

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.24824 of 2023
Reserved on: 08.02.2024
Pronounced on:21.03.2024

Jaswinder Kaur

....Petitioner

Versus

State of Haryana and others

....Respondents

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

Present: Mr. P.K. Ganga, Advocate,
for the petitioner.

Mr. Deepak Bhardwaj, D.A.G., Haryana.

Mr. Himmat Singh, Advocate
for the respondents No.2 and 3.

VIKRAM AGGARWAL J.

1. By way of the instant writ petition, the petitioner assails the order dated 03.10.2023 (Annexure P-14) dismissing the review petition filed by the petitioner against the order dated 20.07.2022 (Annexure P-8). Challenge has also been laid to the order dated 20.07.2022 vide which the revision petition preferred by respondents No.2 and 3 (hereinafter referred to as the HSVP) was allowed and the resumption of the plot of the petitioner was upheld.

2. The petitioner was allotted Plot No.24, measuring 420 square meters, in Sector 1 and 4, Hisar, vide letter of allotment dated 17.09.2010 (Annexure P-1) (hereinafter referred to as the 'disputed

plot'). The tentative price was fixed as ₹31,41,600/-. 25% of the sale consideration was paid by the petitioner. The balance sale consideration, as per the terms and conditions of the letter of allotment was to be paid as per the schedule given in the letter of allotment.

(i) As per the petitioner, on account of financial crisis in the family, the petitioner could not pay the installments regularly resulting in the issuance of a show-cause notice dated 29.12.2017. Despite the reasons for non-payment having been explained by the petitioner, the plot was resumed vide order dated 30.12.2019 (Annexure P-3).

(ii) Aggrieved by the said order, an appeal was preferred by the petitioner (Annexure P-4). The same was allowed vide order dated 16.09.2021 (Annexure P-5) and the petitioner was called upon to clear the outstanding amount within a period of 60 days.

(iii) Vide communication dated 21.10.2021, the petitioner wrote to HSVP that she was ready and willing to deposit the outstanding amount and requested that the status of her plot be changed from 'resumed' to 'restored' to enable the petitioner to deposit the outstanding amount within the time period fixed by the Appellate Authority. To this, HSVP, vide communication dated 29.10.2021 stated that they were contemplating filing a revision petition and till a decision was taken in the matter, no action could be taken (Annexure P-7).

(iv) Vide order dated 20.07.2022 (Annexure P-8), the revision petition preferred by HSVP was allowed, the order dated 16.09.2021 passed in appeal was set aside and the resumption order was restored.

(v) It is the case of the petitioner that the order by the revisional authority was passed at the back of the petitioner without giving her any

opportunity of hearing. It has been claimed that the petitioner is suffering from mental sickness since 2016 and has been under regular treatment. The father of the petitioner expired on 19.01.2019 on account of which the health of the petitioner further deteriorated. Her mother-in-law also expired on 17.04.2020 as a result of which the petitioner faced a number of issues and the family plunged into a crisis. It has also been averred that when the revision petition was listed for hearing, the health of the husband of the petitioner deteriorated and he remained admitted in hospital. The medical record of the petitioner and some relatives has been annexed as Annexures P-9 to P-11. It is also the case of the petitioner that she has three school going children apart from an old ailing father-in-law and that the delay in deposit of the installments was beyond her control.

(vi) The petitioner preferred CWP No.19826 of 2022 but the same was withdrawn with liberty to avail other remedies available to her (Annexure P-12).

(vii) A review application was thereafter preferred by the petitioner against the revisional order which was also dismissed on 03.10.2023 (Annexure P-14)

3. Broadly the petitioner pleads that hers is a case of extreme hardship and her plot deserves to be restored to her.

4. Though formal notice was not issued, however, since learned counsel representing the respondents were present on account of advance copy of the petition having been served upon them, they were also heard.

5. It was vociferously argued by Sh. P. K. Ganga, learned counsel representing the petitioner that the circumstances of the

petitioner as have been stated in the petition were such that the petitioner was not able to clear the outstanding amount and when her appeal was allowed and she was willing to clear the outstanding amount, the respondents did not permit her to do so on the ground that they were contemplating filing a revision petition against the order passed by the Appellate Authority. Learned counsel submitted that the default of the petitioner was not willful but was on account of circumstances beyond her control. Learned counsel submitted that any woman facing so many issues in life would definitely crumble under pressure and would make efforts to re-join the scattered pieces of her life only post the situation becoming somewhat normal. It was submitted that in view of the peculiar facts and circumstances as have been stated in the petition and have been argued by learned counsel, the disputed plot deserves to be restored to the petitioner.

