

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

(119)

Neutral Citation No.2023:PHHC:100406-DB

CWP-15988-2023

Decided on : 27.07.2023

Om Parkash

.....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

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

Present:- Mr. Gaurav Mohunta, Advocate for the petitioners.

Mr. Pankaj Kundra, Advocate for

Mr. Deepak Sabherwal, Advocate for the respondent-HSVP.

G.S. Sandhawal, J.

Challenge in the present petition filed under Article 226 of the Constitution of India has been raised to the various consequential orders passed by the authorities whereby the residential House No.584, Sector-2, Hisar measuring 250 square yards of the petitioner was resumed for non-payment installments on 15.09.1988 (Annexure P-1).

2. A perusal of the writ petition would go on to show that the allotment was made way-back on 05.11.1984 (Annexure P-4) at the tentative price of ₹35,000/-. The 25% of the total tentative price was to be paid for the completion of the contract and the balance amounts were then to be paid in lump-sum without interest within 60 days or in easy installments alongwith interest which was to accrue from the date of offer of possession. As per clause 10 of the said allotment letter there was a condition of resumption, if the installments were not paid.

3. Resultantly, on account of arrears of ₹6,225/- which fell due on 05.11.1986, various notices were issued from 12.11.1986 onwards till September, 1987. Accordingly, resumption was ordered on 15.09.1988 (Annexure P-1) forfeiting the 25% deposited i.e. ₹3,500/- while noticing that none was putting in appearance for the allottee. The appeal was dismissed on 08.03.1989 (Annexure P-2) and where also the allottee had not put in appearance, though time had been given by the said authority of one month to deposit the dues. The revision petition preferred was returned on the ground that it was not maintainable and liberty was given to file a review application with the Administrator, HUDA, vide communication dated 12.07.1989 (Annexure P-16). The review was apparently dismissed. The petitioner was asked to put in appearance on 23.03.1994, vide notice dated 03.03.1994 (Annexure P-18) and in his review application (Annexure P-19) he had objected to the proposal that he was required to deposit ₹36,360/- as the balance annual installment plus enhancement in one go.

4. Vide communication dated 29.09.2003 (Annexure P-20), the Chief Administrator informed the petitioner that his review application had been listed before the Secretary to the Government, Town and Country Planning-cum-Urban Estate Department on 27.10.2003 in the form of revision petition. Apparently, the formal revision petition was then filed in the year 2022 challenging the order of the Appellate Authority which has now been decided vide the impugned order dated 23.05.2023 (Annexure P-3). The reasoning which prevailed as such with the authority is that there was a delay and, therefore, the same was dismissed and the Estate

Officer, HSVP, Hisar was directed to put the plot in question in the e-auction forthwith.

5. Counsel for the petitioner has tried to convince us that he is willing to pay ₹17 lakhs in favour of the respondents qua the plot in question and the photocopy of the demand draft has also been appended as Annexure P-24. It is, accordingly, submitted that the resumption is last resort as such and, therefore, the petitioner be permitted to deposit the amount and plot be restored in his name.

6. During the course of arguments, it transpires that after the resumption orders, respondents have already taken possession of the plot in question and it was in such circumstances the plot has been put back in the circulation by way of e-auction. The conduct of the petitioner has already been noticed at the initial stage and at the appellate stage. On account of not adhering to the terms of the allotment, the necessary show cause notices were issued to him under Section 17 (1) of the Haryana Urban Development Authority Act, 1997 and he was put to notice that *ex parte* proceeding would be taken against him, which would be clear from Annexures P-8 to P-11.

7. A perusal of the letter dated 02.02.1989 (Annexure P-14) would go on to show that even after resumption he was given an offer of ₹36,360/- against the said plot. It is apparent that he did not comply with it, which would be clear from communication dated 05.05.1989 (Annexure P-15) wherein he had held out that it was very difficult for him to deposit the whole balance cost in lump-sum. The opportunity has, thus, been given to him to get his property restored and the same was not taken

up by him and resultantly the appellate order was passed on 08.03.1989 (Annexure P-2) dismissing his appeal.

8. The Apex Court in **HUDA and another Vs. Kedar Nath, (2015) 1 SCC 186**, had set aside the order of this Court by coming to the conclusion that when there was no bonafide intention to make the balance payment and in spite of the fact that the booth had been constructed, had allowed the appeal and set aside the orders of the Courts below on account of the fact that default had been committed continuously. In **Sumitra Jain Vs. Haryana Urban Development Authority and another, (2020) 13 SCC 465**, the Apex Court held that if despite notice person does not pay the installments, then he is not entitled for relief under Article 226 or 227 of the Constitution.

9. In such circumstances, reference which has been made to the judgment of the Division Bench of this Court in **Chander Kala and another Vs. Union Territory Chandigarh through its Chief Commissioner and others, 2015 (11) RCR (Civil) 144** would be of no assistance to the counsel for the petitioner, since in the said case there was a house which had already been constructed and it was noticed that if the petitioners are evicted, they would suffer an irreparable loss. In such circumstances, the resumption order was set aside and directions were given to deposit the due amount. Therefore, it was in the peculiar facts and circumstances of the said case. The Full Bench of this Court in **Shri Ram Puri Vs. The Chief Commissioner, Chandigarh and others, 1982 PLR 388** had also held that the resumption order is an extreme power and weapon of last resort to use and it should be used with great caution.

Apparently the value of property having gone up from the paltry allotment

price of ₹35,000/- has now given the reason to the petitioner to change his mind at this belated stage after 30 years to offer ₹17 lakhs.

10. We have noticed that an opportunity was given to the petitioner at the appellate stage, which had not been availed. In such circumstances, we are of the considered opinion that keeping in view the above discussion, the present writ petition is not liable to be entertained as it is the petitioner who himself had failed to avail the lifeline which had been advanced to him at the appellate stage.

11. Resultantly, for the reasons as given in the resumption order, further upheld in appeal and revision, we do not interfere in the orders. Accordingly, the present writ petition is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

27.07.2023
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :		No