



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.9409 of 2024
Reserved on: 30.08.2024
Pronounced on: 15.10.2024

Swarana Rani and othersPetitioners

V/s

State of Haryana and othersRespondents

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

Present: Mr. Vineet Chaudhary, Advocate, for the petitioners.
Mr. Deepak Sabherwal, Advocate, for the respondents-HSVP.

VIKRAM AGGARWAL, J.

1. Petitioner No.1 is the widow of Sh. Ram Surjeet Gulati, whereas petitioners No.2 to 4 are his sons and petitioner No.5 is his daughter. They assail the order of resumption dated 16.08.2021 (Annexure P-3), the order dated 22.08.2022 (Annexure P-5) passed in appeal and the order dated 09.01.2024 (Annexure P-7), vide which the revision petition was dismissed.
2. The facts, as set out in the writ petition, are that Booth No.38, measuring 22.68 sq. mtr. situated in Sector 8, Manav Chowk, Ambala City (hereinafter referred to as the “disputed booth”) was allotted to Ram Surjeet Gulati vide allotment letter dated 05.01.2001 (Annexure P-1). Sh. Ram Surjeet Gulati is stated to have paid the installments towards the consideration up to June, 2014 (Annexure P-2). Thereafter, he along with



his family members is stated to have settled down at Kurukshetra.

3. It is the case of the petitioners that Sh. Ram Surjeet Gulati never had any knowledge of resumption proceedings having been initiated by the respondents qua the disputed booth because of his not residing at the given address. He unfortunately expired on 01.06.2019, after which, the petitioners came to know from the neighbours in the market that the disputed booth had been resumed on 16.08.2021, regarding which the petitioners had no knowledge.

4. Aggrieved by the said order, an appeal was preferred which was dismissed on 22.08.2022 (Annexure P-5) and the revision petition filed against the said order was also dismissed on 09.01.2024 (Annexure P-7). It is the case of the petitioners that against the total cost of Rs.9,30,000/-, initially a sum of Rs.2,32,500/- had been paid within one month of the allotment. The balance amount was to be paid within six years. However, as the market was not developed, Sh. Ram Surjeet Gulati could not start his business but had still paid a total sum of Rs.7,93,000/- up to 05.06.2014. He could not, however, deposit the remaining amount on account of non-receipt of notices. It is the case of the petitioners that since they had not been served and, therefore, could not respond to the notices, the resumption order is illegal and arbitrary. The prayer is to set aside the impugned orders.

5. It is also the case of the petitioners that many similarly situated persons were given relief by the respondents. It has been averred that the petitioners are now willing to pay the entire outstanding amount. Learned counsel for the petitioners placed reliance upon a judgment of the Supreme Court in the case of ***Green S. Jacob and another vs. HUDA and another***,



6. The writ petition has been opposed by the respondents. In the short reply, the basic stand that has been taken is that after payment of the initial amount, the balance amount of Rs.6,97,500/- was to be paid in ten half yearly installments starting from 05.07.2001 and ending on 05.01.2006. As per clause 22 of the letter of allotment, 18% interest was chargeable on account of delayed payment. It is the case of the respondents that on account of non-payment, notices under Sections 17(1), 17(2) and finally under Sections 17(3) and 17(4) of the Haryana Urban Development Authority Act, 1977 (hereinafter to be referred to as the “HUDA Act”) were issued starting from 16.01.2003 and the last notice was served on 30.06.2021. Neither any reply was submitted by the petitioners nor any payment was made. It has been averred that on 19.07.2013, one Suresh Kumar appeared before the Estate Officer, HSVP, Amabla in pursuance of notice dated 26.06.2013 and stated that Sh. Ram Surjeet Gulati was his father-in-law and that the entire amount would be deposited in July 2013. However, no amount was deposited. Suresh Kumar again appeared on 28.05.2014 in pursuance of notice dated 09.05.2014 and submitted in writing that the entire outstanding amount would be deposited up to 06.06.2014 but it was not deposited. It has been averred that under the circumstances, the petitioners cannot contend that they did not have any notice of the resumption proceedings having been initiated. It has also been averred that no intimation was given regarding the death of Sh. Ram Surjeet Gulati.

7. It has also been averred that one Sh. Naresh, who had deposited the amount against the disputed booth was also allotted Booth No.29 in the same area and the same had also been resumed on 17.08.2021 and his appeal and revision petition had also been dismissed. He also had the same address



as that of the petitioners in the present petition, showing that both booths had been purchased by the same family and there was a default in both the cases. It has been averred that as on 12.08.2021, a sum of Rs.22,17,904/- was outstanding and on account of failure to pay the outstanding amount for a period of 20 years, the disputed booth had been resumed. The order of resumption, the order passed in appeal and in the revision petition have been stated to be legal and valid and it has been prayed that the same be upheld. Reliance has been placed upon Clause 22 of the letter of allotment which laid down that on account of delayed payment, interest @ 18% per annum shall be charged. Reference has also been made to Section 10 of the HUDA Act, stating that though the petitioners were aware about the resumption proceedings, even the failure to serve a notice on any person where no substantial injustice had resulted from such failure, would not affect the proceedings of resumption. Reference is also made to Clause 23 of the letter of allotment, wherein it is provided that no separate notices would be sent for payment of installments.