6. On the other hand, learned counsel representing HSVP, with equal vehemence, opposed the submissions made by learned counsel representing the petitioner. Learned counsel submitted that the petitioner chose not to pay the outstanding amount for a number of years without any plausible explanation which disentitles her from any relief.

(i). Learned counsel further submitted that the Appellate Authority had not considered the matter from the correct perspective and had allowed the appeal filed by the petitioner without considering the settled position of law or the guidelines issued by the department. Learned counsel submitted that under the circumstances, the revisional authority rightly set aside the order passed by the Appellate Authority.

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

8. The disputed plot was allotted to the petitioner vide letter of allotment dated 17.09.2010. The tentative price was ₹31,41,600/- (rupees thirty one lakh forty one thousand and six hundred). Admittedly, only 25% of the said price amounting to ₹7,85,400/- (rupees seven lakh eighty five thousand and four hundred) was paid out of which ₹3,14,200/- (rupees three lakh fourteen thousand and two hundred) had been paid as earnest money along with the application form and ₹4,71,200/- (rupees four lakh seventy one thousand and two hundred) was paid within 30 days from the date of issuance of the allotment letter. The balance amount was to be paid in six equated annual installments starting from 17.09.2011 and the last installment was to fall due on 17.09.2016. Admittedly, none of the installments was paid. It, therefore, essentially means that no amount was paid after the deposit of 25% amount in 2010.

(i) On account of non-payment of the installments, the respondents, as it evident from the resumption order dated 30.12.2019 initiated proceedings for resumption only on 11.07.2016 when the first notice under Section 17(1) of the HSVP Act was issued. It was followed by subsequent notices under Section 17(2), 17(3) and 17(4). Penalty was also imposed which was also not paid. Having no choice left, the plot was resumed on 30.12.2019 by holding that the default in payment was willful.

(ii) An appeal was instituted on 15.02.2021 i.e. more than one year after the plot having been resumed. The Appellate Authority gave 60

days time to the petitioner to clear all the outstanding dues. At this stage, the petitioner did show some *bone fides* by making a request for depositing the outstanding amount, vide communication dated 21.10.2021.

(iii). The respondents, however, preferred a revision petition which was accepted by the revisional authority vide order dated 20.07.2022 and the order passed by the Appellate Authority was set aside. The revisional authority duly noticed the willful default on the part of the petitioner as also the delay caused in filing the appeal.

(iv). The petitioner then knocked the doors of this Court. The record was summoned by a Co-ordinate Bench and it appears that when the Court was not inclined to interfere, the petitioner withdrew the writ petition with liberty to avail remedies as would be available to her in law. This would be evident from order dated 07.03.2003 passed in CWP No.19826 of 2022 (Annexure P-12).

(v). The petitioner, thereafter filed a review petition against the revisional order which has also now been dismissed holding the review petition to be not maintainable, there being no provision of review. The authority also noticed the willful default on the part of the petitioner.

(vi). It is, therefore, manifestly clear that there has been a willful default on the part of the petitioner as the petitioner did not deposit a single penny from 2010 to 2019 before the plot was resumed. The medical record which has been annexed with the writ petition does not, in any manner, even *prima facie* show that the petitioner was prevented from some serious disease suffered by her or by her husband or some other family member from depositing the outstanding amount. It has to

be borne in mind that the terms and conditions of the letter of allotment are binding upon an allottee and that the petitioner was duty bound to abide by the same. The petitioner, on the contrary did not bother to deposit the outstanding amount and all this while, did not even bother to make any request for extension etc., on account of the circumstances which she is now stating were responsible for the non-deposit of the outstanding amount.

9. In the considered opinion of this Court, the authorities committed no error in resuming the disputed plot. The Appellate Authority allowed the petition without giving any cogent reasons for the same. The order was, therefore, rightly set aside by the revisional authority.

10. There is another aspect of the matter. The petitioner knocked the doors of this Court by way of CWP No.19826 of 2022 and thereafter, withdrew the same to avail other remedies after which the petitioner simply filed a review petition which has also been dismissed as not maintainable. The *locus standi* of the petitioner to, thereafter again prefer the instant writ petition is also in serious doubt. Her conduct and bone *fides* are in any case in serious doubt.

11. 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. As has been noticed above, the petitioner not only defaulted in payment of the outstanding amount from 2010 to 2019 but also did not participate in the proceedings and availed the remedies after considerable delay which could not be condoned.

In the totality of the facts and circumstances, as have been discussed above, we find the writ petition to be totally devoid of merit and accordingly dismiss the same.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 21.03.2024
Rekha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No