011. As per condition No.5 of the allotment letter, a specific acceptance of the terms and conditions of the allotment was sought from the allottee/petitioners. The allottee was also required to make good the payment of 25% of the total tentative price by depositing a sum of Rs.4,79,605/- as he had already deposited a sum of Rs.2,40,000/- at the time of submitting the application form. As per clause 6 of the allotment letter, the allottee had an option either to deposit the remaining payment amounting to Rs.21,58,814.46/- in lumpsum without interest within a period of 60 days from the date of issue of the allotment letter or in 6 yearly installments of Rs. 3,59,802.00/-. Each installment was recoverable together with interest with balance price @12% per annum on the remaining amount. As per clause No. 7 of the allotment letter possession was to be offered within a period of 3 years from the date of allotment after completion of development work in the area. The schedule of payment of yearly installments is mentioned in para No.26 of the allotment letter.

6. The petitioner is alleged to have purchased the plot from the original allottee and respondent No.2 has issued re-allotment letter in favour of the petitioner clearly specifying the payment schedule in the re-allotment letter (Annexure P-2). Six number of installments were required to be paid w.e.f. 5.09.2012 to 05.09.2017 each amounting to Rs.3,14,983/-. As per the averments of the petitioners only 25% of the amount in question has been paid and

thereafter, no payment has been deposited either by the original allottee or by the petitioner in whose favour the subsequent allotment was made. As per re-allotment letter Annexure P-2 the petitioner submitted an application and indemnity bond for transfer of the plot in question and he has also submitted an affidavit regarding acceptance of the terms and conditions of the allotment letter, as such he was issued the re-allotment letter. The original allottee had also accepted the terms and conditions of the allotment letter as so mentioned in allotment letter Annexure P-1 and the petitioner has also accepted the terms and conditions of the allotment letter as mentioned in re-allotment letter Annexure P-2. We are of the considered opinion that the petitioner is bound by the terms and conditions of the re-allotment letter which specifically provides in Clause 5 that *in the event of the breach of any other condition of transfer the Estate Officer may resume the land in accordance with the provisions of Section 17 of the Act.* As per Clause No.4, the installments were to be paid by 10th of the month following the month in which its fall due, failing which the Estate Officer was specified to be competent to proceed to take action for imposition of penalty and resumption of plot.

7. As per the order of resumption dated 29.11.2017 (Annexure P-3) the Estate Officer-respondent No.4 has served various notices before passing the impugned order of resumption.

8. 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.

9. Resumption order dated 29.11.2017(Annexure P-3) clearly indicate that Memo No.3007 dated 21.07.2016 was served under Section 17(1) of the Act, Memo No.2766 dated 23.11.2016 was served under Section 17(2) of the Act, Memo No.3797 dated 21.03.2017 was served as Penalty Notice, Memo No.5900 dated 30.05.2017 was served under Section 17(3) of the Act and Memo No.10993 dated 13.11.2017 was served under Section 17(4) of the Act. On the basis of the said notices, the Estate Officer recorded the conclusions that allottee has made willful default in making the payment of the outstanding dues. There is nothing on record that the petitioner had appeared before the Estate Officer in pursuance to the

said notices and made any submissions with regard to the medical illness of his father as pleaded in the present writ petition.

10. We have also observed that the order of resumption was passed in November, 2017 and even thereafter, the petitioner remained silent and he challenged the said order by way of filing an appeal only on 27.04.2022; which was filed after a period of more than 4½ years. The Appellate authority has observed in the order (Annexure P-4) while dismissing the said appeal that the appellant not only failed to make installments but also did not file the appeal within a period of limitation as prescribed under Section 17 of the Act. Even at the time of filing of the appeal, the petitioner did not offer to make the payment of the dues.

11. We have further observed that after the dismissal of the appeal on 05.07.2022, the petitioner filed a revision before the Additional Chief Secretary to Government of Haryana, Town & Country Planning Department, Chandigarh but even at that stage no payment was offered to be made.

12. Present writ petition has been filed after a period of 12 years from the date of allotment and re-allotment in favour of the petitioner. Apart from depositing 25% of the initial payment, the petitioner has not deposited even a single penny against the balance payment of the plot. Despite the fact that resumption order was passed in the year 2017 even after that the petitioner has not given any genuine offer to deposit the payment alongwith interest. In such circumstances we are of the considered opinion that there is no

equity in favour of the petitioner. The petitioner has violated the terms and conditons of the allotment letter and the authorities have acted in pursuance of the provisions of Section 17 of the Act. No doubt the resumption is a last resort but before that all the statutory requirments of issuance of various notices have been followed by the respondents and the petitioner has not shown any bonafide for non-compliance of the terms and conditions of the allotment.

13. Learned counsel for the petitioner has submitted that he is entitled for parity in view of the fact that the order of the resumption passed by the authorities under the Haryana Urban Development Authorities Act, 1977 regarding Booth site No.25, Sector 11, Panchkula was set aside by this High Court and Special Leave Petition was dismissed by the Hon'ble Supreme Court whereby the said order of the High Court was challenged in Civil Appeeal No(S) 6278 of 2022 titled as Suresh Chand vs. The State of Haryana and others.

14. We have considered the said submissions. The petitioner is not entitled to parity in view of the said decision by the Hon'ble Apex Court keeping in view the different facts in the said case. In that case the appellant deposited a sum of Rs. 25 lakhs to show his bonafide for retention of the booth in question which was deposited by him whereas in the present case, no such bonafide has been shown by the petitioner by making an offer to deposit the said amount either before this Court or before the appellate authority and the revisional authority.

15. We have also considered the submissions made by learned counsel for the petitioners regarding the De-resumption policy (Annexure P-6). Annexure P-6 is a letter dated 10.01.2013 issued by the Chief Administrator, Haryana Urban Development Authority to all the Zonal Administrators, specifying various conditions which could be considered while granting the relief where there is default in payment. Whereas as per para No.6 of the said letter regarding question of delay it has been specifically directed that Authority shall not condone the delay in routine matter. The appellant must explain the delay to the satisfaction of the authorities failing which the appeal or revision is to be dismissed on the ground of delay. In the present case, the authorities while dismissing the appeal and revision have considered the explanation regarding delay in approaching the authorities which was found unsatisfactory as such the petitioner is not entitled to any relief on the ground of intra departmental instructions.

16. As such, we are of the considered opinion that the impugned order of dismissal of the revision does not suffer from any infirmity and there are no grounds made out for interference by this Court by invoking extraordinary jurisdiction. Accordingly, the present petition stands dismissed.

(G.S.Sandhawalia)
Judge

(Harpreet Kaur Jeewan)
Judge

19th September, 2023

Shivani Kaushik

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No