
(2008) 10 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12178 of 2008

Ajay Singh Kinha

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 03-10-2008

Acts Referred:

Citation : (2009) 1 RCR(Civil) 959

Hon'ble Judges : Uma Nath Singh, J and Daya Chaudhary, J

Advocate : Mr. Gaurav Kathuria, Advocate. For the Respondents Nos. 2 to 4, Ms. Ritu Punj, DAG, Haryana and Mr. Ajay Nara, Advocate., Advocates for appearing Parties

Judgement

Daya Chaudhary, J.—The petitioner was allotted a residential plot in Sector 39, Gurgaon on 16.3.1995. Tentative price of the plot was Rs. 3,04,920/. As per terms and conditions of allotment letter, the petitioner was to deposit a sum of Rs. 45738/ within a period of 30 days from the date of issuance of allotment letter, along with Rs. 30492/ already deposited at the time of submission of application i.e. making 25% of the total cost of the plot. The petitioner was required to deposit a sum of Rs. 2,28,690/ in six annual installments. The petitioner has only deposited 25% of actual cost of the plot within stipulated period as mentioned in the allotment letter and has not deposited the outstanding amount despite issuance of show cause notice dated 1.9.2000 but neither he cleared the dues nor appeared before the Estate Officer for personal hearing. Therefore, a penalty of Rs. 37717/ was imposed by the Estate Officer, HUDA on 14.3.2001. When the petitioner did not deposit any amount, he was again issued a show cause notice vide letter dated 15.6.2001 and an opportunity of personal hearing was also given on 22.10.2001. Since petitioner did not deposit the entire outstanding amount, the Estate Officer resumed the said plot vide order dated 11.3.2002 in accordance with terms and conditions of allotment and HUDA Rules.

2. The petitioner challenged the order of resumption by way of filing appeal

before Administrator, HUDA, Gurgaon, who vide order dated 28.7.2004 remanded the case to Estate Officer, HUDA, Gurgaon for fresh decision after giving opportunity of personal hearing to the petitioner. The Estate Officer again passed a detailed speaking order on 14.10.2004 which was further challenged in appeal before Administrator with a prayer that since petitioner could not deposit the entire outstanding amount within time due to financial problems and illness of his mother, the resumption orders passed by the Estate Officer may be set aside. The appeal was dismissed by the Administrator vide order dated 4.3.2005 with a direction to Estate the Officer to pass a speaking order after giving personal hearing to the petitioner. The Estate Officer again dismissed petitioner's case by passing a speaking order on 27.6.2005. Thereafter petitioner filed an appeal under Section 17(5) of the Haryana Urban Development Authority Act, 1977 before Administrator HUDA, Gurgaon, who exercising the powers of Chief Administrator HUDA dismissed the appeal vide order dated 7.3.2006. Aggrieved by the order of Chief Administrator, the petitioner filed a revision petition before Commissioner & Secretary to Govt. Haryana Town and Country Planning Department, which was also dismissed vide order dated 2.5.2008.

3. The petitioner has challenged order of resumption, orders passed in appeal as well as order passed in revision in the present writ petition.

4. Mr. Gaurav Kathuria, learned counsel for petitioner, has argued that petitioner was always ready to pay the balance amount but due to personal difficulty and financial position, lie could not deposit the same. The bona fide of the petitioner is clear from the letters written to the respondent authorities mentioning therein to give details of the balance amount so as to enable him to deposit against the balance amount. It has also been argued by Mr. Kathuria that the order of resumption as well as orders passed in appeal and revision are not speaking orders and petitioner has not been given opportunity of personal hearing and, as such, orders are illegal, arbitrary, discriminatory and against principles of natural justice.

5. Notice of motion was issued to the respondents only on a limited point as to whether the petitioner is willing to pay the current price with interest of the plot in question.

6 Mr. Kathuria, learned counsel for petitioner, has argued that the alleged notices were sent at the wrong address of the petitioner and the same were not served. He also submitted that grandmother of the petitioner was seriously ill and, therefore, he could not deposit the balance amount well in time. Even the appellate authority, keeping in view the genuine grievance of lie petitioner, remanded the Case to respondent No. 4 to look into the matter afresh. The petitioner has also been writing to the respondents time and again to apprise him about the balance amount due against him so that he may be able to clear the dues, but nothing was conveyed to the petitioner and ultimately the order of resumption dated 11.3.2002 was passed. It has also been contended by counsel for the petitioner that resumption of plot is a weapon of last resort and should

not have been used in peculiar circumstances of the case. Moreover, the petitioner was not afforded a reasonable opportunity to explain his position and his proprietary rights have been taken away without affording him the opportunity of hearing and without giving any personal hearing. Mr. Kathuria also argued that as per the allotment letter the only course left with the respondent authority for nonpayment of the instalment was to impose penalty or interest on unpaid amount and nowhere it was mentioned in the allotment letter that plot in dispute can be resumed on failure to make payment. The petitioner has already made the payment more than the principal amount and the balance amount is an enhanced amount and the petitioner is still ready to deposit the entire amount along with interest and penalty if the Hon''ble Court so desires. He has relied on a Judgment of the Hon''ble Apex Court reported in M.D., H.S.I.D.C. and Ors. v. M/s. Hari Om Enterprises and another, JT 2008(8) SC 184 and argued that even in cases of chronic defaulters, the resumption order can be set aside in case the allottee offers to pay current price of the plot.

7. Although the petitioner is a defaulter as he has not deposited the balance price of the plot in spite of granting opportunities, but from perusal of the record it is clear that petitioner has deposited Rs. 3,28,690/ as against principal amount of Rs. 3,00,4920/ plus Rs. 2,02,83/ as enhanced amount. Moreover, the petitioner has been asking from the respondents from time to time as to how much balance amount was to be paid, but the respondents never came with a clear stand with regard to deposit of the balance amount. Even during the pendency of the appeal, the petitioner sent a letter to the respondent authorities asking them to tell details of the additional price of the plot in question as is clear from the letter dated December 30, 2003.

8. Mr. Ajay Nara, learned counsel for respondents No. 2 to 4, argued on the basis of orders passed by respondent authorised authorities that petitioner did not deposit the balance amount in spite of providing many opportunities and despite issuing various show cause notices under Section 17(i) & (ii) of the HUDA Act, 1977. The resumption order has rightly been passed as the petitioner has violated the terms and conditions of allotment and HUDA Rules.

9. We have heard the arguments of learned counsel for parties and perused the pleadings on record.

10. Keeping in view the peculiar facts and circumstances of the case, we deem it appropriate to direct the respondent authorities to reconsider the claim of the petitioner in view of the judgment of the Hon''ble Apex Court reported in M.D., H.S.I.D.C. and Ors. v. M/s. Hari Om Enterprises and another, JT 2008(8) SC 184 provided petitioner is ready to deposit current price of the plot along with interest and penalty. If the claim of the petitioner is allowed by the respondents, then petitioner would be directed to deposit the amount within a period of one month, failing which the resumption order dated 11.3.2002 shall remain in operation.

This petition is disposed of in above terms.