

(2015) 11 P&H CK 0131
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 8476 of 2014 (OandM)

Ajay Kumar Jain and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Haryana Urban Development Authority Act, 1977 — Section 17, 17(1), 17(8)

Citation : (2015) 11 P&H CK 0131

Hon'ble Judges : S.J. Vazifdar and Tejinder Singh Dhindsa, JJ.

Bench : Division Bench

Advocate : Sanjay Kaushal, Sr. Advocate and Arjun Shukla, Advocate, for the Appellant; Rahul Dev, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—Petitioners seek quashing of order dated 4.4.2001 (Annexure P-3), passed by the Estate Officer, HUDA, Gurgaon resuming a residential plot. Petitioners are also aggrieved of the orders dated 7.5.2002 (Annexure P-2) and 10.9.2013 (Annexure P-1), passed by the Appellate and Revisional authorities respectively affirming the action of resumption.

2. Plot No. 4349, Sector 23/23-A, Gurgaon was allotted in the name of Sh. N.K. Jain i.e. father of petitioner No. 1 on 22.4.1988 upon his bid of Rs. 3,81,810/- having been accepted in an open auction. Allotment letter dated 22.4.1988 (Annexure P-4) was issued by the third respondent and the terms and conditions which would be relevant for the present case are reproduced hereunder:-

"1. Please refer to your bid for Plot No. 4349 in Sector 23-23 A at Gurgaon.

2. Your bid for Plot No. 4349 in Sector 23-23 A at Gurgaon has been accepted and the plot as detailed below has been allotted to you on free-hold basis as per the following terms and conditions and subject to the provisions of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the Act) and the rules/regulations applicable thereunder and as amended from time to time

including terms and conditions as already announced at the time of auction and accepted by you.

3. The sum of Rs. 38180/- deposited by you of bid money at the time of bid will be adjusted against the said plot.

4. You are requested to remit Rs. 57,272-50 in order to make the price of the said plot building within 30 days from the date of acceptance of your bid. The 25% payment shall be made by a bank draft payable to the Estate Officer, Gurgaon and drawn on any scheduled bank at Gurgaon. In case of failure to deposit the said amount within the above specified period, the allotment shall be cancelled and the deposit of 10% bid money deposited at the time of bid shall stand forfeited to the Authority against which you shall have no claim for damages.

5. The balance amount i.e. Rs. 2,86,357.50/- of the above price of the plot/building in lumpsum without interest within 60 days from the date of issue of allotment letter or in Six half yearly installment. The first installment will fall due after the expiry of six months/one year of the date of issue of this letter. Each installment would be recoverable together with interest on the balance price at 10% interest on the remaining amount. The interest shall, however, accrue from the date of offer of possession.

6. The possession of the site will be offered to you on completion of the development works in the area. In the case of building or undeveloped land, the possession shall, however, be delivered within 90 days from the date of this letter.

7. Each installment shall be remitted to the Estate Officer and every such remittance shall be accompanied by a letter showing the full particulars of the site i.e. the number of the plot and sector number to which the payment pertains. In the absence of these particulars the amount remitted shall not be deemed to have been received.

8. In case the installment is not paid by the 10th of month following the month in which it falls due the Estate Officer shall proceed to take action for imposition of penalty and resumption of plot in accordance with the provisions of section 17 of the said Act.

9. to 14 XXX XXX XXX

15. The Authority will not be responsible for levelling the uneven sites.

16. You will have to complete the construction within two years of the date of offer of possession, after getting the plans of the proposed building approved from the competent authority in accordance with the regulations governing the erection of building. This time limit is extendable by the Estate Officer if he is satisfied that non-construction of the building was due to reasons beyond your control, otherwise this plot is liable to be resumed and the whole or part of the money paid, if any in respect of it forfeited in accordance with the provision of

the said Act. You shall not erect any building or make any alteration/addition without prior permission of the Estate Officer. No fragmentation of any land or building shall be permitted.

17 to 22 XXX XXX XXX

23. No separate notice will be sent for the payment of the yearly installments. However, the information regarding the installment, the due date etc. may be sent as a matter of courtesy.

