

(1998) 11 P&H CK 0119

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1829 of 1989

Amrit Lal Jain

APPELLANT

Vs

Haryana Urban Development Authority and Others

RESPONDENT

Date of Decision : 26-11-1998

Acts Referred:

Haryana Urban Development Authority Act, 1977 — Section 17, 18
Transfer of Property Act, 1882 — Section 52

Citation : AIR 1999 P&H 140 : (1999) 123 PLR 757 : (1999) 2 RCR(Civil) 705 : (1999) 1 RCR(Civil) 545

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : A.C. Jain, for the Appellant; N.S. Panwar, for the Respondent

Final Decision : Dismissed

Judgement

Jawaharlal Gupta, J.—The appellant's challenge to the order of resumption of his plot in Gurgaon having been rejected by the learned single Judge, he has filed the present Letters Patent Appeal. A few facts as relevant for the decision of this case may be briefly noticed.

2. On January 27, 1967, the appellant was allotted plot No. 860, Sector 4, Urban Estate, Gurgaon on June 27, 1967, when the appellant had not even paid the price, he is alleged to have been handed over the possession. The appellant claims that he paid the initial price of Rupees 9350/-. However, on May 9, 1979, he was asked to deposit an enhanced additional price of Rupees 870.65 on account of the increase in the amount of compensation as awarded by the court. The appellant failed to comply with the direction of the authority to make the deposit. A show cause notice was issued to him on September 15, 1980. He was called upon to explain as to why a penalty be not imposed upon him. The appellant did not respond. On November 25, 1982, show cause notices as contemplated u/s 17(1) and 17(2) of the Haryana Urban Development Authority Act, 1977 were issued. Even these elicited no response. Vide letter dated July 27,

i 983, the appellant was called upon to appear for personal hearing. He asked for adjournment. Ultimately, he was asked to make a deposit of Rs. 870.65 by way of penalty. The appellant informed the authority that he was unable to pay this amount. On October 5, 1983, a show cause notice u/s 17(3) on account of the appellant's failure to pay the amount together with the penalty was issued to him. He was asked to explain as to why an order of resumption be not passed. He still did not respond. He was called upon to appear for personal hearing on September 4, 1984. He still did not appear. On October 26, 1984, the authority ordered the resumption of the plot. A copy of the order is at Annexure P. 15. He filed an appeal which was barred by limitation. Vide order dated April 9, 1985, the appeal was dismissed. On May 14, 1986, the appellant approached this court through a petition under Article 226 of the Constitution. In the meantime, vide order dated January 29, 1986, the plot had been allotted to the fourth respondent. He deposited the money in May 1986. The appellant amended the petition to challenge the resumption of the plot and the subsequent allotment in favour of the fourth respondent.

3. The only ground urged before the learned single Judge was that the allotment to respondent No. 4 was against the provisions of Section 52 of the Transfer of Property Act, 1953. The challenge having been negatived, the appellant has filed the present Letters Patent Appeal.

4. Mr. Jain, counsel for the appellant has contended that the appellate authority had erred in dismissing the appeal on the ground of limitation. It should have condoned the delay. Secondly, it has been contended that the order of resumption is vitiated as the procedure u/s 18 of the Act had not been followed. Lastly, the learned counsel has argued that the allotment in favour of respondent No. 4 is illegal as doctrine of lis pendens would be attracted. The claim made on behalf of the appellant has been controverted by Mr. Panwar, who has appeared for respondent No. 4.

5. The sequence of events as delineated above clearly shows that the appellant had no interest in the plot. Despite repeated opportunities to pay the enhanced price, he had failed to comply with the demand. Thereafter, he was given more than one opportunity as contemplated u/s 17. Yet, he did not avail of those opportunities. In fact, he did not even appear when he was called upon to do so. The authority was driven to the inevitable and was constrained to order resumption. The appellant had the right to submit an appeal. However, he had to do so within the prescribed period of limitation. It is the admitted position that he had not filed the appeal within the prescribed period of 30 days as contemplated u/s 17(5). No doubt, the authority had the discretion to condone the delay. However, this power had to be exercised only if the authority was satisfied that the appellant was "prevented by sufficient cause from filing the appeal in time." It has not been shown that the appellant had sufficient cause. No explanation for the delay in filing the appeal was advanced before the learned Single Judge. No cause has been shown even now at the time of the hearing of

the present appeal. In this situation, no ground for interference with the discretion exercised by the competent authority u/s 17(5) is made out at this stage.

6. It was then contended that the order of resumption is vitiated as the procedure u/s 18 of the Act had not been followed.

7. The contention is misconceived. Section 17 prescribes the procedure which has to be followed by the authority when there is breach of the conditions of transfer. Admittedly, there was a breach in the present case. The procedure as prescribed u/s 17 was followed. It was after compliance with the requirements of Section 17 that an order of resumption as contemplated under the provision was passed. For the purposes of ordering resumption, it was not at all necessary for the authority to resort to the proceedings of Section 18. In fact, the provisions of Section 18 are attracted only when a person has to be evicted from the premises on account of his failure to pay the rent, subletting the premises without the permission of the Estate Officer, acting in contravention of the terms on which he had been authorised to occupy the premises and when his possession is found to be unauthorised. The appellant had come to the court to challenge the orders of resumption. For the purposes of resumption, the procedure u/s 18 was not at all attracted. Still further, it was not even suggested before the learned single Judge that the appellant was in possession and that he had been illegally dispossessed therefrom. No such complaint had been made before the court. Such an argument cannot be allowed to be raised at the stage of the Letters Patent Appeal for the first time.

8. Lastly, it was contended that the allotment in favour of respondent No. 4 was illegal as the matter was still pending consideration of the Court.

9. The contention is again misconceived. So far as the appellant is concerned, the allotment had been cancelled and the plot had been resumed by the authority on October 26, 1984. His appeal had been dismissed on April 9, 1985. Thereafter, the plot was allotted to respondent No. 4 on January 29, 1986. On that day, no litigation was pending. No case was being considered by any Court. The doctrine of *lis pendens* had no application. It was not even remotely attracted.

10. No other point was raised.

In view of the above, there is no merit in this appeal. It is, consequently, dismissed. It is a fit case for the award of penal costs. However, we deposit (desist) from doing so only because the appellant is, said to be a heart patient.