



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

CWP No.13011 of 2024
Reserved on: 30.08.2024
Pronounced on: 15.10.2024

Naresh Kumar

....Petitioner

V/s

State of Haryana and others

....Respondents

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

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

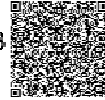
VIKRAM AGGARWAL, J.

1. Petitioner assails the order of resumption dated 17.08.2021 (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.29, measuring 23.64 sq. mtr. situated in Sector 8, Manav Chowk, Ambala City (hereinafter referred to as the “disputed booth”) was allotted to the petitioner vide allotment letter dated 12.03.2008 (Annexure P-1) for a total sale consideration of Rs.22,15,000/-.

3. It is the case of the petitioner that he never had any knowledge of resumption proceedings having been initiated by the respondents qua the disputed booth. He was suffering from severe illness and due to unavoidable circumstances he could not pay the installments in time. He came to know from the neighbours in the market that the disputed booth had been resumed

on 17.08.2021, regarding which the petitioner had no knowledge.



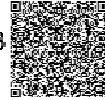
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4. Aggrieved by the said order, an appeal was preferred which was dismissed on 22.08.2022 (Annexure P-5) and the revision petition filed against the said order was also dismissed on 09.01.2024 (Annexure P-7). It is the case of the petitioner that against the total cost of Rs.22,15,000/-, initially a sum of Rs.5,53,750/- 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, the petitioner could not start his business. He could not, however, deposit the remaining amount on account of non-receipt of notices. It is the case of the petitioner that since he 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 petitioner that many similarly situated persons were given relief by the respondents. It has been averred that the petitioner is now willing to pay the entire outstanding amount. Learned counsel for the petitioner placed reliance upon a judgment of the Supreme Court in the case of ***Green S. Jacob and another vs. HUDA and another***, (2020)13 SCC 458.

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.16,61,250/- was to be paid in ten half yearly installments. As per clause 22 of the letter of allotment, 12% interest was chargeable on account of delayed payment. Thereafter, against the outstanding amount of 75%, only Rs.49000/- each on two occasions was deposited by the petitioner i.e. on 16.12.2011 and 17.12.2011. It is the case of the respondents that on account of non-payment, notices under Sections

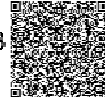


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Urban Development Authority Act, 1977 (hereinafter to be referred to as the “HUDA Act”) were issued starting from 19.02.2010 and the last notice was served on 30.06.2021. Neither any reply was submitted by the petitioner, nor any payment was made. It has been averred that one representative of the petitioner namely Dinesh Kumar appeared before the Estate Officer, HSVP, Amabla on 28.05.2014, in pursuance of notice dated 09.05.2014 and stated that the outstanding amount would be deposited up to 13.06.2014. However, no amount was deposited. It has been averred that under the circumstances, the petitioner cannot contend that he did not have any notice of the resumption proceedings having been initiated.

7. It has also been averred that one Sh. Ram Surjeet Gulati, was also allotted Booth No.38 in the same area and the same had also been resumed on 16.08.2021 and his appeal and revision petition had also been dismissed. He also had the same address as that of the petitioner 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 12.08.2001, a sum of Rs.49,87,106/- was outstanding and on account of failure to pay the same for a period of 13 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 @ 12% per annum shall be charged. Reference has also been made to Section 10 of the HUDA Act, stating that though the petitioner was aware about the resumption proceedings, even the failure to serve a notice on any

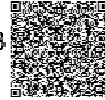


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not affect the proceedings of resumption. Reference is also made to Clause 23 of the letter of allotment, wherein it is provided that no separate notices would be sent for payment of installments.

8. Countering the averment that he could not deposit the amount due to severe illness and unavoidable circumstances, it has been averred that the allottee has failed to submit any record showing his alleged illness. Countering the averment that the petitioner had no knowledge of resumption proceedings and no notice having been received by the petitioner, it has been averred that one Dinesh Kumar appeared on behalf of the petitioner on 28.05.2014 and gave an undertaking on behalf of the petitioner that the outstanding amount would be deposited up to 13.06.2014. However, no amount was deposited. Notices were duly served upon the petitioner and were never received back undelivered. Even as per Clause 23 of the HUDA Act, no separate notice is required to be sent for payment of the installments. Countering the contention that the area was undeveloped, it has been averred that the same was clearly an after thought and the petitioner had never complained about non-development of the area. The averment in the writ petition that the petitioner is 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 petitioner. As regards the contention of the petitioner that he had deposited Rs.5,53,750/- against the total costs of Rs.22,15,000/-, it has been averred by the respondents that it is a misstatement as the said amount had been paid by the petitioner to make 25% of the allotment price. Learned counsel for the respondents have placed reliance upon a judgment of the Supreme Court in the case of *Municipal*



