

(2005) 04 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12165 of 2002

Balwant Singh Saluja and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab Regional and Town Planning and Development Act, 1995 — Section 46(1)

Punjab Urban Estates (Development and Regulation) Act, 1964 — Section 11(3)

Citation : (2005) 140 PLR 714 : (2005) 3 RCR(Civil) 688

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Advocate : J.K. Sibal and Sapan Dhir, for the Appellant; Govind Goel, for the Respondent

Final Decision : Dismissed

Judgement

Jasbir Singh, J.—Petitioners have filed this Writ Petition under Articles 226/227 of the Constitution of India with a prayer to issue writ of Certioraris quashing order of resumption dated 11.7.19991 (Annexure P-I), order passed by the Estate Officer dated 30.11.1995 (Annexure P-2) and order dated 31.3.1992 (Annexure P2/A) passed by the revisional authority. Prayer has further been made to quash order dated 20th June, 2002 (Annexure P/12) passed by the Estate Officer-respondent No.3. Petitioners have also made a prayer that writ of Mandamus be issued directing the respondents to accept balance amount of price of Booth No. 92 Phase VII, Mohali, with interest/penalty and restore the above mentioned property to them, in terms of order passed by the Hon"ble Supreme Court in Civil Appeal No. 7348-67349/1997 (Annexure p-7).

2. It is apparent from the record that Booth No. 92, Phase VII, Mohali was allotted to the petitioners, being highest bidders, in an open auction for a Sum of Rs. 1,79,000/- on 23rd September, 1987. Petitioner had deposited 25% of the sale price. Remaining amount was to be paid in four annual equal installments

with interest at the rate of 7% per annum. Schedule for payment of installments was mentioned in the allotment letter. After deposit of 1st installment, petitioners failed to make any deposit towards remaining amount. In the meantime, petitioners had completed construction over the plot allotted to them, occupation certificate was issued on 31st August, 1989. Despite notice, payment towards remaining sale price was not made and ultimately, after providing due opportunities of hearing, to the petitioners, booth in dispute was resumed vide order dated 11th July, 1991 (Annexure P/I) and 10% of the sale price was ordered to be forfeited. Petitioners went in appeal and vide order dated 6th September, 1991, appeal was accepted, subject to the condition that petitioners will deposit remaining amount along with simple interest within four months from the date of said order. It was further ordered that in case they failed to make payment within the stipulated period, order of resumption shall remain intact. Petitioners failed to avail this golden opportunity given to them and instead filed a revision petition u/s 11(3) of the Punjab Urban Estates (Development and Regulations) Act, 1964. At the time of hearing of the revision petition, petitioners offered to pay Rs. 10,000/- within one month and remaining amount within four months thereafter. Revisional authority, by taking lenient view, accepted request made by the petitioners. They were allowed to make payment; as offered by them. Order of resumption was kept in abeyance, subject to the condition that if they failed to make the payment, as undertaken by them, the site in question shall be deemed to have been resumed automatically. Petitioners made payment of Rs. 10,000/-, as agreed, but they failed to make payment of the remaining amount. Ultimately, site was resumed vide order dated 30th November 1995 (Annexure P-2) by the Estate Officer. Excess amount than 10% of the sale price was ordered to be refunded. Petitioner No. 1 filed Civil Writ Petition No. 18004 of 1995 in this Court seeking quashing of orders, referred to above. That writ petition after contest, was dismissed, vide order dated 24th May, 1996. Petitioner No. 1 filed SLP No. 18581 of 1996 in the Hon'ble Supreme Court of India, against order referred to above, the same was got dismissed as withdrawn. Petitioner No. 1 again filed Civil Writ Petition No. 3102 of 1997 in this Court. At the time of hearing, counsel made a request that he may be permitted to withdraw that writ petition unconditionally. Request was accepted and writ petition was dismissed as withdrawn on 4th March, 1997. Thereafter, Estate Officer, while exercising powers u/s 46(1) of the Punjab Regional & Town Planning and Development Act, 1995 on 3rd September, 1998, ordered eviction of the petitioner from the property in dispute. Petitioner went in appeal, which was dismissed on 1st June, 1989. Thereafter even civil suit was filed with a prayer that the authorities be restrained from dispossessing them from the booth in question, till assessment of the value, towards super-structure, was made. Civil Court refused to grant any interim injunction. Appeal was also dismissed by the appellate Court on 6th September, 2000. After failing at every stage(s), as has been referred to above, again representation was made by the petitioners on 28th January, 2000 to the Chief Administrator, PUDA with a request to revoke resumption and eviction order, after accepting balance payment. They also

approached Chief Minister, Punjab by letter dated 18th September, 2000. In compliance to the eviction order possession of the property in dispute, was also taken by the respondents. Petitioners filed Civil Writ Petition No. 3255 of 2002 by reiterating prayers, which were made in earlier writ petitions. In the writ petition, which was filed later in time, reliance was placed upon the judgment passed by Hon"ble Supreme Court in Civil Appeal No. 7348-49 of 1997 titled as Shri H.S Bajwa v. State of Punjab, This Court vide order dated 1st March, 2002 disposed of the Civil Writ Petition No. 3255 of 2002 with direction to the authorities to dispose of the representation moved by the petitioners by passing a speaking order. Thereafter, order dated 20th June, 2002 (Annexure P/12) was passed, vide which relief was declined to the petitioners. Hence this writ petition.

3. Heard learned counsel for the parties.

4. After looking into sequence of events, as referred to above, this Court feels that this writ petition deserves dismissal,

5. It is apparent from the record that property, in dispute, was allotted to the petitioners in the year 1997. After making initial payment, they failed to make payment towards balance amount, when it became due. Despite notice, they failed to do the needful, as such, resumption order was passed, Appellate Court below again provided them a good opportunity on 6th September, 1991, by ordering that they should deposit entire balance amount, with simple interest, within four months. They did not avail that opportunity and rather filed a revision against that order. Revisional authority again by taking a very lenient view, asked the petitioners to make payment of balance price. Schedule for payment was fixed and it was observed by the revisional authority that in case of failure to make payment within stipulated period, revision shall stand dismissed automatically. Petitioners again failed to utilise this opportunity also. Their writ petition was dismissed thereafter they failed in the Hon"ble Supreme Court, wherein SLP was got dismissed as withdrawn on 25th September, 1996. In a very clever manner, petitioners again filed writ petition No. 3102 of 1997, At the time of hearing, when the counsel was confronted with the earlier orders passed by this Court and the Hon"ble Supreme Court, that writ petition was withdrawn unconditionally. Booth was resumed thereafter. Petitioners made a futile attempt to retain the property without making payment, before the Civil Court, but failed.

6. In consequent to the orders passed by this Court on 1st of March, 2002, a detailed order Annexure P/12 was passed by the competent authority on 20th June, 2002. A reading thereof indicates that order was perfectly justified and is based upon proper appreciation of facts on record. By their act and conduct, petitioners have shown that they are interested in litigation only, they failed to make the payment and got the property restored, as and when opportunities were given to them at different stages, Present writ petition has been filed vide which challenge has been laid to the resumption order passed in the year 1991. No explanation has been furnished, for a huge delay, in filing this writ petition, Simply because property has been ordered to be restored to some other allottee,

petitioners had not become entitled to get benefit in their case. In the case of the petitioners resumption order had already become final, possession has already been obtained and excess amount paid by them has already been ordered to be refunded.

Thus, the present litigation is nothing but a sheer abuse of process of law and accordingly, finding no merit in the same, writ petition is dismissed. However, keeping in view old age of the petitioners, though it was a fit case for imposition of heavy costs, no costs is being imposed.