

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.16790 of 2018
Reserved on : 13.03.2024
Pronounced on: 20.04.2024

Haryana Shehri Vikas PradhikaranPetitioner

V/s

State of Haryana and anotherRespondents

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

Present: Mr. Deepak Sabherwal, Advocate, for the petitioner.

None for respondent No.1.

Respondent No.2 proceeded against *ex parte* vide order dated
11.10.2023

VIKRAM AGGARWAL, J.

1. The petitioner-Haryana Shehri Vikas Pradhikaran (for short “the HSVP”) has filed the present writ petition seeking quashing of the order dated 04.01.2018 (Annexure P-9) passed by respondent No.1, vide which resumption proceedings were set aside.

2. A booth site bearing No.21-P, Sector-10, Panchkula (hereinafter referred to as “the disputed booth”) was allotted to one Darshan Singh (respondent No.2) (hereinafter referred to as “respondent No.2-allottee”) for a total sale consideration of Rs.12,50,000/-, vide letter of allotment dated 07.04.1998 (Annexure P-1). Possession was delivered on 30.06.1998 (Annexure P-2). As per the letter of allotment, after payment of 25% of the premium, the balance amount of Rs.9,37,500/- was payable either in lumpsum or in 10 half yearly installments, as per the schedule laid down in the letter of allotment. The lumpsum payment, if made, was to be interest

free, whereas the amount of installments which started from 06.10.1998 and

went upto 06.04.2003, was specified in the letter of allotment.

2(ii) Admittedly, respondent No.2-allottee paid only 25% of the premium and did not pay the installments as per the schedule. Only some payments were paid up to year 2000. Further, illegal construction of basement was made contrary to the sanctioned building plan, invited action under Section 17 of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as “the HUDA Act”).

2(iii) After issuance of various notices in the year 1999-2000 (Annexure P-3, Colly) and after no response having been received, the disputed booth was resumed vide order dated 13.02.2001 (Annexure P-4) and an appeal was preferred, which was allowed vide order dated 26.04.2002 (Annexure P-5), laying down a condition that respondent No.2-allottee would get the illegal basement compounded, within a period of two months. However, since the same was not done, the resumption order was revived vide letter dated 27.08.2002 (Annexure P-6).

2(iv) Ultimately, eviction proceedings were initiated and notice under Section 18 (1) (b) of the HUDA Act was issued on 21.11.2011 (Annexure P-7). An amount of Rs.4,73,038/- deposited by respondent No.2-allottee was sought to be refunded but the efforts remained futile as the cheque was received back undelivered. The eviction notice dated 21.11.2011 was challenged by way of an appeal, which was dismissed vide order dated 05.10.2016 (Annexure P-8). Thereafter, a revision petition was filed which was allowed on 04.01.2018 (Annexure P-9) and the disputed booth was restored by the revisional authority, stating that the violation could be regularized by the petitioner herein. The petitioner herein was also directed to communicate the outstanding amount to respondent No.2-allottee. It is

2(v) Respondent No.2-allottee initially put in appearance through counsel but subsequently no written statement was filed, nor the counsel put in appearance, as a result of which respondent No.2-allottee was proceeded against *ex parte* on 11.10.2023. No one appeared on behalf of respondent No.2 even subsequently when arguments were heard and the case was reserved for orders.

3. We have heard learned counsel for the petitioner and have perused the paper-book.

4. It was strenuously urged by Sh. Deepak Sabherwal, learned counsel representing the petitioner that the revisional authority had exceeded its jurisdiction by allowing the revision petition. Learned counsel submitted that the revision petition arose out of eviction proceedings and, therefore, the revisional authority had no jurisdiction to go into the issue of resumption and it could at best have dealt with the issue of eviction and could have examined its legality.

4(ii) Learned counsel submitted that instead of doing so, the revisional authority went into the legality of the order of resumption and erroneously restored the disputed booth, subject to certain conditions.

5. We have considered the submissions made by learned counsel.

6. Admittedly, an illegal basement was constructed by respondent No.2-allottee and he is alleged to have not paid the entire premium. Strangely, how much amount was due from him is not depicted anywhere. The show cause notices issued under Section 17 of the HUDA Act (Annexure P-3, colly) talk only about the construction of the illegal basement and do not even remotely refer to any outstanding amount. The order of resumption (Annexure P-4) also primarily refers to the construction of illegal basement but also mentions that the due amount was not paid. It, however, does not refer to any particular figure of the due amount. It is also

an admitted fact that the appeal against the resumption order was allowed and respondent No.2-allottee was given two months time to get the unauthorized construction compounded. This order was passed on 26.04.2002. However, since the same was not done, the order of resumption came into force on 27.08.2002.