24. XXX XXX XXX

25. If the payment/installment is not made in due date the interest @ 18% will be charged on the delayed period. "

3. 25% of the allotment price having been deposited, no further installment was paid. Vide memo dated 10.5.1994 (Annexure P-5) possession of the plot in question was offered. A show cause notice dated 17.2.1999 (Annexure P-8) under Section 17(1) of the Haryana Urban Development Act, 1977 (herein after to be referred to as the 1977 Act) was issued on account of non-deposit of installment and as such, imposition of a penalty of Rs. 1,33,258/- was contemplated. After consideration of a reply dated 22.3.1999, order dated 25.6.1999 (Annexure P-10) was issued by the third respondent imposing a penalty of Rs. 1,33,287/- and as such, directing the allottee to deposit the entire outstanding amount along with the penalty within a period of 15 days. Non-deposit of the due amount has led to the passing of the resumption order dated 4.4.2001 (Annexure P-3). Original allottee Sh. N.K. Jain died in the year 2001 and his legal heirs i.e. present petitioners pursued the proceedings thereafter. Administrator, HUDA, Gurgaon rejected the appeal preferred by the petitioners vide order dated 7.5.2002 (Annexure P-2) and even the Revisional Authority i.e. Principal Secretary to Govt. of Haryana, Town, Country Planning and Urban Estates Department has rejected the revision petition preferred under Section 17(8) of the 1977 Act in the light of the order dated 10.9.2015 (Annexure P-1).

4. Learned senior counsel appearing for the petitioners would vehemently contend that the offer of possession made vide letter dated 10.5.1994 was not a valid offer inasmuch as development works in the area had not been completed. It has been argued that as per condition No. 6 of the allotment letter the possession of the plot was to be offered on completion of the development works. Counsel has even adverted to the reply dated 22.3.1999 submitted by the allottee to the show cause notice, wherein it had been stated that there was a poultry farm situated opposite the plot in question and there were even high tension electric cables passing over head and on account of which construction was not possible. Precise submission raised is that since development works had not been undertaken and the plot itself was situated at a disadvantageous location, accordingly, installments had not been deposited and for which the extreme step of resumption should not have been resorted to. Reliance has been placed on a judgement dated 23.2.2015 rendered by a Division Bench of this

Court in CWP No. 7425 of 2014 titled as Anil Kumar Jolly Vs. State of Haryana and others, wherein the resumption order in respect of a residential plot on account of nonpayment of installments/dues over a considerable length of time had been set aside subject to the allottee therein depositing the entire outstanding dues along with interest and penalty as applicable.

5. Mr. Kuldeep Tiwari, learned counsel appearing for HUD A authorities would vehemently oppose the petition by referring to the notice of motion order dated 5.5.2014, which reads in the following terms:-

"The allotment of a residential plot made on 22.04.1988 through public auction had to be cancelled and the site resumed as the petitioners failed to deposit the due instalments. Against the order of resumption passed in 2001, they went in appeal and the appellate authority permitted them to deposit the due instalments but they did not avail that opportunity. Their revision petition unfortunately remained pending for more than 10 years and has been finally dismissed. The facts would speak for themselves that no interference in the impugned orders is called for by this Court.

Faced with this, Mr. Sanjay Kaushal, learned counsel for the petitioners submits that the petitioners are ready and willing to seek fresh re-allotment at the current price.

Notice of motion for 15.09.2014 to explore the aforesaid possibility.

Sd/- (SURYA KANT) JUDGE Sd/- (LISA GILL) JUDGE"

Counsel informs that there is no policy of HUD A, whereunder the plea of the petitioners for seeking fresh re-allotment of the plot in question at the current price can be considered.

Counsel further submits that after making deposit of 25% of the allotment price, no installments have been deposited and the action of resumption has been resorted to strictly as per terms and conditions contained in the allotment letter and after following due procedure. Dismissal of the writ petition, as such, is prayed for.

6. The issue as to whether an allottee, who has purchased a plot in an open auction, can withhold the price of the plot as may be payable in installments as also the interest accruing thereupon on the plea that development works have not been undertaken by the authority concerned came to be considered by the Hon"ble Apex Court in U.T. Chandigarh Administration and Another Vs. Amarjeet Singh and Others, and it was observed as follows:-

