

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.25461 of 2017(O&M)
Date of Decision: April 10, 2023

V.S.Chaudhary Petitioner

Versus

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. B.S.Rana, Senior Advocate with
 Mr. S.S.Gangola, Advocate for the petitioner.

Mr. Aman Bahri, Addl. AG, Haryana.

Mr. Deepak Sabherwal, Advocate
for respondents No. 2 to 4.

HARPREET SINGH BRAR, J.

1. Petitioner has approached this Court for issuance of a writ in the nature of certiorari for quashing the order dated 13.09.2017 (Annexure P-10) passed by respondent No.1 along with order dated 19.10.2011 (Annexure P-8) passed by respondent No. 2 and has further sought quashing of the order dated 01.11.2001 (Annexure P-6) passed by respondent No.4 vide which Booth No.71, Sector 16-A, Faridabad allotted to the petitioner was resumed on account of non-payment of the instalments towards the sale consideration within the stipulated period.

2. The brief facts of the case are that Booth No. 71, Sector 16-A, Faridabad was allotted in favour of petitioner on 11.01.1996 through open auction and as per terms and conditions of the allotment letter, 75% price of the site was required to be paid by the allottee in 10 half yearly instalments along with interest at the rate of 15% and the interest was to accrue from the date of offer of possession. The petitioner failed to make payment of instalments as per the terms and conditions of the allotment letter and after giving statutory notices, the site in question was resumed by the Estate Officer, HUDA, Faridabad vide order dated 11.01.2001. The petitioner filed appeal against the resumption order and vide order dated 19.10.2011 the same was dismissed by the Administrator, HUDA, Faridabad. The revision petition filed against the order dated 19.10.2011 was also dismissed on 13.09.2017.

3. We have heard counsel for the parties and have perused the impugned orders passed by the authorities below.

4. Learned Senior counsel representing the petitioner has argued that no notice under Section 17(1), (2), (3) and (4) of the HUDA Act, 1977 (hereinafter referred to as 'the Act' for short) was ever served upon the petitioner by respondent No.1 and even the resumption order was passed at the back of the petitioner on 11.01.2001. He further argued that none of the impugned orders was ever served upon the petitioner. Therefore, the orders passed by the Appellate Authority and the Revisional Authority are illegal, arbitrary and against the principles of natural justice. Petitioner has further placed on record the death certificate of his mother dated 09.06.2016 as

Annexure P-4 to indicate that he was unable to pay the instalments due to the illness and death of his mother on 17.10.2006. Learned Senior counsel for the petitioner has argued that the extreme power of resumption and forfeiture has to be applied as a last resort and action of the statutory authorities is required to be judged on the touch stone of Article 14 of the Constitution of India on the ground that the booths of similarly situated persons which were resumed in various sectors of Urban Estate, Faridabad, have been restored by respondent No.2 in appeal filed by the allottees. The reliance is placed upon the judgment of the Hon'ble Supreme Court in the case of *Teri Oat Estates (P) Ltd. vs. State (UT of Chandigarh), 2004 (2) SCC 130* as well as the judgement of the Hon'ble Supreme Court in the case of *Jasbir Singh Bakshi vs. UT Chandigarh, 2004(10) SCC 440*. Learned Senior counsel for the petitioner further submitted that the case of the petitioner is squarely covered by the judgment of this Court in *Ajay Singh Mann vs. State of Haryana and others, 2009(1) RCR(Civil) 474*.

5. On the other hand counsel representing respondents No. 2 to 4 has argued that the site was resumed vide order dated 11.01.2001 on the ground that after making the initial payment of 25% of the total price the petitioner has not made the payment of instalments as per the terms and conditions of the allotment letter (Annexure P-1). Learned counsel further rebutted the contention of the petitioner that notices under Section 17(1) to 17(4) of the Act were not served by referring to the order of the Revisional Authority (Annexure P-10) wherein it was clearly indicated that the notices were served on 18.05.1999, 31.07.2000 and 09.10.2000 due to non-payment

of the instalments on the same address at which allotment letter was admittedly received. Therefore, the contention of the petitioner that no notice was served before passing of the resumption order is factually incorrect. Learned counsel for respondents No. 2 to 4 has relied upon ***SLP(Civil) No. 12968 of 2006*** titled as ***Municipal Corporation Chandigarh and others vs. Vipin Kumar Jain*** and sought dismissal of the writ petition.

