



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

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CWP No.7516 of 2019
Date of decision: 10.12.2024

Krishan Lal

...Petitioner

V/s

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Vikram Singh, Advocate, for the petitioner.
Mr. Deepak Bhardwaj, DAG, Haryana.
Mr. Sanjeev Majra, Advocate,
for respondents No.2 and 3 (HSVP)
Ms. Jyotsna Saini, Advocate, for
Mr. Ashish Yadav, Advocate, for respondent No.5.

VIKRAM AGGARWAL, J.

1. Petitioner Krishan Lal prays for the issuance of a writ of certiorari quashing the order dated 18.01.2019 (Annexure P-6), order dated 26.02.2018 (Annexure P-5) and order dated 27.09.2017 (Annexure P-3).
2. A booth site bearing No.62, measuring 48 sq. mtr. situated in Urban Estate, Rewari was initially allotted to one Braham Singh on 15.05.2007. It was subsequently re-allotted to the petitioner and one Subhash Kumar vide re-allotment letter dated 14.05.2009 (Annexure P-1). As per the conditions of re-allotment, the balance installments had to be paid by the petitioner. However, having failed to do so, the booth site was

Resumed vide order dated 27.09.2017 (Annexure P-3). The appeal against the



said order was dismissed on 26.02.2018 (Annexure P-5) and the revision petition was also dismissed on 18.01.2019 (Annexure P-6), leading to the filing of the instant writ petition.

3. For the appeal had been dismissed primarily on the ground of delay, notice of motion was issued on 18.03.2019 and *status quo* was ordered to be maintained.

4. On 27.11.2024, after arguments had been addressed to some extent, the following order was passed by this Court:-

“Learned counsel for the petitioner submits that the petitioner was re-allotted booth No.62, measuring 48 Sq. Mtrs., Urban Estate, Rewari, on 14.05.2009. He submits that concededly, petitioner had remitted three installments, whereas he failed to deposit the balance consideration. As a result, the subject site was resumed. Whereafter, the appeal as also the revision preferred by the petitioner have since been dismissed. However, he submits that pursuant to the order of status quo, passed by this Court on 18.03.2019, the petitioner continues to be in actual physical possession of the demised premises. It is submitted that the petitioner is ready and willing to clear all pending dues including interest, penalties etc.. Further, the law is settled that resumption is the last resort. Reliance in this regard is placed upon a decision of the Supreme Court, rendered in Teri Oat Estate (P) Ltd. Vs. U.T.Chandigarh and others (2004) 2 SCC 130.

Faced with this, learned counsel for respondents No.2 and 3 submits that he be afforded a short accommodation to seek instructions.

Adjourned to 10.12.2024.

To be taken up immediately after urgent matters.”

5. Today, learned counsel for respondents No.2 and 3 informs the Court that as on 31.07.2024, the sum of Rs.1.3 crore was outstanding against the petitioner and as on today the amount would be approximately Rs.1.35

crore (Rs.1,35,00,000/-). He, however, submits that even if the petitioner



deposits the said amount, it may not be possible for the authorities to recall the order of resumption, the same having been upheld upto the higher authority.

6. Learned counsel for the petitioner submits that the entire outstanding amount i.e. Rs.1.35 crore (Rs.1,35,00,000/-) shall be deposited within a period of one week from today. He submits that the petitioner is not a rank defaulter and is in possession of the booth site right from the beginning. He submits that under the circumstances, the petitioner may not be deprived of his property and that the *bona fides* of the petitioner are also clear from the fact that he had approached the Court in time and has been ready and willing to pay the outstanding amount ever since then. He also submits that the appellate authority had erred in dismissing the appeal despite the fact that the delay in filing of appeal was just about one month. Learned counsel submits that keeping in view the ratio of law laid down in the cases of *Teri Oat Estate (P) Ltd. Vs. U.T. Chandigarh and others, (2004) 2 SCC 130* and *Dheera Singh Vs. U.T. Chandigarh Administration, 2012 (4) RCR (Civil) 970*, a compassionate view be taken in the matter.

7. We have considered the submissions made by learned counsel for the parties.

8. The booth site was re-allotted to the petitioner on 14.05.2009. There was a schedule of payment attached to the re-allotment letter. The first installment had duly been paid by the original allottee. The order of resumption shows that the balance amount was not paid by the petitioner and accordingly the booth site was resumed on 27.09.2017. The appeal was preferred with a delay of about one month in which, it was stated that a total



amount of Rs.79,93,050/- had already been paid against the auction price of Rs.77,15000/- and that they were ready to pay the balance amount also but no intimation was received by them prior to the passing of the resumption order. It was also averred that the notices had not been delivered at the correct address and were returned to the office of the Estate Officer, HUDA, Rewari undelivered. The appeal was, however, dismissed primarily on the ground of delay of about one month though on merits also, the petitioner herein was non-suited. The revision petition met the same fate. When the petitioner approached this Court, the following order was passed on 18.03.2019:-

“The statutory appeal is dismissed only on the ground of delay of 33 days.