8. Countering the averment that a resumption order could not have been passed against a dead person, it has been averred that the allottee was duly represented in the resumption proceedings by one Sh. Suresh Kumar, who claimed to be the son-in-law of Sh. Ram Surjeet Gulati and had been appearing on his behalf and further no intimation about the death of Sh. Gulati had been given. Countering the contention that the area was undeveloped, it has been averred that the same was clearly an after thought and the petitioners had never complained about non-development of the area. The averment in the writ petition that the petitioners are willing to pay the entire outstanding amount has also been countered and reliance has been



placed upon certain judgments to contend that no such right vests with the petitioners. Learned counsel for the respondents placed reliance upon a judgment of the Supreme Court in the case of ***Municipal Corporation, Chandigarh and others vs. Vipin Kumar Jain*** (SLP (Civil) No.12968-2006, decided on 28.04.2006) and judgments of this Court in ***Ravinderpal Singh vs. Union Territory, Chandigarh***, 2001(2) RCR (Civil) 169 and ***Shri Kamal Anand vs. HUDA and another*** (CWP No.3284-2009, decided on 04.02.2013).

9. Learned counsel for the parties were duly heard.

10. Before advertng to the merits of the case, it would be essential to mention here that on 08.05.2024 that the case was taken up, learned counsel for the petitioners had brought a demand draft for Rs.25,41,833/-, which according to learned counsel for the petitioners, was the total outstanding amount till that date. The demand draft had been handed over to learned counsel for the respondents-HSVP without prejudice to the rights and interest of the respondents and subject to further orders by this Court. Learned counsel for the respondents had prayed for some time to seek instructions, after which on 15.05.2024, it was contended by learned counsel for the respondents that the petitioners were perpetual defaulters and accordingly, there was no other choice with the respondents but to resume the property.

11. It was strenuously urged by learned counsel for the petitioners that the resumption proceedings are not sustainable, for no notices were ever received by Sh. Ram Surjeet Gulati or by the petitioners. It was also contended that the petitioners are willing to pay the entire outstanding



respondents. Learned counsel also submitted that the petitioners are in possession of the disputed booth and that resumption at this stage would not be in their interest. Learned counsel also submitted that a substantial amount had already been deposited with the respondents and only some amount remained, for which the respondents should not have resumed the disputed booth. Learned counsel made efforts to convince this Court that on payment of the entire amount, the resumption proceedings deserve to be set aside.

12 On the other hand, learned counsel representing the respondents opposed the arguments and submitted that the petitioners being rank defaulters, do not deserve any relief. Arguments on the lines of averments made in the written statement were addressed.

13. Having considered the submissions made by learned counsel for the parties, we find the petition to be devoid of merit. The disputed booth was allotted to Sh. Ram Surjeet Gulati on 05.01.2001 i.e. 23 years back. A perusal of the allotment letter shows that the same had been allotted in pursuance of an auction having been conducted and the total sale consideration was Rs.9,30,000/-. A sum of Rs.1,39,500/- being 25% of the total sale consideration was to be paid within 30 days and the balance amount of Rs.6,97,500/- was to be paid in ten half yearly installments, the first of which started from 05.07.2001 and the last installment was to be paid on 05.01.2006. The schedule of payments was duly given in the letter of allotment;

Sr. No.	Due Date	Principle	Interest	Total
1	05.07.2001	6975-00	52312-50	122062-50
2	05.01.2002	6975-00	47081-25	116831-25
3	05.07.2002	6975-00	41850-00	111600-00



4	05.01.2003	6975-00	36618-75	106368-75
5	05.07.2003	6975-00	31387-50	101137-50
6	05.01.2004	6975-00	26156-25	95906-25
7	05.07.2004	6975-00	20925-00	90675-00
8	05.01.2005	6975-00	15693-75	85443-75
9	05.07.2005	6975-00	10462-50	80212-50
10	05.01.2006	6975-00	5231-25	74981-25

14. Admittedly, the petitioners defaulted in the payment of installments, upon which repeated notices, the details of which have been given in the written statement were issued to Sh. Gulati:-

