IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(209) **CM-13546-CWP-2022 in/and**
CWP-29965-2017
Decided on: 13.07.2023

Seema Rani ....Petitioner

Versus

State of Haryana & others .... Respondents

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

Present: Mr. Prateek Rathee, Advocate, for the petitioner.

Mr. Aman Bahri, Addl., AG, Haryana, for respondent No.1.

Ms.Vasundhra Asija, Advocate for
Mr.P.S.Chauhan, Advocate, for respondent Nos.2 to 4.

*****

G.S. Sandhawalia, J. :-

1. Challenge in the present writ petition, filed under Article 226 of the Constitution of India is to the order dated 30.07.2004 (Annexure P-23) which was passed by respondent No.1 wherein the revision filed arising out of the consequential proceedings has been dismissed and the said respondent did not exercise the revisional powers in favour of the petitioner. The conclusion arrived at rightly was that since resumption order had become final way back on 28.12.1992, there was no scope for interference in the order passed by the Administrator, HUDA dated 16.10.2003 regarding booth No.24, Sector 7, Panchkula.

2. It is a matter of fact that the booth in question was sealed on 08.01.2017. Since the said action is also subject matter of challenge, the writ petition was thereafter filed only on 10.12.2017 and there was a unexplained delay of 14 years in challenging the last order passed by the authority. Resultantly, the respondents have raised serious objections on the ground of limitation also that the writ petition filed after 14 years is not

SAILESH RANJAN
2023.07.20 11:37
I attest to the integrity/authenticity
of this document/order

maintainable and the same is hopelessly time-barred which in our considered opinion, cannot be brushed aside.

3. However, counsel for the petitioner has relied upon the interim observations made on 02.02.2018 that the booth can be restored in favour of the petitioner subject to her payment of penal interest/penalty and other charges though the writ petition suffers from unexplained and inordinate delay and laches.

4. A perusal of the paperbook would go on to show one Varinder Kumar was allotted the booth in question on 21.08.1986 (Annexure P-1). The husband of the petitioner had taken permission for re-allotment on 20.03.1989 (Annexure P-6) and was liable to pay the balance 6 instalments of Rs.2,04,000/- along with interest since the earlier allottee had deposited the 4 instalments in question. Various notices were issued under Section 17 of the Haryana Urban Development Authority Act, 1977 (for short, the 'Act') for the outstanding amounts between 1989-91 and as per the last notice dated 24.11.1992, a sum of Rs.2,23,990/- was due. Keeping in view the fact that not even a single penny had been deposited against the outstanding dues after 03.01.1989, the booth was resumed on 28.12.1992 (Annexure P-8) and the forfeiture of Rs.42,445/- already deposited was also ordered by the Estate Officer.

5. The appeal was dismissed by the Administrator on 27.04.1994 (Annexure P-9) by relying upon condition No.5 of the allotment letter that in default of payment of instalments, interest could be levied which was recoverable and resumption could be effected. In revision, the petitioner also met no success and the same was dismissed on 26.09.1995 (Annexure P-10) on the ground that there was no jurisdictional error and the principles of natural justice had been followed. A complaint

SAILESH RANJAN
2023.07.20 11:37
I attest to the integrity/authenticity
of this document/order

was also filed before the District Consumer Disputes Redressal Forum, Panchkula by the petitioner and her husband that they were ready and willing to deposit the entire amount along with interest and therefore, they be asked not to vacate the booth site. The same was dismissed on 23.10.2002 (Annexure P-12). A suit was filed for permanent injunction wherein status quo was also granted in their favour on 19.06.2003.

6. The factum of delay has now been sought to be explained that a writ petition was prepared in the year 2004 but was never listed and the drafted petition is appended as Annexure P-25. Counsel for the petitioner has thus submitted that the resumption orders should be interfered with and the same should be set aside subject to payment of penal interest.

7. Eventually the Civil Suit was also dismissed on 11.04.2008 (Annexure P-24) that no evidence was led and it was brought to the notice of the Civil Court that notice dated 06.06.2003 had also been issued under Section 18 of the Act which is contained in Chapter-IV of the said Act where there is bar to retain premises without the permission of the authorities of the building constructed therein. The same is in pursuance of the fact that the possession is unauthorized which is apparently there since the resumption order has become final.

