

Sr.No.207

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP No.20905 of 2016(O&M)  
Date of decision:21.08.2023

Paramjit Kaur

.....Petitioner

versus

State of Punjab and another

....Respondents

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

**Present:** Mr. Himanshu Chhabra, Advocate, for the petitioner.

Mr. Navdeep Chhabra, Sr.D.A.G., Punjab.

Mr. Naresh Gopal Sharma, Advocate, for respondent No.2.

**Harpreet Kaur Jeewan, J.**

1. Petitioner has filed the present Civil Writ Petition under Article 226/227 of Constitution of India seeking quashing of Resumption Order passed by way of Resolution No.208 dated 26.12.2002; Resolution No.286 dated 11.03.2016; and Cancellation order LIT/2868 dated 30.05.2016 passed by the Improvement Trust Ludhiana and further seeking the relief of restoration of the Booth to the petitioner which was allotted to her in the open auction conducted on 18.01.2000.

2. It is the case of the petitioner that Booth No.5-F measuring 22.68 sq. yards was allotted to her being the highest bidder in an open auction conducted on 18.01.2000. The bid was confirmed and allotment letter dated 31.03.2000 was issued to the petitioner and a sum of Rs.

1,26,875/- being 1/4th of the bid amount was paid by the petitioner at the time of auction vide receipt No.6875 dated 18.01.2000.

2.1 The petitioner could not deposit the remaining amount due to adverse circumstances faced by the family. However, without issuing any notice and giving any opportunity to the petitioner, the plot was resumed vide Resolution No.208 dated 26.12.2002 (Annexure P-4).

2.2 In January, 2003, the petitioner made a request to deposit the remaining amount but the said request was neither accepted nor rejected. On 10.09.2008 the petitioner made another representation to the respondent trust. Ultimately, vide Resolution No.87 dated 02.09.2011 (Annexure P-5) the Improvement Trust, Ludhiana-respondent No.2 sought an approval from Principal Secretary Local Government Punjab, Chandigarh-respondent No.1 for restoration of plot in question after permitting the petitioner to deposit the remaining amount along with interest and penalty. The petitioner also moved a representation dated 20.03.2013 (Annexure P-6) requesting both the respondents to consider for restoration of the plot in question on the basis of Resolution No.87 dated 02.09.2011. However, no decision was made by respondent No.1 on the said resolution. As such, the petitioner filed CWP No.17134 of 2013 titled as "*Paramjit Kaur vs. State of Punjab*" and another which was disposed of vide order dated 07.08.2013 (Annexure P-7) with a direction to respondent No.1 to decide the representation dated 20.03.2013 by passing a speaking order.

2.3 As per order dated 14.01.2014 passed by Secretary, Punjab Government Department of Local Bodies (Annexure P-

8), Resolution No.87 dated 02.09.2011 was considered and respondent No.2-Improvement Trust Ludhiana, was directed to decide the matter again, considering the facts and circumstances, order of the Civil Court, delay and laches and the instructions mentioned in the said order. Thereafter, Resolution No.286 dated 11.03.2016(Annexure P-9) was passed and the allotment of the Booth was cancelled which was communicated to the petitioner vide letter dated 30.05.2016(Annexure P-10). Resultantly thereof, present writ petition was filed.

3. Respondent No.1 filed reply by way of affidavit of Shri Balbir Singh, Under Secretary, Department of Local Government, Punjab whereby the allotment of the Booth to the petitioner was admitted. It was submitted that after payment of 1/4<sup>th</sup> of the cost of the Booth on 18.01.2000, the petitioner did not turn up for payment of remaining installments as per the terms and conditions of the allotment. As such, the Booth was resumed after issuing show cause notice dated 27.06.2002 and 03.12.2002. It was submitted that ample opportunity was granted to the petitioner to make the payment before passing the resumption order. It was further submitted that speaking order dated 14.01.2014 was passed, whereby Improvement Trust Ludhiana-respondent No.2 was directed to decide the matter within one month while considering all the facts and circumstances.

4. Respondent No.2 filed separate written statement whereby it was submitted that the allottee had failed to avail the remedy to file an appeal before the Secretary, Local Govt. Punjab within a period of three months. Instead of filing an appeal within time, the present writ petition

has been filed after a period of 09 years. It was further submitted that Resumption Order was passed after giving proper opportunity to the petitioner to deposit the remaining payment as per allotment letter.

