

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24360-2022 (O&M)
Date of Decision: 07.08.2023

RAJESH GARG AND ANOTHER

....PETITIONERS

VS.

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CWP-12376-2022 (O&M)

RAJESH GARG

....PETITIONER

VS.

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CWP-12129-2022 (O&M)

RAJESH GARG AND ANOTHER

....PETITIONERS

VS.

STATE OF HARYANA AND OTHERS

...RESPONDENTS

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

Present: Mr. Shalender Mohan, Advocate,
for the petitioners.

Mr. Aman Bahri, Addl. A.G., Haryana.

Mr. Deepak Sabherwal, Advocate,
for the HSVP.

HARPREET KAUR JEEWAN, J.

1. A common question for decision is involved in the aforesaid
three writ petitions *as to whether the impugned orders, Annexure P-6*

passed by the Additional Chief Secretary to the Government of Haryana, Town and Country Planning Department, Chandigarh (respondent No. 2), allowing the revision petition of the Haryana Shehri Vikas Pradhikaran through District Attorney, HSVP, Panchkula (respondent No. 5), thereby setting aside the order passed in appeal and restoring the resumption order is justified or not? As such, these petitions, i.e. CWPs- 24360, 12376 and 12129 of 2022, are taken up together for discussion and disposal, vide this common judgment.

Facts of CWP-24360-2022

2. As per the facts of the lead case, i.e. CWP-24360-2022, Plot No. 2772-P, Sector 20, Part IV, Sirsa, was allotted to the initial allottee Parveen on 16.02.2009, which was purchased by the petitioners and was re-allotted to the petitioners on 12.07.2010 (Annexure P-1). The petitioners deposited the installment of ₹9,17,000/- and thereafter, could not deposit the further installment as Rajesh Garg (petitioner No. 1) met with an accident on 28.07.2015 and suffered various injuries on his leg, neck, shoulder and nervous system and therefore, he was under treatment for a long time. Even father of petitioner No. 1 was ill and suffered heart attack in the month of January 2017. He was also operated upon and was under medical treatment for a long time. The wife of petitioner No. 1 namely, Upasana Garg, was also being treated for illness of fistula and T.B. for a period of 4 to 5 years and she was operated upon multiple times in the hospitals of Ganga Ram and Fortis.

2.1 Whereas, Ashwani Mittal (petitioner No. 2) was residing out of India and the plot in question was allotted on the name of his father namely, Santosh Kumar. Santosh Kumar was also seriously ill since 2012

and therefore expired in 2014. Petitioner No. 2 came back to India from Hong Kong and came to know regarding the allotment of plot in question and also the fact that the same has been resumed vide order dated 13.02.2018 (Annexure P-2).

2.2. The order of resumption dated 13.02.2018 (Annexure P-2) was neither conveyed to the petitioners nor they were served upon before passing the said order. In November 2021, the petitioners came to know about the order of resumption at the time when they wanted to deposit the remaining amount. After arranging the copy of the order of resumption, it came to the notice of the petitioners that a notice under Section 17 (1) of the Haryana Urban Development Authority Act, 1977 (for short 'the Act') was issued on 12.07.2016 and notice under Section 17 (2) of the Act was also issued on 15.09.2016 and thereafter, notice under Section 17 regarding payment of penalty was issued on 09.03.2017. Thereafter, notice under Section 17 (3) was issued on 20.06.2017 and final notice for hearing under Section 17 (4) was issued on 05.09.2017. None of the aforesaid notices have been received by the petitioners nor these notices were conveyed to the petitioners. Petitioner No. 1 was under treatment since 28.07.2015, his father and wife were also under treatment. Whereas, petitioner No. 2 was out of India and his father was seriously ill.

2.3 The petitioners challenged the order of resumption by way of filing an appeal, which was allowed, vide order dated 28.04.2022 (Annexure P-4), passed by the Administrator, HSVP, Hisar (respondent No. 3) by considering that the appellants are *bona fide* and serious about making payments. The plot in question was ordered to be restored at prevailing reserve price to the same category of the plot in vicinity.

2.4 The order passed in appeal was impugned by way of filing a revision petition under Section 17 (8) & 30 (2) of the Act by the Haryana Shehri Vikas Pradhikaran through District Attorney, HSVP, Panchkula (respondent No. 5), which was allowed, vide order dated 23.08.2022 (Annexure P-6).