"19. In Lucknow Development Authority Vs. M.K. Gupta, , it was held that where a developer carries on the activity of development of land and invites applications for allotment of sites in a developed layout, it will amount to service", that when possession of the allotted site is not delivered within the stipulated period, the delay may amount to a deficiency or denial of service, and

that any claim in regard to such delay is not in regard to the immovable property but in regard to the deficiency in rendering service of a particular standard, quality or grade. The activity of a developer, that is development of land into layout of sites, inviting applications for allotment by assuring formation of a lay out with amenities and delivery of the allotted sites within a stipulated time at a particular price, is completely different from the auction of existing sites either on sale or lease. In a scheme for development and allotment, the allottee has no choice of the site allotted. He has no choice in regard to the price to be paid. The development authority decides which site should be allotted to him. The development authority fixes the uniform price with reference to the size of plots. In most development schemes, the applications are invited and allotments are made long before the actual development of the lay out or formation of sites. Further the development scheme casts an obligation on the development authority to provide specified amenities. Alternatively the developer represents that he would provide certain amenities, in the Brochure or advertisement. In a public auction of sites, the position is completely different. A person interested can inspect the sites offered and choose the site which he wants to acquire and participate in the auction only in regard to such site. Before bidding in the auction, he knows or is in a position to ascertain, the condition and situation of the site. He knows about the existence or lack of amenities. The auction is on "as is where is basis". With such knowledge, he participates in the auction and offers a particular bid. There is no compulsion that he should offer a particular price.

20. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site. If all amenities are available, he would offer a higher amount if there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/premium or the stipulated interest on the delayed payment, or the ground rent, on the ground that the site suffers from certain disadvantages or on the ground that amenities are not provided."

7. In view of the observations reproduced herein above the justification offered on behalf of the petitioners that the installments were not deposited on account of development works having not been carried out and that the plot in question suffering from certain disadvantages, cannot be accepted. If there had been any bonafide intention on the part of the petitioners to retain the property, it was always open for them to have deposited the installments under protest and thereafter sought redressal of their grievance, if any, by taking out appropriate proceedings. Petitioners on the other hand chose not to deposit even a single penny after the initial deposit of 25% of the premium in the year 1988. The action of HUDA authorities to initiate and finalize resumption proceedings, as such, cannot be faulted.

8. Even otherwise, in the given set of facts and circumstances the allottee/s would be seen as willful and deliberate defaulters. The plot in question was purchased in an open auction in the year 1988. 25% of the premium/allotment price was paid in the year 1988 itself. As per terms and conditions of the allotment letter, balance amount was liable to be deposited in lump sum without interest within a period of 60 days from the date of issuance of the allotment letter or in six half yearly installments alongwith interest. The schedule of installments expired on 21.4.1994. The allottee did not pay a single installment during such tenure. Even thereafter no payment was made and which led to the issuance of a show cause notice under section 17(1) of the 1977 Act. Even then no payment was deposited. It is only for the first time in the reply dated 22.3.1999 (Annexure P-9) to the show cause notice a plea was taken that development works had not been completed and that high tension electric cables were passing over head. The resumption order was passed on 4.4.2001. A perusal of the order passed by the Appellate Authority dated 7.5.2002 (Annexure P-2) would reveal that a finding has been recorded that the allottee were still not ready to clear the dues. In other words, after deposit of the initial 25% of the allotment price in the year 1988 the allottee/s did not deposit a single installment even till the date of rejection of their appeal in the year 2002. It appears that the petitioners are pursuing the present proceedings and seeking setting aside of the resumption order purely for speculative consideration. We may also proceed to note that even though, notice of motion order dated 5.5.2015 had been issued by recording the contention raised on behalf of the petitioners that they are ready and willing to seek fresh re-allotment at the current price but learned senior counsel during the course of hearing today has not advanced any submission in such regard. This is only reflective of the lack of the bonafides on the part of the petitioners as regards their requirement of a residential site.

9. The reliance placed by counsel upon the Division Bench judgement in Anil Kumar Jolly's case (supra) is misplaced. In the facts of such case a residential plot allotted by HUDA in Sector 10, Ambala was resumed in the year 2003 on account of default in deposit of installments. The Division Bench set aside the order of resumption in the light of the peculiar facts of the case as would be discernible from the following passage contained in the decision dated 23.2.2015:-

"After considering the rival contentions of the parties, we feel that the writ petition deserves to be accepted. No doubt the petitioner has failed to pay the due instalments within reasonable period, but in view of the fact that the petitioner does not possess any other residential plot and has even submitted a demand draft dated 14.12.2005, it reflects his bonafide need of plot. He is staying in a rented accommodation at Panipat. The factum of unfortunate adverse business losses, as pleaded by the petitioner, has also not been controverted by the respondents. It has also not been disputed that the petitioner who was earlier carrying on the business at Ambala had shifted his

business from Ambala to Panipat in adverse conditions."

The facts of the present case are clearly distinguishable and as such, the judgement in Anil Kumar Jolly's case (*supra*) would have no applicability.

10. For the reasons afore stated, we do not find any ground to interfere with the impugned orders in exercise of our discretionary jurisdiction.

11. Writ petition is dismissed.