

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

CWP-27518-2015

Reserved on: 23.02.2023

Date of decision: 03.03.2023

**STATE OF HARYANA THROUGH PRESCRIBED AUTHORITY CUM
SUB DIVISIONAL OFFICER (C), ROHTAK**

...Petitioner

Versus

SMT. SHANTI DEVI & OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Pradeep Parkash Chahar, DAG, Haryana

Mr. V.B. Aggarwal, Advocate
for respondents No.1 to 6.

SURESHWAR THAKUR, J.

1. The State of Haryana is aggrieved from the order drawn on 13.01.2015 by respondent No.1. The said order is appended to the petition as Annexure P-7. The State of Haryana has prayed that Annexure P-7 be quashed, and, set aside. Moreover a further consequential prayer is made for the quashing, and, setting aside, of the allotment of the petition lands, as made to the predecessor in interest of the respondents, hence through an allotment order dated 08.01.1977, and, as becomes enclosed in Annexure P-1.

2. Undisputedly, the allotment of the disputed lands was made to the predecessor in interest of the respondents one Harke Ram. The allotment as made to the said Harike Ram was through Annexure P-1. The said allotment was in pursuance to Section 15(5) of the Haryana Ceilings on Land Holding Act, 1972 (in short “the Act”), provisions whereof stands extracted hereinafter.

“15. Disposal of surplus area - (1) The surplus area acquired or vested under section 12 shall be at the disposal of the State Government.

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(5) On payment of full price or the first instalment thereof, as the case may be, the allottee shall be deemed to have become the owner of the land and the prescribed authority, where the allottee is not already in possession, shall put him in possession thereof.”

3. Moreover, it was made in pursuance to Clauses 9, 10 & 11 of the apposite scheme, provisions whereof also becomes extracted hereinafter.

“9. Mode of payment – The purchase price of the allotted land including the amount payable in respect of the building, structure, tubewell, water-course including its subsidiary works or crop thereon, determined in accordance with the provisions of sub-section (4) of Section 15 read with Section 16 of the Act together with interest at the rate of five per cent per annum shall be payable by the allottee in ten equated annual instalments. The first instalment shall be deposited by the allottee within thirty days from the date of delivery of possession.

Provided that the allottee may at any time make payment of the purchase price of balance thereof together with interest, if any, thereon in lump sum.

10. Issue of certificate and delivery of possession – (1) Omitted vide 2nd amendment, 1979.

(2) The allottee shall be issued a certificate in form U.S. 4 when he has made full payment of the purchase price together with interest, if any.

(3) Every allottee shall be bound to take possession of the land allotted to him within a period of seven days of the date when the same is offered to him by the allotment authority. The allottee shall further be bound to deposit the first instalment of the purchase price of the land within thirty days from the date of taking possession of the allotted land. If he fails to take possession of the allotted land or fails to deposit the first instalment within the specified period, the allotment shall be cancelled.

11. Recovery of instalments – (1) *It shall be the responsibility of the tehsildar concerned to collect the instalments from the allottees. A separate account shall be maintained in form U.S. 4 for every individual allottee.*

(2) *In case any instalment is not paid within a period of thirty days from the due date, the amount thereof shall become recoverable as arrears of land revenue together with interest thereon from the due date to the date of payment at the rate of ten per cent per annum.”*

4. Be that as it may, the issue with respect of non-payment of installments by the allottees, and/or, *qua* such installments being not paid, in time, by the allottee to the authority concerned, has been settled in a judgment of this Court rendered, on 16.05.2014 in LPA-2043-2013. A reading of the relevant thereof hereinafter extracted paragraphs, paragraphs whereof became extracted hereinafter reveals, that the fact of such non-payment of installments by the allottee to the authority concerned, if he has paid the first installment rather not entailing the ill-effect of the allottee being deprived of ownership rights on the allotted lands.

“A perusal of the aforesaid Clauses shows that the purchase price can be paid in instalments and that on payment of complete purchase price, the certificate will be issued to the allottee in terms of Clause 10(2) of the Scheme. However, Clause 11 fixes the responsibility of the Tehsildar to collect the instalments from the allottees. Sub-clause (2) of Clause 11 contemplates that in case any instalment is not paid within a period of thirty days from the due date, the amount thereof shall become recoverable as arrears of land revenue together with interest thereon from the due date to the date of payment at the rate of ten per cent per annum.

Thus, it is apparent that non-payment of the balance instalments does not deprive an allottee of its ownership rights. Only certificate of title of purchase can be issued on payment of full price. The unpaid price is to be recovered as arrears of land revenue. In the present case, since Puran, predecessor-in-interest of respondent Nos.5 to 8, has deposited the first instalment, he is

entitled to possession of the same in terms of sub-section (5) of Section 15 of the Act read with Clause 9 of the Scheme. The unpaid allotment price can be recovered as arrears of land revenue, but the allotment or the possession cannot be taken from the person, who has been allotted land and who has been delivered possession.

In view of the above, we do not find any patent illegality or irregularity in the order passed by the learned Single Judge, which may warrant any interference by this Court in appeal. Consequently, the present appeal is dismissed.”

5. The reason for making the above conclusion, is rested upon the factum that the allotment price is recoverable as arrears of land revenue, but if possession of the allotted lands has been assumed by the allottee, thus such possession cannot be retrieved from the allottee.

6. However, it is argued by the counsel concerned, that since undisputedly the original allottee had died on 23.01.1977, besides when his demise occurred before the issuance of allotment letter received on 16.05.1977. Therefore, though the allotment letter (supra), became received by the LRs concerned, and, whereafter they proceeded to make deposit of the initial installment, and, also assumed possession of the disputed lands. However, yet since prior to the allotment letter being communicated to the LRs of deceased original allottee Harke Ram, the latter had died. Thus, the said allotment, as, made in favour of deceased litigant becomes devoid of any efficacy, unless the LRs had promptly on receiving the allotment letter rather had asked for alteration or the substitution of their names thereons rather in place of their deceased predecessor in interest one Harke Ram, in whose favour the allotment was made.

7. However, the above made submission(s) are not accepted by this Court. The above inference is drawn from the factum, that since the Competent Authority allowed the LRs of the deceased original allottee, to tender the first

installment. Therefore, the above permission as became granted to the LR's of the deceased original allottee, does tantamount, to the Competent Authority substituting or replacing the name of the respondents in the letter of allotment, wherein, the name of deceased Harke Ram rather did evidently occur. Since the learned State counsel has also placed on record an application of 04.06.2022, seeking leave to withdraw instant petition. Therefore, after allowing the said application, the petition is permitted to be dismissed as withdrawn. Impugned orders are affirmed, and, maintained.

(SURESHWAR THAKUR)
JUDGE

03.03.2023

(KULDEEP TIWARI)
JUDGE

Ithlesh

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