Facts of CWP-12376-2022

3. The petitioner Rajesh Garg was re-allotted a Plot No. 2767-P, measuring 10 marla, Sector 20, Part IIIrd, Sirsa, on 24.06.2010 (Annexure P-1), whereas the original allotment was made to Smt. Krishna Devi on 15.09.2008. The said plot was also resumed on account of non-payment of installments, vide order dated 16.02.2018 (Annexure P-2) and the appeal filed by the petitioner Rajesh Garg, was allowed, vide order dated 14.12.2021 (Annexure P-4), whereas the order passed in appeal was set aside by the revisional authority, vide order dated 04.05.2022 (Annexure P-6) and order of resumption was revived.

Facts of CWP-12129-2022

4. Both the petitioners, Rajesh Garg and Ashwani Mittal, got re-allotted a Plot No. 2691, measuring 10 marla, Sector 20, Part IIIrd, Sirsa, on 13.08.2010 (Annexure P-1), whereas the original allotment was made to Sh. Rajinder Kumar on 15.09.2008. The said plot was also resumed on account of non-payment of installments, vide order dated 13.02.2018 (Annexure P-2) and the appeal filed by petitioner No. 1 Rajesh Garg was allowed, vide order dated 14.12.2021 (Annexure P-4), whereas the order passed in appeal was set aside by the revisional authority, vide order dated 04.05.2022 (Annexure P-6) and order of resumption was revived.

Arguments on behalf of the petitioners:-

5. Learned counsel for the petitioners has submitted in the lead case that the petitioners had deposited a sum of ₹9,17,000/- as payment of installment but he could not deposit the remaining installments due to the circumstances which were beyond their control, on account of the medical issues of petitioner No. 1, his wife and his father. Whereas, the father of petitioner No. 2 was also seriously ill since the year 2012 who unfortunately expired in August 2014 and petitioner No. 2 was not present in India. It was submitted that while restoring the order of resumption, respondent No. 2 has neither considered nor discussed the unavoidable extreme circumstances pointed out by the petitioners. The order is totally arbitrary and discriminatory as relief of setting aside the resumption order was granted to another allottee of Plot No. 1117 of Sector 19, Part-I, Sirsa vide order dated 16.03.2022 (Annexure P-7). This fact was not considered by respondent No. 2 that various notices alleged to have been issued before passing the order of resumption were never received by the petitioners. However, the petitioners are ready to deposit all the balance payment of installments.

6. Learned counsel for the petitioners has further submitted that the guidelines, dated 10.01.2013 (Annexure P-14), issued by the Chief Administrator, Haryana Urban Development Authority, for deciding the appeals and revisions under Section 17 of the Act were not followed by respondent No. 2, which provides that the authorities may consider providing a relief where the allottee has spent major financial expenditure on treatment of serious diseases of the family, rendering him unable to discharge the liabilities of such payments which were due.

Arguments on behalf of the Respondents:-

7. On the other hand, learned counsel appearing on behalf of the HSVP has tried to justify the order of the revisional authority by submitting that the appeal was not filed within the limitation period as such could not have been accepted. The resumption order was passed on 13.02.2018 (Annexure P-2) whereas the appeal was filed after a period of more than three years, i.e. on 07.12.2021 (Annexure P-3). It has further been submitted that after making payment of 25%, the petitioners did not make any payment, as such the revision petition was rightly allowed.

Findings:-

8. We have considered the aforesaid submissions.

9. As per the re-allotment letter dated 12.07.2010 (Annexure P-1), the petitioners were required to make the payment of due installments w.e.f. 15.09.2010 to 15.09.2014 as per condition No. 1 of the re-allotment letter. As per Clause No. 4, in case any payment is not made before the due date, then additional interest was to be added as per prevalent policy for extended period and thereafter, resumption proceedings could be initiated in accordance with the provisions of Section 17 of the Act. Clause No. 5 of the re-allotment letter also provided that in the event of breach of any other condition of transfer, the Estate Officer was also authorized to initiate resumption proceedings, in accordance with the provisions of Section 17 of the Act.

10. No doubt, the petitioners did not pay any installments as per the schedule fixed in the re-allotment letter, but it is categorically alleged that no notice or any other intimation was received before the order of resumption dated 13.02.2018 (Annexure P-2) was passed, on account of

non-payment of a sum of ₹28,95,276/-. Though, it is mentioned in the resumption order, that additional opportunity to pay the amount was given to the re-allottee, vide memo dated 30.11.2017 but he neither turned up for hearing nor deposited the balance amount but the mode of service of the said notice is not mentioned in the resumption order. Whereas the authorities were required to afford effective opportunity by calling the petitioners for making the payment of the default amount before resorting to the extreme order of resumption.