8. We are of the considered opinion that the relief claimed cannot be granted as apparently the petitioner herself is at fault as firstly, as no stone has been left unturned to retain possession. A writ petition alleged to be prepared but never pursued, a complaint before the Consumer Court, a Civil Suit for permanent injunction are the methodology adopted apart from the challenge now raised to the eviction proceedings under Section 18 of the Act. The subsequent proceedings are only consequential proceedings in order to secure possession of the

SAILESH RANJAN
2023.07.20 11:37
I attest to the integrity/authenticity
of this document/order

property by the authorities under Section 18 of the Act, as noticed above. The petitioner has resorted to all available means by filing a suit which was not maintainable in view of the provisions of Section 50 of the Act since there was no jurisdictional error which would permit the Civil Court to interefere. The same reads as under:

> "50. Finality of orders and bar of jurisdiction of civil courts :- (1) Save as otherwise expressly provided in the Act, every order passed or direction issued by the State Government or order passed or notice issued by the [Pradhikaran] or its officer under this Act shall be final and shall not be questioned in any suit or other legal proceedings.
>
> (2) No civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter the cognizance of which can be taken and disposed of by any [Pradhikaran] empowered by this Act or the rules or regulation made thereunder."

9. As noticed, injunction was granted on the basis of possession on 19.06.2003 and continued till 11.04.2008. It is also the case of the respondents that the property was leased out and the petitioner was earning rent and therefore, it cannot be said that the reasons for non payment of arrears were justified in any manner. Vide order dated 30.07.2004 (Annexure P-23), the revisional authority has only upheld the order by rightly taking into account the fact that resumption order having attained finality, the same could not be reviewed in the consequential proceedings initiated under Section 18 of the Act.

10. A three Judge Bench of the Apex Court in **HUDA & another Vs. Kedar Nath, 2015 (1) SCC 186** allowed the appeal of the Authority and set aside the orders of the Courts below whereby indulgence had been granted and resumption orders had been set aside which was on account of

SAILESH RANJAN
2023.07.20 11:37
I attest to the integrity/authenticity
of this document/order

non-payment of the instalments. The relief which had been granted to the allottee was that interest @ 10% could only be charged on the outstanding amount and not @ 18% compounded, as demanded. In the said case also, construction had been raised in the booth in question and it was noticed that there was no bona fide intention to pay since there was continuous default and there was illegal construction of the booth without taking permission from the concerned authority. The relevant part of the judgment reads as under:

> "20. The above facts clearly show that the respondent is not having bona fide intention and is merely trying to remain in possession without making payment of the bid amount, which he had agreed to pay. It is not in dispute that the appellant authority is entitled to take possession in the event of non-payment of the entire price of the booth, which the respondent, as an auction purchaser, had agreed to pay. Thus, the respondent has been committing default continuously. The respondent has also put up illegal construction on the booth/land allotted to him without taking any permission from the concerned authority.
>
> 21. Looking at the fact that the appellant is entitled to resume possession of the booth on account of non-payment of the price, but still the respondent is in possession of the same.
>
> 22. Though sufficient opportunities were given to the respondent to make payment of the price, the respondent has not paid the same. Hence, in our opinion, the Courts below had become more lenient than necessary towards the respondent by permitting him to retain possession and make payment along with 10% interest on the amount due and payable by him.
>
> 23. Upon looking at the overall facts, in our opinion, it would not be proper to grant any further accommodation to the respondent, who has admittedly not paid the amount due and therefore, we allow the appeal by quashing and setting aside the orders passed by the courts below. It would be open to the appellant to take possession of the booth in question in accordance with law.
>
> 24. The appeal is, accordingly, allowed with no order as to costs."

SAILESH RANJAN
2023.07.20 11:37
I attest to the integrity/authenticity
of this document/order

The above observations would be directly relevant to the facts and circumstances of the present case.

11. Resultantly, we do not find any ground to interefere in the orders passed by the authorities below which do not suffer from any legal infirmity. The present writ petition is dismissed, with the direction that any principal amount which has been deposited subsequent to the resumption orders, without any permission, be refunded without any benefit of interest which is the only relief that can be given to the petitioner in the present proceedings. The needful be done within 2 months from receipt of copy of the order.

12. With the above-said observations, the present writ petition is dismissed. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

13.07.2023
sailesh

Whether speaking/reasoned : Yes
Whether Reportable : No

SAILESH RANJAN
2023.07.20 11:37
I attest to the integrity/authenticity
of this document/order