6. After considering the submissions made by learned counsel for the parties, we do not find any ground to interfere in the impugned orders.

Undisputedly, in the present case the petitioner, after paying 25% of the total sale consideration, has failed to deposit even a single instalment within the stipulated time as required under the terms and conditions of the allotment letter (Annexure P-1). In clause 22 of the allotment letter it was specifically provided that no separate notice will be sent for the payment of instalments and clause 8 of the allotment letter further provided that if the allottee fails to make the payment of the instalments by the 10th of the month following the month in which it falls due, the Estate Officer shall proceed to take action for imposition of the penalty and resume the plot in accordance with the provisions of Section 17 of the Act.

7. A perusal of the record further reveals that the commercial site in question was resumed on 11.01.2001 and the appeal against the resumption order was filed in the year 2011 after a delay of more than 9 years. Further, the feeble attempt made by the petitioner to plead a ground of hardship for not paying the instalments in time, cannot be approved under

the facts and circumstances of the case. The death certificate (Annexure P-4) would indicate that the mother of the petitioner died on 17.10.2006 and it was registered on 09.06.2016. After the death of his mother, the petitioner kept quiet for more than 5 years and no justification is forthcoming why he challenged the order of resumption dated 01.11.2001 in the year 2011. The Hon'ble Supreme Court in ***Teri Oat Estates (P) Ltd. (supra)*** has observed in para 57 as under:-

“ We may, however, hasten to add that we do not intend to lay down a law that the statutory right conferring the right of the respondent should never be resorted to. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt whatsoever that if the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then Section 8-A can be taken recourse to.”

8. The Hon'ble Supreme Court discussed the doctrine of proportionality in the above decision and has concluded that every case has to be examined on its own facts. The whole edifice of the case of the petitioner is based upon the principle that power of resumption is ultimate civil sanction and it must be used as a weapon of last resort but this Court cannot be oblivious of the fact that the petitioner has purchased the commercial site in open auction on 11.01.1996 and took possession on 11.03.1996 and further raised construction over it and utilised the premises without making the balance payment. After 1996 the petitioner remained a mute spectator till 2011 and enjoyed the fruits of the allotment of the booth

site. Thus, the present case is not the one, where the extreme step of resumption of the site ought not to have been resorted to. The facts of the present case are clearly distinguishable from the decisions relied upon by counsel for the petitioner.

9. The Hon'ble Supreme Court in somewhat similar case in ***Dalip Singh and others vs. State of Haryana and others, 2019(11) SCC 422*** examined the scope and power of resumption on account of breach of any term and condition of the allotment letter and observed as under in para 19:-

“ All the judgments relied upon by the appellants are distinguishable on facts. Even assuming that for some other allottees, order of resumption of plot had been quashed/cancelled, the appellants cannot claim equality of treatment. Article 14 is a positive concept and cannot be enforced by a citizen in a negative manner.”

In State of Orissa v. Mamata Mohanty, it was held as under SCC p.458, para 56)

56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. [Vide State (UT of Chandigarh) v. Jagjit Singh ; Yogesh Kumar v. State (NCT of Delhi); Anand Buttons Ltd. V. State of Haryana; K.K.Bhatia v. State of M.P.; Krishan Bhatt vs. State of J & K; State of Bihar v. Upendra Narayan Singh; Union of India vs. Kartick Chandra Mondal.]”

10. The Hon'ble Supreme Court in ***Smitra Jain vs. Haryana Urban Development Authority and another, 2020 (13) SCC 465*** has laid down as

under:-

*“..... the Estate Officer did not commit any illegality by resuming the Booth Site because the petitioner had persistently failed to pay the instalments of price despite the notices issued to her under Sections 17(1) (2) and (3). A ranked defaulter like the petitioner is not entitled to relief under Articles 226 or 227 of the Constitution. This is also the ratio of the judgment of this Court in **Municipal Corporation Chandigarh vs. Shantikunj Investment (P) Ltd. (2006) 4 SCC 109, UT Chandigarh Administration v. Amarjeet Singh (supra) and Haryana State Agricultural Marketing Board v. Raj Pal (supra).**”*

In Sukhpal Singh Kang’s case, the Punjab and Haryana High Court considered a somewhat similar issue and observed:

“the petitioners cannot avoid their liability to pay the instalments of premium and ground rent. That apart, after having taken in part in the auction with full knowledge of the terms and conditions notified by the respondents and having accepted the leases of the sites on the basis of terms and conditions incorporated in the letters of allotment without any protest, the petitioners will be deemed to have agreed to pay the amount of premium along with interest and ground rent in terms of Rules 12 and 13 of the 1973 rules. In our considered opinion, the petitioners cannot seek intervention of the court for getting themselves relieved of their obligation to pay the amount due to the respondents in accordance with the terms of contract.”