11. Section 17 (1) of the Act provides if any transferee makes default in the payment of any consideration amount or any installment, the Estate Officer may by notice in writing call upon the transferee to show cause as to why a penalty equal to 10% the dues may not be imposed. Sub-Section (2) of Section 17 of the Act provides that after giving the reasonable opportunity of hearing, the Estate Officer may impose the penalty; whereas sub-Section (3) of Section 17 of the Act provides that where the transferee fails to pay the amount due together with the penalty as imposed under Sub-Section (2) of Section 17 of the Act or commits a breach of any other condition of sale etc. a show cause notice for resumption of the land or the building can be issued. Sub-Section (4) of Section 17 of the Act provides that after considering the cause, if any, in pursuance of the notice issued under sub-section (3) and considering the evidence, if any, the Estate Officer may pass an order of resumption after recording reasons.

12. The resumption order does not indicate that any notice was served upon the petitioners under Section 17 (2) of the Act calling for the petitioners to make the payment of penalty alongwith the due amount. The

said order does not indicate that any time was granted for making the payment under Section 17 (2) of the Act or that a show cause notice for resumption under Section 17 (3) of the Act was served upon the petitioners.

13. There is categorical assertion of the petitioners that the father of petitioner No. 2, who was one of the re-allottees was sick and ultimately died in the year 2014. The order of resumption, dated 13.02.2018 (Annexure P-2) was passed at the time when Santosh Kumar, the father of petitioner No. 2 had already expired in August 2014. The fact that resumption order was passed in the year 2018 and the memo dated 30.11.2017 is alleged to have been served upon the petitioners clearly indicates that the said memo was allegedly issued at the time when one of the re-allottee, i.e. father of petitioner No. 2 had already expired. As such, the impugned order was passed at the time when one of the re-allottee had already expired. These facts clearly indicate that no notice was served upon the petitioners before passing the order of resumption.

14. Even otherwise, the petitioners have attached voluminous medical record (Annexures P-11 to P-13) which indicates that petitioner No. 1 and his family members were suffering from various medical issues during the said period. Annexure P-11 is the medical record of petitioner No. 1, dated 08.01.2018; Annexure P-12 is the medical record of Tersam Lal Garg, i.e. the father of petitioner No. 1, which also pertains to the relevant period and Annexure P-13 is the medical record pertaining to Upasana Garg, wife of petitioner No. 1 and Santosh Kumar Mittal, who was one of the re-allottee.

15. The appellate authority had further considered the said facts along with the undertaking given by the appellants to deposit the pending

dues within 60 days and also considered that the order of resumption would be very harsh in such circumstances.

16. The order passed in appeal was based on reasons and considering the medical issues of the petitioners. Whereas the impugned order, dated 23.08.2022 (Annexure P-6), whereby the order in appeal was set aside, was merely, on the ground that no proof regarding the accident and illnesses was submitted by the petitioners and no such ground was raised in the reply to the show causes notices.

17. Though the reference of the various show cause notices issued under Section 17 of the Act was given in the impugned order but the mode of service of the said notices has not been mentioned in the impugned order.

18. The delay in filing the appeal was also one of the grounds which weighed in the mind of respondent No. 2 in allowing the revision. The said reason is not justified. It is well settled that delay, as such, cannot be made a ground for dismissal of an appeal where the delay is justified. The petitioners have placed on record the voluminous medical record reflecting the medical issues in the family and moreover, the issuance of statutory notices under Section 17 of the Act before passing the order of resumption and the service of the order of resumption to the petitioners has not been reflected in the impugned order. As such, in view of the peculiar circumstances, the order passed in appeal could not have been set aside, on the ground that the appellate authority had accepted the appeal which was filed beyond the period of limitation.

19. Respondent No. 2 has also placed reliance upon the decision of the Hon'ble Supreme Court in Smitra Jain vs. Haryana Urban

Development Authority and another 2020 (13) SCC 465, while referring that an allottee would be bound to make payment of installments in time as per the terms and conditions of the allotment letter.

19.1 The ratio of the said case is not applicable, as the facts of the present case are distinguishable. In the said case, the order of resumption was passed under Section 17 of the Act. The appeal against the order of resumption was dismissed and thereafter, the petitioner filed a complaint under Section 12 of the Consumer Protection Act, 1986, whereby the order of resumption was set aside. However, in an appeal against the order of the District Forum, it was held that the complaint filed by the petitioners was not maintainable and the order of the District Forum was set aside.

19.2 During the pendency of the appeal before the State Consumer Disputes Redressal Commission, the petitioners therein had filed a petition under Sections 25 & 27 of the Consumer Protection Act, 1986 and in the said petition, there was a controversy between the parties regarding the period of completion of development work at the spot and settlement of account as to how much amount is to be paid by the complainant or owed by the complainant to the opposite party. An interim order was passed by the District Forum, directing the parties to submit their respective calculations.