Notice of motion for 03.09.2019.

Till next date, status quo be maintained.

9. Admittedly, the petitioner is in possession of the booth site. He does not appear to be a rank defaulter, for he has been knocking the doors of the authorities from the very beginning and has been willing to pay the outstanding amount. Even before this Court, when it was put to learned counsel for the petitioner as to in how much time the balance amount of Rs.1.35 crore (Rs.1,35,00,000/-) would be deposited, learned counsel very fairly stated that the same would be deposited within a period of one week. It is well settled that resumption should normally be a weapon of last resort unless, of course, the allottee is found to be a rank defaulter. In the case of **M/s Teri Oat Estate** (Supra), the Supreme Court of India held as under:-

“22. One of the questions which, therefore, must always be posed by the Estate Officer, while initiating a proceeding under Section 8A of the Act is as to whether the drastic power of resumption and



forfeiture has been taken recourse to as a last resort. The order of the Estate Officer dated 13.3.1992, does not say so. No reason has also been assigned in the said order.

23. It may be that the appellant even did not comply with the appellate order but it has a legitimate grievance therefore insofar as the said order was made available to it after 7.3.1995 whereas the part payment in terms thereof was to be made on the said date. The revisional order dated 17.5.1995 provided that payment be made in terms of the accounts submitted by the Estate Officer but the question as to whether the Estate Officer could levy interest over and above 12% p.a. i.e. 15% from 1992 and 24% from 1993 was the subject-matter of a writ petition which was pending before the High Court. The appellant paid the entire amount which, according to the it, was due to the respondent. It further kept in readiness a pay order of Rs 13,00,000/-, a copy whereof had also been filed with the review application.

24. It is, therefore, not a case where the court will have to take one stand or the other in the light of the statutory provisions. The question as to whether the extreme power of resumption and forfeiture has rightly been applied or not will depend upon the factual matrix obtaining in each case. Each case may, therefore, have to be viewed separately and no hard and fast rule can be laid down therefor. In a case of this nature, therefore, the action of the Estate Officer and other statutory authorities having regard to the factual matrix obtaining in each case must be viewed from the angle as to whether the same attracts the wrath of Article 14 of the Constitution of India or not.”

Further, in the case of *Dheera Singh (Supra)*, it was held as

under:-

“81. The doctrine of proportionality as ruled in M/s. Teri Oat Estates Pvt. Ltd. is now an integral part of Section 8-A to protect an allottee against unreasonable or arbitrary action by the Authority under that provision. It necessarily means and the respondents cannot be heard to say otherwise except that the power of resumption can be invoked as a last resort and the action of the Estate Officer is required to be judged on the touch-stone of Article 14 of the Constitution. It implies that the Estate Officer before passing a resumption order shall be obligated to determine whether the breach of terms and conditions



of allotment or violation of any building byelaw by the allottee is 'willful' and 'deliberate' or it has occurred for the reasons beyond his control? In the case of the latter category it shall not be possible to invoke the power mechanically and resume the property. For example, if an allottee indisputably rents out his residential premises to a tenant for residential purposes only and the tenant in utter defiance to the terms of tenancy starts misusing the premises for commercial purposes against whom the landlord, without any inordinate delay, initiates eviction proceedings under the East Punjab Urban Rent Restriction Act, 1949 (as applicable to UT Chandigarh) inter alia on the ground of misuse of the premises, how can the allottee be held guilty of willful and deliberate violation of the building byelaws? The only recourse in such an eventuality available with the Estate Officer shall be to keep the resumption proceedings in abeyance till the eviction proceedings are decided though he must keep track of the status of eviction proceedings from time to time. Any attempt to deviate from such like fait accompli conditions shall vitiate the action rendering the resumption proceedings to nothing but a colourable exercise and/or abuse of power by the Estate Officer. Similarly, the first or stray violation(s) can hardly justify the impaling effect of 'resumption' and any such casual attempt with a bureaucratic approach deserves serious view in exercise of power of judicial review.”

10. In the considered opinion of this Court, the said ratio squarely applies to the facts of the present case.
11. In view of the aforesaid, the writ petition is allowed and the impugned orders dated 18.01.2019, 26.02.2018 and 27.09.2017 are set aside and the booth site is restored. This, however, shall be subject to the petitioner depositing the sum of Rs.1.35 crore (Rs.1,35,00,000/-) within a period of ten days from today.

(ARUN PALLI) (VIKRAM AGGARWAL)
JUDGE JUDGE

December 10, 2024