5. Learned counsel for the petitioner has submitted that the petitioner had offered to deposit the remaining payment in January, 2003 which is evident from the office noting dated 12.11.2003 whereas the Trust has wrongly mentioned in the impugned Cancellation Order dated 30.05.2016 (Annexure P-10) that the offer to deposit the remaining payment was made in the year 2011. Learned counsel for the petitioner has further submitted that in order to protect the rights of petitioner, a civil suit for injunction was filed, however, the same was withdrawn as respondent No.2 gave an assurance that petitioner would be allowed to deposit the balance payment in case the civil suit is withdrawn. As such Resolution No.87 dated 02.09.2011 was passed by the Trust making recommendation for restoration of the Booth. Since the said resolution was passed by respondent No.2 which was though not approved by respondent No.1, but respondent No.2 was estopped to cancel the allotment by subsequent by passing the cancellation order dated 30.05.2016.

6. On the other hand, learned counsel for the respondent has submitted that the petitioner was granted reasonable opportunities to deposit the balance payment which was defaulted by her, despite that she did not deposit the same as such, the resumption order is justified.

7. We have considered the aforesaid submissions.

8. As per Clause 1 of the allotment letter dated 31.03.2000 (Annexure P-1) the total price of the Booth was fixed at Rs.6,25,000/-. The petitioner had two options either to deposit the entire payment within a period of 30 days or to make the payment in installments as per the schedule. It is further mentioned in the allotment letter that in case the payment is not made as per the installments on scheduled date, the petitioner would be liable to pay penal interest specifically mentioned therein for a period of 6 months. It is further mentioned in the allotment letter that in case of default of payment of installment within a period of six months of its becoming due, the Trust shall be entitled to resume the plot. Apart from the aforesaid conditions, the allottee was required to make the construction within a period of 3 years of date of allotment and was further required to execute an agreement for compliance of the aforesaid terms and conditions. It is not disputed that petitioner did not make the remaining payment as per the terms and conditions of the allotment letter except the initial payment of 25%.

9. The Resolution No.208 dated 26.12.2002 (Annexure P-4) reveals that the petitioner was issued show cause Notice No. 4868 dated 27.06.2002 and show cause Notice No.12080 dated 03.12.2002 for deposit of the balance payment but no such payment was deposited.

10. Though the petitioner has alleged that no such notice was received by her before the order of resumption was passed but we are of the considered opinion that the petitioner is a defaulter in payment of the remaining balance consideration amount as per the terms and conditions of the allotment. As per the terms and conditions of the allotment letter

(Annexure P-1), the petitioner was required to either deposit the entire payment within a period of 30 days or the payment was to be made in 6 monthly installments regarding which a schedule is alleged to be a part of allotment letter. It is not the case of the petitioner that any such payment was made after initial deposit of 25%.

10.1 As per **Sub Rule (6) of Rule 13 of The Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983**(hereinafter referred to as 'the Rule 1983') in case of default in making the due payment as per the allotment letter, it is the duty of the Executive Officer of the Trust to place the matter before the Trust for initiating the process of resumption of the property. Relevant rule reads as under:-

**“[13. Allotment and ancillary matters.** – (1) An applicant entitled to get a residential plot or a multi-storeyed house or commercial plot on the basis of a draw of lots held under rule 12 or otherwise shall be issued an allotment letter in Form 'D' (hereinafter referred to as the allotment letter) and such allotment shall be subject to the conditions specified therein.

XXXX XXXX XXXX XXXX XXXX

(6) Where an allottee fails to make the due payments as per the allotment letter, the Executive Officer of the Trust shall be required to place the matter before the Trust for taking appropriate action for resumption of the property, and the Trust shall resume the same, after giving an appropriate opportunity to the allottee, within a period of twelve months of the expiry of the date fixed for payment of last installment in the allotment letter. However, the Trust shall not resume the property in case

all the due payments, alongwith interest or penalty are received by it within such period of twelve months.”

In view of above circumstances, the respondent No.2 was within its right to initiate the process of resumption in terms of the allotment letter. As such there was a violation of terms and conditions of the allotment regarding payment of the price of the plot.

11. We have further observed that booth was resumed on account of non-payment of the allotment price as per Resumption Order dated 26.12.2002. Whereas the present Civil Writ Petition has been filed in the year 2016 with a delay of 14 years. Even the previous CWP No.17134 was filed in the year 2013 whereby the submissions were made that resolution was forwarded by the Improvement Trust to the State and even the representation dated 20.03.2013 was forwarded to the State but no decision was taken by the authorities. The said Civil Writ Petition was disposed of by giving a direction to respondent No.1 to decide the representation dated 20.03.2013. Even the representation dated 20.03.2013 was filed after a period of 11 years of passing of the resumption order. The said order would not revive the cause of action which had occurred way back in the year 2002.

12. Though the petitioner has alleged that he requested for permission to make the balance payment in January, 2003 but no document has been appended with the present writ petition to show that any genuine offer was made by the petitioner for depositing the balance payment in January, 2003.