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No.12968-2006, decided on 28.04.2006) and judgments of this Court in ***Neelam Badera vs. State of Haryana and others*, (CWP-2708-2017, decided on 19.01.20218), *Varun vs. State of Haryana and others*, (CWP-5154-2015, decided on 16.05.2016).**

9. Learned counsel for the parties were duly heard.

10. It was strenuously urged by learned counsel for the petitioner that the resumption proceedings are not sustainable, for no notices were ever received by the petitioner. It was also contended that the petitioner is willing to pay the entire outstanding amount. Learned counsel also submitted that the petitioner is in possession of the disputed booth and that resumption at this stage would not be in his interest. Learned counsel made efforts to convince this Court that on payment of the entire amount, the resumption proceedings deserve to be set aside.

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

12. 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 the petitioner on 12.03.2008 i.e.16 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.22,15,000/-/-. A sum of Rs.3,32,250/- being 25% of the total sale consideration was to be paid within 30 days and the balance amount of Rs.16,61,250/- was to be paid in ten half yearly installments, the first of



12.03.2013. The schedule of payments was duly given in the letter of allotment;

Sr. No.	Due Date	Principle	Interest	Total
1		166125/-	74760/-	240825/-
2		166125/-	67284/-	233409/-
3		166125/-	59808/-	225933/-
4		166125/-	52332/-	218457/-
5		166125/-	44856/-	210981/-
6		166125/-	37380/-	203505/-
7		166125/-	29904/-	196029/-
8		166125/-	22428/-	188553/-
9		166125/-	149520/-	181077/-
10		166125/-	7476/-	17360/-

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

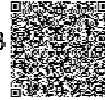
Sr. No.	Particulars	Memo No.	Dates
1	Notice u/s 17(1)	1564	19.02.2010
2	Notice u/s 17(1)	2176	09.03.2010
3	Notice u/s 17(1)	11194	13.10.2011
4	Notice u/s 17(1)	8111	03.08.2011
5	Notice u/s 17(1)	324	17.01.2013
6	Notice u/s 17(2)	2857	30.05.2013
7	Notice u/s 17(2)	3345	26.06.2013
8	Notice u/s 17(2)	2134	09.05.2014
9	Penalty order of Rs.3,37,606.30	20	27.07.2016
10	Notice u/s 17(3)	102	20.02.2017



11	Letter/Notice	790	13.05.2020
12	Letter/Notice	1131	01.07.2020
13	Notice u/s 17(4)	3	27.05.2021
14	Notice u/s 17(1)	3	30.06.2021

14. It is the case of the petitioner that none of the said notices was received by him. This averment is found to be false, as it is the categoric case of the respondents that one Sh. Dinesh Kumar had appeared before the respondents on 28.05.2014 in pursuance of notice dated 09.05.2014 and had undertaken that the outstanding would be cleared amount up to 13.06.2014. The document/noting sheet dated 13.06.2014 showing the signatures of Sh. Dinesh Kumar has been placed on record as Annexure R-4/1 and even the statement of Sh. Dinesh Kumar has been annexed in the said document, wherein he had undertaken that the outstanding amount would be deposited up to 13.06.2014. It is, therefore, clear that the petitioner was 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.

15. The offer of the petitioner to today clear the outstanding amount would not acceptable because the petitioner was bound to pay as per the payment schedule. He remained a mute spectator for a period of thirteen years and today he offers 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 them having been passed in the specific facts of each case. In the case of **Neelam Badera** (supra), it was held that though the petitioner had indicated that the petitioner would be willing to pay all the outstanding amounts with interest and penalty, the said offer would not be accepted at that late stage. In the case of **Ravinderpal Singh vs. Union Territory, Chandigarh, 2001 (2) RCR (Civil) 169**, it was held that the offer of depositing entire amount due with interest could not be accepted after the value of the property having been risen manifold.

16. Admittedly, the disputed booth in the present case was allotted in the year 2008 and the petitioner seeks to pay the outstanding amount with interest in 2024 when the prices have increased manifold. We concur with the view taken by the Division Bench of this Court in **Neelam Badera's** case and **Ravinderpal Singh's** case (supra) and hold that such an offer would not merit consideration.

17. The argument that no notice was issued for payment of installments is also devoid of merit, for the schedule of payments was also 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



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and, therefore, the argument falls to the ground.

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

19. 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.

20. 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

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No