

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

118

2023:PHHC:118242-DB

CWP-19880-2023

Date of Decision: 11.09.2023

Estate Officer, Haryana Shehri Vikas Pradhikaran, Hisar and others
.....Petitioner(s)

Versus

Additional Chief Secretary to Government of Haryana, Town and Country
Planning Department and another
....Respondent(s)

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

Present: Mr. Arvind Seth, Advocate,
for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

1. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the order dated 11.01.2023 (Annexure P-1) passed by the Additional Chief Secretary to the Government of Haryana, Town & Country Planning Department whereby, the revision has been allowed and the resumption order dated 12.12.2017 (Annexure P-3) has been set aside in respect of Plot No.248, Sector 3, Hisar on the condition that the allottee shall deposit the entire outstanding amount which was stated to be Rs.33,60,808/- within 2 months. The condition was that the petitioner-HSVP was to communicate the said amount within one month so that the amount could be deposited.

2. Mr. Seth submits that since the order was being challenged, there was no such communication on record which had been initiated to intimate the allottee regarding what is the amount to be deposited.

3. We have perused the paper book. The revisional authority as such has come to the conclusion that against the tentative cost of

Rs.11,01,600/- as per allotment letter dated 04.08.2005 (Annexure P-2), the allottee had deposited Rs.16,10,800/- prior to the date of resumption. This fact would also be clear from the resumption order dated 12.12.2017 (Annexure P-3) wherein, only Rs.1,93,423/- was stated to be the outstanding amount on account of various show cause notices and penalty imposed. Resultantly, the resumption order had been passed with forfeiture of the 10% of the consideration money, interest and penalty out of the amount deposited. The resumption order does not show in any manner whether the allottee was present at the time when the extreme order of resumption was passed and there is only a reference that notices had been served which were prior in time from 08.09.2016 onwards to 17.11.2017. The appeal thereafter was filed with the Appellate Authority on 12.01.2022 which was dismissed on 01.07.2022 and Mr. Seth has strenuously submitted that the appeal as such was time barred and, therefore, the dismissal of the appeal was correct and the Revisional Authority has wrongly interfered in the order.

4. We have gone through the grounds of appeal also in which it was specifically mentioned regarding the amount of Rs.16,10,800/- being deposited which was against the tentative amount of 11,01,600/- and there was an enhancement element also of Rs.4,81,435/-, which he deposited. It was specifically mentioned that the allottee's mother had shifted to Faridabad due to transfer and they had shifted from Charkhi Dadri. The resumption order has also been sent to the address at Charkhi Dadri and it has been mentioned in the appeal that the application for change of address was given in the HUDA Office. Thus, apparently the allottee was unaware of the fact that the resumption order had been passed and it was only thereafter the appeal was filed and, thus, the argument raised that the appeal was patently

time barred is without any basis. The grounds of appeal would go on to show that it was specifically mentioned that the allottee got married and started living separately and there were certain deaths in the family. He was not aware of the resumption order and he had prayed that he would deposit all the outstanding dues. The said appeal had been dismissed without taking these aspects in account by the Administrator by holding that it was not certain that who had received the application for change of address and that there is no record regarding the application for change of address.

5. A perusal of show cause notice would go on to show that the notice was sent to Heera Chowk, Charkhi Dadi (Annexures P-5 and P-6) whereas another notice dated 14.06.2017 would go on to show that it was sent to SBI Bank, Rohtak and similar is the position in order dated 13.09.2017 (Annexure P-8). Another communication dated 15.11.2017 (Annexure P-9), which was notice of hearing again shows that the notice was sent to Charkhi Dadri. It is, thus, apparent that the allottee had never been served as such and, therefore, the Revisional Authority has rightly interfered in the order by noticing that substantial amount had been paid and even as per the department's estimate, out of Rs.25,58,967/- which was the enhanced amount, Rs.16,10,800/- had already been paid. In such circumstances, it cannot be said that there was never any wilful intention not to pay. Substantial amount had been paid over and above the initial amount of Rs.11,01,600/-. Apparently due to shifting of the residence on account of exigency of service of the mother, the allottee as such could not deposit the outstandings of Rs.1,93,423/- on the basis of which, the extreme order of resumption had been passed.

6. It is settled principle that the resumption is the last step as such,

as has been held by the Full Bench in *Shri Ram Puri vs. Chief Commissioner, Chandigarh and others, 1982 PLR 388*. Similar view has also been taken by the Apex Court in *Babu Singh Bains and others vs. Union of India, (1996) 6 SCC 565* decided on 11.09.1996. The Revisional Authority has also relied upon the judgment of the Apex Court in *Teri Oat Estates (P) Ltd. vs. U.T., Chandigarh and others, (2004) 2 SCC 130*. The Full Bench has held that the action of the Authority to pass the resumption is like using a hammer to swat a fly, which is exactly what the petitioner-authority has done.

7. Resultantly, we are of the considered opinion that in the facts and circumstances, a just view has been taken by the Revisional Authority to prevent miscarriage of justice in restoring the plot conditionally. Accordingly, finding no merit in the present writ petition, the same is dismissed. The petitioner shall comply with the order of the Revisional Authority by communicating the amount to the allottee so that the amount can be deposited as per the time frame fixed by the Revisional Authority.

(G.S. SANDHAWALIA)
JUDGE

11.09.2023
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(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No