13. We may further observe that remedy of appeal is provided under Sub Rule (8) Rule 13 of the Rules 1983 which provides that an allottee or a transferee may prefer an appeal against the order of resumption of property within a period of 60 days from the date of such resumption order. Relevant Rule reads as under:-

“[13.Allotment and ancillary matter:-

(1) xxxx.....xxxx....xxxx

(2) xxxx

xxxxxxxxxxxxxx

(8) An allottee or transferee, as the case may be, may prefer an appeal, against the orders of resumption of the property to the State Government, within a period of sixty days from the date of such resumption order, and the State Government may pass appropriate orders including restoring the said property, but subject to the payment of restoration charges, as may be considered appropriate.”

The order of resumption was passed way back in December, 2002. No such appeal was filed under Rule 13 of the said Rule; and without availing equal and efficacious remedy, the previous Civil Writ Petition was filed whereby a relief was pressed seeking a direction to respondent No.1 to decide the representation which was filed in the year, 2013.

14. The only reason for non-payment has been projected by the petitioner as adverse family circumstances but no such circumstances has been explained either in the present petition or in the representation filed before the authorities. There is a huge delay in approaching the concerned authorities as well as filing the present Civil Writ Petition and

no plausible explanation has been given for such a long delay. The Hon'ble Supreme Court of India in ***Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai; 2012 (5) SCC 157*** observed that even though a liberal and justice oriented approach is required to be adopted in exercising the powers under Section 5 of the Limitation Act and other similar statutes but the bonafide nature of explanation should be tested as to whether the explanation was satisfactory? In the said case delay of 7 years and 108 days in filing the appeal by Corporation was condoned by the High Court. However, the Hon'ble Apex Court set aside the said order observing that the explanation for delay was found unsatisfactory. Applying the ratio of the said decision to the facts of the present case, we are of the considered opinion that the petitioner had failed to justify huge delay in approaching the authorities as well as approaching this Court. As such, the petition is liable to be dismissed on the ground of delay and laches as well.

15. Impugned order dated 14.01.2014 (Annexure P-8) further transpires that Civil Suit No.300 dated 18.10.2008 was filed by the attorney of the petitioner in Civil Court, Ludhiana seeking an injunction against the respondents for cancellation of the property forcibly was dismissed on 09.02.2012. Even the appeal against the order of dismissal of the civil suit was also dismissed by Additional District Judge, Ludhiana on 18.12.2012. After dismissal of the said Civil Suit in the year, 2008 and the dismissal of the appeal in the year, 2012, instead of filing a regular second appeal against the dismissal of the appeal the petitioner had invoked the writ jurisdiction by way of filing the previous Civil Writ Petition No.17134 in the year, 2013.

16. In view of the aforesaid reasons, we are of the considered opinion that no appeal has been filed against the resumption order dated 26.12.2002. Petitioner did not approach the authorities within a reasonable time seeking permission to deposit the balance sale consideration after the resumption order was passed. Though initially respondent No.2 has recommended for restoration of the plot by way of Resolution No.87 dated 02.09.2011 on the ground that the petitioner is ready to deposit the amount along with interest and penalty and ready to withdraw the court case and the said resolution was sent to the State Government for approval but the said recommendation is contrary to the provisions of Rule 13 (8) of the Rules 1983 which provides that order of resumption could have been challenged by the allottee by way of filing an appeal and the said appeal is to be decided by the State Government. As such, after the property was resumed under Rule 13 (6) of the Rules 1983, it was not within the jurisdiction of the Trust-respondent No.1 to make a recommendation for restoration where the claim was so stale and the petitioner approached after such a long delay by giving an offer to make the payment of the balance allotment price of the plot.

17. The impugned order of resumption dated 26.12.2002 (Annexure P-4) was passed on account of non-payment of balance price of the plot. The terms and conditions of the allotment letter regarding payment of the plot was not adhered to by the petitioner. The impugned order i.e. Resolution No.286 dated 11.03.2006 is only a narration of the facts and by way of resolution the matter was placed before the Chairman of the Trust-respondent No.1. As per impugned communication (Annexure P-10), the petitioner was informed that the allotment of the

Booth has been cancelled due to non-payment of installments and the cancellation has been approved by the Government vide letter dated 17.05.2016. The reason recorded in the communication (Annexure P-10) is non-payment of installments. The petitioner could not point out any irregularity or illegality in the impugned Resolution (Annexure P-9) and the communication (Annexure P-10).

18. In view of the aforesaid reasons, we are of the considered opinion that it is not a fit case for exercising our extra ordinary writ jurisdiction and the present petition is devoid of any merit and is accordingly dismissed.

19. Pending miscellaneous application(s), if any, also stand disposed of.

(G.S.Sandhawalia)  
Judge

(Harpreet Kaur Jeewan)  
Judge

21st August, 2023  
*Shivani Kaushik*

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