

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(115)

CWP-17713-2023

Decided on : 17.08.2023

Sanjay Kumar

.....Petitioner(s)

Versus

State of Haryana & others

.....Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN

Present: Mr.Gaurav Bakshi, Advocate for the petitioner (s).

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India is to the order dated 11.01.2023 (Annexure P-4).

2. Vide the said order, the revision petition filed by the petitioner had been dismissed on the ground that the petitioner, after 7 years of his allotment, failed to deposit the amount which were due against the plot in question and the appeal was also time-barred before the Appellate Authority having been filed after more than 3 years. It was noticed that only 25% of the price of the plot had been paid and there was a default at every stage. Accordingly, keeping in view the law laid down in **Smitra Jain Vs. Haryana Urban Development Authority & another, 2020 (13) SCC 465**, the revision petition was dismissed.

3. Counsel has tried to convince us on the ground that in similar circumstances, revision was allowed regarding the commercial property whereas the present issue pertains to residential plot No.1297, Sector 19 P-1, Sirsa.

4. The said argument also apparently is without any basis. A perusal of the order dated 11.04.2017 (Annexure P-5) relied upon by the counsel would go on to show that in the said case, the Revisional Authority had noticed that refund had not been made to the petitioner till the year 2016 nor possession of the booth had been taken. Keeping in view the mitigating factors direction was made that a penalty of Rs.3,50,000/- be imposed and all the outstandings were to be paid along with interest as per HUDA policy and the booth was thereafter restored.

5. In the present case, it is to be noticed that the resumption order dated 25.03.2018 which has not been placed on record was subject matter of appeal before the Appellate Authority after a period of 4 years since the appeal

was instituted only on 03.03.2022. It is to be noticed that as per the re-allotment letter dated 15.11.2011, petitioner was to pay a sum of Rs.62,278/- + interest in easy six monthly instalments. Apparently, the same were not paid and the said period also expired. Notice under Section 17 of Haryana Urban Development Authority Act, 1977 were given and resultantly, resumption order was passed which was upheld by the Appellate Authority on the ground of delay.

6. In Smitra Jain (supra), the Apex Court, while placing reliance upon the judgments of the Apex Court in **Municipal Corporation Chandigarh & others Vs. M/s Shantikunj Investment Pvt. Ltd. & others, (2006) 14 SCC 109**, **U.T. Chandigarh Administration Vs. Amarjeet Singh, (2009) 4 SCC 660** and **Haryana State Agricultural Marketing Board Vs. Raj Pal, (2011) 13 SCC 504**, held that a ranked defaulter is not entitled for the relief under Article 226/227 of the Constitution of India.

7. In **HUDA & another Vs. Kedar Nath, 2015 (1) SCC 186**, the Apex Court set aside the order of this Court wherein the judgment and decree of the Civil Court had been upheld wherein the resumption of booth had been set aside though there were several irregularities in making payment of the amount. In spite of the fact that the booth was set up, the Apex Court set aside the judgment of this Court and held that a person who is in default continuously cannot be allowed to continue in possession and the leniency shown by the Courts by permitting to retain possession by making payment along with 10% interest was not permissible. Relevant para 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.”

8. Resultantly, we do not find any ground to interfere and the present writ petition is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

17.08.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No