11. There is another noticeable facet which has drawn the attention of this Court which is required to be dealt with by this Court while deciding

the present writ petition, which is:-

“Whether parties to the concluded contract can be allowed to seek deviation/modification of the settled terms and conditions?”

12. Admittedly, the Haryana Urban Development Authority had made an offer to sell the commercial booth site through auction. The offer made by HUDA was accepted by the petitioner by participating in the auction and tendering his bid for the offered site. His bid was accepted and allotment letter was issued on 11.01.1996 and thereafter the petitioner made the payment of 25% of the total price and also took the possession on 11.03.1996. Thus, the concluded contract came into existence between the parties and both the parties are bound by the terms and conditions of the contract. The acceptance of the petitioner is absolute and unqualified within the meaning of Section 7(1) of the Contract Act, 1872 when he acted upon the terms and conditions of the allotment letter. In this case both the parties have arrived at a concluded contract and acted on the basis of those terms and conditions for a long period of time and, therefore, the petitioner cannot be allowed to seek any modification of the terms and conditions of the allotment. The Estate Officer (respondent No.4) has not committed any illegality by ordering the resumption of the booth site on account of non-payment of pending instalments towards the sale price despite the fact that the possession of the site was taken itself in the year 1996.

13. The Hon’ble Supreme Court has further examined the issue in

Assistant Excise Commissioner and others vs. Issac Peter and others, JT

1994(2) SC 140 and has held:

“ We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts. It bears repetition to say that the State does not guarantee profit to the licensees in such contracts. There is no warranty against incurring losses. It is a business for the licensees. Whether they make profit or incur loss is no concern of the State. In law, it is entitled to its money under the contract.”

14. While dealing with a similar issue in ***Hari Shankar and others vs. Deputy Excise and Taxation Commissioner, AIR 1975 SC 1121***, a Constitution Bench of the Hon’ble Supreme Court has held:

“ On the preliminary objection it was finally urged by the appellants that the objection was misconceived because there was, in fact, no contract between the parties and therefore they were not attempting to enforce any contractual rights or to wriggle out of contractual obligations. The short answer to this contention is that the bids given by the appellants constitute offers and upon their acceptance by the Government a binding agreement came into existence between the parties. The

conditions of auction become the terms of the contract and it is on those terms that licences are granted to the successful bidders in Form L. 14-A of the Rules”.

15. Keeping in view the above mentioned law laid down by the Hon’ble Supreme Court of India we hold that the terms and conditions of the auction and allotment letter are binding on both the parties. Thus, it is not open to the petitioner, to have agitated resumption against the terms and conditions of the auction and allotment letter accepted by him.

16. The Hon’ble Supreme Court of India has laid down the ratio in ***Panna Lal and others v. State of Rajasthan and others, 1975 (2) SCC 633*** that a person who enters into a contract with the State and its agencies cannot resile from the express obligation undertaken by him. Their lordships of the Hon’ble Supreme Court held:-

“ The licenses in the present case are contracts between the parties. The licensees voluntarily accepted the contracts. They fully exploited to their advantage the contracts to the exclusion of others. The High Court rightly said that it was not open to the appellants to resile from the contracts on the ground that the terms of payment were onerous. The reason given by the High Court were that the licensees accepted the licence by excluding their competitors and it would not be open to the licensees to challenge the terms either on the ground of inconvenient consequences of terms or of harshness of terms.”

17. In view of the settled law the petitioner who has entered into a contract for buying a commercial site by voluntarily participating in the

auction, is bound by the terms and conditions of the allotment letter.

18. In the light of the aforesaid principles, if we examine the impugned orders in the facts and circumstances of the case, we find that the action of respondents No. 2 to 4 in passing the impugned orders is neither illegal, irrational or suffer from procedural impropriety nor is it a case of exceeding the jurisdiction. In our considered opinion the impugned orders do not require any interference by this Court in the writ jurisdiction and the same stands affirmed.

19. In view of the above discussion, finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

April 10, 2023
sunita

Whether Reasoned/Speaking : Yes/No

Whether Reportable : Yes/No