19.3 The said interim order was challenged by way of filing an appeal before the State Consumer Disputes Redressal Commission, which was dismissed by observing that main order of the District Forum (whereby the order of resumption was set aside) had been set aside.

19.4 In the said case, the petitioner had neither challenged the order of the State Consumer Disputes Redressal Commission, whereby the order

of resumption was upheld, nor did he make any payment but he filed a Civil Writ Petition for issuance of a writ in the nature of '*mandamus*' against the authority not to charge interest and penal interest on the amount of installments till the delivery of actual physical possession had been filed. In such facts and circumstances, the Hon'ble Supreme Court observed that the Special Leave Petition is thoroughly misconceived and was dismissed summarily by observing that the petitioner did not challenge the order passed by the State Consumer Disputes Redressal Commission by filing a revision under Section 21 of the Consumer Protection Act, 1986. The said order will be deemed to have become final and the same could not have been indirectly nullified by the High Court by entertaining the writ petition filed by the petitioner against the order passed by the Estate Officer for resumption.

19.5 Keeping in view the multiple rounds of litigation, it was observed by the Hon'ble Apex Court that a ranked defaulter like the petitioner is not entitled to relief under Article 226 or 227 of the Constitution of India.

19.6 In the present case, keeping in view the medical record of petitioner No. 1, his family members and the medical record of the father of petitioner No. 2 and the peculiar fact that father of petitioner No. 2 had died in August 2014, whereas the order of resumption was passed in the year 2018, we are of the considered opinion that the ratio of the said decision is not applicable to the peculiar facts of the present case.

20. As per the order of the appellate authority, dated 28.04.2022 (Annexure P-4), an undertaking given by the petitioners to deposit all the pending dues within 60 days was accepted and the plot in question was

ordered to be restored at prevailing reserve price out of same category of plot in vicinity. The said order was justified, keeping in view the facts and circumstances of the case. As such, we are of the considered opinion that the impugned order, dated 23.08.2022 (Annexure P-6) passed in the revision is liable to be set aside. However, the petitioners would be required to deposit the balance arrears within a period of 30 days from the date of this order, along with interest, as per the policy of the Haryana Shehri Vikas Pradhikaran. In such terms, the present writ petition, i.e. CWP-24360 of 2022 is liable to be allowed.

21. While considering the facts and circumstances of the other two petitions, we have observed that the petitioner No. 1 has also purchased two more plots in the same sector and got the re-allotment done in short span of time. One plot was joint with petitioner No. 2. Both the said plots were also resumed on account of non-payment of the installments, vide resumption order dated 13.02.2018 and 16.02.2018, respectively. The appeals against the orders of resumption were allowed but the resumption orders were upheld in the revision in both the said cases. Though there are mitigating facts, which have been noted above while considering the facts of CWP-24360-2022 that there were medical conditions in the family of petitioner No. 1 and the father of petitioner No. 2 had already expired at the time when resumption order was passed and there was no indication that the requisite notices under Section 17 of the Act was served upon the petitioners. But keeping in view the fact that 03 plots of the same size were purchased by Rajesh Garg, petitioner No. 1, out of which 02 plots were jointly purchased with Ashwani Mittal, petitioner No. 2, that too in the same sector gives an indication that the petitioners were trying to do

hoarding by way of purchasing such plots. As such, the mitigating factors cannot be made as a ground for allowing the other two civil writ petitions, as it would amount to unnecessary enrichment of the hoarders, who had not paid up the installments on time.

22. In view of these reasons, the other two Civil Writ Petitions, i.e. CWP-12376 of 2022 and CWP-12129 of 2022 are liable to be dismissed.

23. Consequently, CWP-24360-2022 is allowed and the order impugned therein, dated 23.08.2022 (Annexure P-6) is set aside, subject to the condition that the petitioners would deposit the balance arrears within a period of 30 days from the date the respondents communicate the details to them, along with interest, as per the policy of the Haryana Shehri Vikas Pradhikaran, failing which the impugned order dated 23.08.2022 (Annexure P-6) passed by respondent No. 2 in revision shall revive automatically, without any further requirement of issuance of any notice. The needful be done by the respondents within 30 days of the receipt of the certified copy of this order.

24. However, CWP-12376 of 2022 and CWP-12129 of 2022 stand dismissed.

25. Pending miscellaneous applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

August 07, 2023
nitin

Whether Speaking	Yes
Whether Reportable	Yes