Sr. No.	Particulars	Dates
1	Notice u/s 17(1)	16.01.2003
2	Notice u/s 17(2)	31.07.2003
3	Penalty order imposed of Rs. 39501/-	01.09.2003
4	Notice u/s 17(3)	20.02.2004
5		16.03.2004
6	Notice u/s 17(1)	09.03.2010
7	Notice u/s 17(1)	03.08.2011
8	Notice u/s 17(2)	13.10.2011
9	Notice u/s 17(1)	17.01.2013
10	Notice u/s 17(2)	30.05.2013
11	Notice u/s 17(2)	26.06.2013
12	Notice u/s 17(2)	09.05.2014
13	Penalty Order of Rs.151088.90	27.07.2016
14	Notice u/s 17(3)	20.02.2017
15.	Notice u/s 17(4)	30.06.2021



received by Sh. Gulati or by them. This averment is found to be false, as it is the categorical case of the respondents that one Sh. Suresh had appeared before the respondents in pursuance of two notices in 2013 and 2014 and had undertaken that the entire outstanding amount would be cleared. The document showing the appearance of Sh. Suresh on 19.07.2013 has been placed on record as Annexure R-4/1 and even the statement of Sh. Suresh Kumar has been annexed in the said document, wherein he had undertaken that the entire outstanding amount would be deposited by 06.06.2014, whereas the presence has been noticed on 19.07.2013 and thereafter the statement has been recorded on the second time i.e. 28.05.2014. It is, therefore, clear that the petitioners were duly aware about the resumption proceedings and despite that the outstanding amount was not cleared. It can, therefore, be safely said that the default was willful and not on account of other unavoidable circumstances.

16. The offer of the petitioners to today clear the outstanding amount would not be acceptable because the petitioners were bound to pay as per the payment schedule. They remained mute spectators for a period of ten years and today they offer to pay the entire outstanding amount. It has to be borne in mind that these are commercial properties. In the case of ***Municipal Corporation, Chandigarh and others vs. Vipin Kumar Jain*** (supra), the Supreme Court of India held that auction is a price discovery mechanism which falls in the contractual realm. It was held that auction is basically an exercise for raising revenues for the Government. When the price is not paid within time, it results in loss of revenue to the State. It was held that time is the essence of the contract in such matters as property prices rise by the day. It was held that under the circumstances, resumption



proceedings cannot be said to be illegal or arbitrary. Certain orders in which the delay in making payment had been condoned were also produced before the Supreme Court but the same were also not considered because of they having been passed in the specific facts of each case. In the case of **Ravinderpal Singh** (supra), it was held that the offer of depositing entire amount due with interest could not be accepted after the value of the property having risen manifold.

17. Admittedly, the disputed booth in the present case was allotted in the year 2001 and the petitioners seek to pay the outstanding amount with interest in 2024 or even in 2021 when the prices have increased manifold. We concur with the view taken by the Division Bench of this Court in **Ravinderpal Singh's** case (supra) and hold that such an offer would not merit consideration.

18. The averment that the resumption order had been passed against a dead person is also devoid of merit because it stands proved from the averments made in the written statement that Sh. Suresh Kumar had been appearing before the authorities and after the death of Sh. Ram Surjeet Gulati, no information was given to the authorities.

19. The argument that no notice was issued for payment of installments is also devoid of merit, for the schedule of payments was given in the letter of allotment and as per Clause 23, no separate information was required to be given to the allottees after the issuance of the allotment letter. It stands proved that notices on account of non-payment were issued, and, therefore, the argument falls to the ground.

20. The judgment in the case of **Green S. Jacob and another** (supra) would not come to the aid of the petitioners because as was held in



CWP No.9409 of 2024

- 10-

the case of ***Municipal Corporation, Chandigarh and others vs. Vipin Kumar Jain*** (supra), the said case was allowed on its particular facts. In that case, the allottees had continued in possession for more than ten years under interim orders passed by the Court and considering the peculiar facts of that case, the Supreme Court set aside the resumption proceedings. As has been already observed, the said judgment was passed in the peculiar facts of the said case, and, therefore, would not come to the aid of the petitioners.

21. No doubt, it is well settled that resumption should normally be a weapon of last resort. It has so been held in a number of judgments viz ***M/s Teri Oat Estates (Private) Limited Vs. U.T., Chandigarh, 2004(1) HRR659 SC*** and ***Dheera Singh Vs. U.T. Chandigarh Administration, LAWS(P&H)-2012-11-35***, decided on **08.11.2012**. However, where the allottee is a chronic and a rank defaulter and the default is willful which in the present case is, there would be no hesitation in invoking the said provisions.

22. Be that as it may, keeping in view the facts and circumstances as have been noticed in the preceding paragraphs, we do not find any reason to interfere in the impugned orders and accordingly, the writ petition stands dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 30.08.2024

Pronounced on:15.10.2024

vcgarg

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No