6(ii) Strangely, the petitioner-HUDA again did not initiate any proceedings for a period of ten years, after 27.08.2002 (reasons for which may be known to the petitioner-HUDA only). For the first time, proceedings under Section 17(1)(b) of the HUDA Act were initiated on 21.11.2012 i.e. after more than 10 years of the resumption proceedings having attained finality. This notice also talks about the unauthorized basement. The appeal against the said order was also rightly dismissed, but as has been noticed in the preceding paragraphs, the revision petition was allowed and the revisional authority held as under:-

“6. I have heard the parties at length and gone through the record of the case as produced before me by the official of O/o Estate Office, Panchkula. After giving a thoughtful consideration to facts of the case, it is revealed that the booth the question was allotted to the petitioner on 07.04.1998 and possession of the booth was offered on 07.04.1998. The possession was handed over to the petitioner on 30.06.1998. The petitioner raised construction over the booth. Since the petitioner raised illegal construction in shape of illegal basement which was not sanctioned in the approved building plan, the Estate Officer after issuing notices under section 17 of the HUDA Act resumed the booth vide order dated 13.02.2001. The appeal filed by the petitioner was accepted vide order dated 26.04.2002 conditionally on the undertaking to get the unauthorized basement under the booth site

compounded as per latest policy of HUDA within a period of two months and in case the petitioner fails to comply with the order, resumption will come into force without any notice to the petitioner. Admittedly, the petitioner failed to comply with the said order of the Administrator, Panchkula and the Estate Officer, Panchkula informed the petitioner about revival of resumption order vide letter dated 27.08.2002. But as a matter of fact, the Estate Officer kept sitting over the matter and only on 21.12.2011 issued eviction notice. Finally the possession of the booth was taken over by the Estate Officer, Panchkula on 31.01.2013. The petitioner in the present Revision Petition has challenged the eviction notice dated 21.12.2011. As pointed out by the HUDA Counsel also the present Revision Petition is not maintainable as no order under Section 17(5) of the HUAD Act has been passed against which a Revision Petition before the Revisional Authority lies. But since it is also an admitted position of HUDA that the construction of basement under booth which was the main ground of resumption of booth was later allowed by HUDA vide policies dated 15.03.2002 and 08.02.2006 the same can be regularized on payment of compounding fee as per policy. Though the case of HUDA is technically strong on the grounds of huge delay of 15 years as well as maintainability of Revision Petition but since the violation alleged to have been committed can regularized by HUDA, therefore, it would be in the interest of justice if the petitioner is given one opportunity to get the violations compounded in view of HUDA policy. However, as far as non-payment of dues by the petitioner towards the cost of booth is concerned, there is nothing on record to show the exact default amount. Therefore, the Estate Officer, Panchkula is directed to intimate the outstanding dues

as per HUDA policy within 15 days from the date of receipt of copy of order which shall be deposited by the petitioner within 60 days from the date of demand failing which, the resumption order shall revive without further notice.” (emphasis applied)

7. In the considered opinion of this Court, the revisional authority clearly exceeded its jurisdiction by ordering restoration of the disputed booth, the possession of which had already been taken over by the petitioner on 31.01.2013 i.e. almost 5 years prior to the passing of the revisional order under challenged. The revisional authority lost sight of the fact that it was dealing with an order of eviction and the order passed in an appeal and the resumption order had already become final. Once the resumption proceedings had become final way back in the year 2002, there was absolutely no occasion for the revisional authority to re-open the resumption proceedings. No doubt, revisional powers are vast and records of any case can be summoned by the revisional authority. This, however, in the considered opinion of this Court, would not clothe the revisional authority with absolute and unfettered powers. It is quite strange that there was an inordinate delay on the part of the petitioner in initiating eviction proceedings, as has been noticed in the preceding part of the judgment, and on the other hand, the exercise of such powers by the revisional authority, which, in the opinion of this Court, it did not possess.

7(ii) It has to be borne in mind that respondent No.2-allottee seems to be a chronic defaulter because it constructed an illegal basement and did not bother to demolish it despite directions by different authorities at different points of time. A person who does not feel it necessary to comply with the rules and regulations deserves no sympathy and no indulgence.

Bench having noticed that the proceedings before the authorities did not make any specific reference to any outstanding amount and that the current order under challenge also did not mention that the installments had not been paid by respondent No.2-allottee, called for an affidavit of the authorities, to the effect that it had specifically been argued before the revisional authority that the 'revision petitioner' was in arrears of installments. An affidavit dated 27.08.2018 was filed by the Estate Officer, HSVP in compliance of the said order, after which vide order dated 28.08.2018, the coordinate Bench ordered that *status quo* would be maintained. It is, therefore, clear that apart from having constructed an illegal basement and thereafter not having bothered to remove the said illegal construction, respondent No.2-allottee was in arrears of installments as well, which for some reason, was not referred to by the petitioner-authorities in the show cause notices etc., as also in the subsequent orders passed, though there was a reference here and there and that too was a faint reference.

7(iv) The aforesaid defaults show that the petitioner is a rank defaulter. 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.

8. In view of the aforesaid facts and circumstances, we find merit in the present writ petition and the same is accordingly allowed. The order

aside and the eviction proceedings initiated against the petitioner are upheld
(resumption proceedings already having become final).

	(ARUN PALLI)	(VIKRAM AGGARWAL)
	JUDGE	JUDGE
20.04.2024		
vcgarg		
	Whether speaking/reasoned:	Yes/No
	Whether reportable:	Yes/No