
(2013) 05 P&H CK 0171
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10061 of 2013

Anil Godara

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Haryana Urban Development Authority Act, 1977 — Section 17(2), 17(4)

Citation : (2013) 171 PLR 285

Hon'ble Judges : Satish Kumar Mittal, J;Amol Rattan Singh, J

Bench : Division Bench

Advocate : Arun Jain, with Mr. Sohaib Khan, for the Appellant;

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—On 20.07.2000, the petitioner was allotted residential plot No. 529, Sector 24, Panipat on a premium of Rs. 12,43,250/-. 10% of the premium was paid as earnest money at the time of application, and as per the allotment letter, 15% amount of the premium was to be paid within thirty days. It is the case of the petitioner that after receipt of the allotment letter, 15% amount of the premium was paid within thirty days. Further, as per the allotment letter, the balance 75% amount (Rs. 9,32,437/-) was to be paid in lump sum within sixty days from the date of issuance of allotment letter or in annual installments with interest. Undisputedly, the petitioner did not pay the remaining 75% amount either in lump sum or in installments up to 25.01.2002, when the respondents issued a notice to him u/s 17(2) of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as "the HUDA Act"). He was also given opportunity to appear in person. But the petitioner neither responded to the notice nor appeared in person nor made the payment of the balance amount. Consequently, the plot in question was resumed vide order dated 30.10.2002 (Annexure P-6) in exercise of the powers u/s 17(4) of the HUDA Act together with forfeiture of 10% of the total price of the plot as per the HUDA Act. As per the respondents, the resumption order was duly communicated to the petitioner.

2. For five years the petitioner did not file any appeal against the said order. However, it is the case of the petitioner that in the year 2007 when he had written a letter to the respondents for intimating him about the remaining amount due, he was informed that the plot of the petitioner had already been resumed vide order dated 30.10.2002. Later on, after getting the said order, the petitioner filed an appeal against the resumption order before the Appellate Authority on 21.10.2008. The said appeal was ultimately dismissed on 19.01.2009 after hearing the petitioner in person and the counsel for the respondent/HUDA. The revision petition preferred against the said order has also been dismissed vide order dated 18.09.2012. These orders have been challenged in the instant writ petition.

3. Learned Senior counsel for the petitioner made two-fold submissions. Firstly he argued that the petitioner was never served any notice before passing the order of resumption nor the said order was ever communicated to him. Therefore, the resumption order passed by the respondent-authority is illegal and violative of the principles of natural justice. Secondly, he has argued that due to the great hardship, the petitioner could not pay the remaining 75% price of the plot within the prescribed time, but now the petitioner is ready to pay the said amount with interest and penalty, therefore, on receipt of the interest, the resumption order may be set aside, as according to the learned counsel, in view of the judgment of the Hon'ble Supreme Court in Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, , the drastic power of resumption is to be used only as a fast resort in a rarest case where the allottee has no intention at all to pay the dues.

4. After hearing the learned Senior counsel for the petitioner and keeping in view the facts and circumstances of the case, we do not find any force in both the aforesaid contentions raised by the learned counsel. It is not disputed that the allotment letter was received by the petitioner on the same address on which the notice before resumption was issued to him. The competent authority, who passed the resumption order, the Appellate Authority as well as Revisional Authority have recorded a finding of fact that the notices were issued to the petitioner on the said address. Those notices, which were sent to the petitioner by registered post, were never received back in the office of respondents. Since the notices were sent to the petitioner by registered post on the correct address, there is presumption of service of those notices against the petitioner. The petitioner did not lead any evidence or brought any material on the record which rebuts the stand taken by the respondents except making the statement that he did not receive those notices. Secondly, on issuance of the allotment letter, the petitioner had deposited 15% price of the plot within thirty days from the date of allotment letter, and the remaining 75% amount was to be deposited in lump sum within sixty days or in annual installments together with interest. The petitioner was aware about his obligation to pay the said amount, but undisputedly he did not pay the said amount. He never made any application before the competent authority seeking extension of time. For five years, the

petitioner remained silent. He could not place on record any letter communication showing his intention that he was ever ready and willing to pay the amount due against him. Even the appeal was filed after more than five years of the order of resumption. It has been found by both the authorities that no explanation has been given for filing the appeal at a belated stage. These facts clearly indicate the total unwillingness on the part of the petitioner to pay the balance amount. Therefore, the present case is not a case where the allottee has an intention at all to pay the amount due against him. In such circumstances, where the default is willful, the prayer made by the petitioner to accept the balance amount with interest and penalty at a belated stage, when the price of the plot has increased manifold, cannot be accepted. In our opinion, the competent authority, in the facts and circumstances, was fully justified in passing the resumption order, which has rightly been upheld by the Appellate as well as Revisional Authorities. The judgment relied upon by the learned counsel in M/s .Teri Oat's case (supra) for accepting the balance amount with interest and penalty at a belated stage, is not applicable in the facts of this case as it will amount to granting the unjust relief to the petitioner. In view of the aforesaid, we do not find any ground to interfere in the impugned orders. Hence, the writ petition is dismissed.