
(2002) 02 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 282 of 1982

Basant Lal

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Punjab New Mandi Townships (Development and Regulation) Act, 1960 — Section 13

Citation : (2002) 2 RCR(Civil) 565

Hon'ble Judges : J.S. Narang, J

Bench : Single Bench

Advocate : Sanjiv Sharma, for the Appellant; H.S. Gill, D.A.G. Punjab, for the Respondent

Final Decision : Allowed

Judgement

J.S. Narang, J.—Petitioner purchased Shop-cum-Flat No. 3 (measuring 20 ft. x 80 ft.) in the New Mandi Township. Hoshiarpur, through an auction held on July 9, 1973, by the Administrator, New Mandi Township, Punjab for a sum of Rs. 16,000/-. As per the terms and conditions of the auction, 25 per cent of the price was payable immediately while the balance amount was payable in six half yearly instalments along with interest chargeable at the rate of 6 per cent per annum. Letter of allotment dated 20.10.1973 was issued by respondent No. 2 in favour of the petitioner.

2. Petitioner made a representation to the respondents stating that proper amenities like pucca roads, sewerage and electricity connections have not been laid/provided, as such, the respondent shall not be entitled to charge interest or such like a levies leviable or recoverable from the allottee. However, upon payment of 25 per cent of the price, petitioner was delivered possession of the defined plot. Since the amenities had no been duly provided, the purpose of purchase of the piot could not be achieved accordingly, as such no construction could be commenced. Resultantly, the first three instalments which fell due on

April 22, 1974. October 22, 1974 and April 22, 1975 were not deposited by the petitioner.

3. Despite the non-payment of the aforesaid instalments, the respondents did not issue any show-cause notice before initiating any penal action by way of resumption of the plot. However, the petitioner came to know that order of resumption dated 27.7.1976 (annexure P-I) had been passed. This fact came to his notice only on 28.12.1981 when he had gone to the office of respondent No. 2 for making payment of the balance amount.

4. The impugned order disclosed the forfeiture of whole of the money paid by the petitioner and possession of the plot having been taken by the respondents. However, Section 13 of the Punjab New Mandi Township (Development and Regulations) Act, 1960 (in short "the 1960 Act") provides two methods:-

(i) Under the ordinary Civil Law for recovery of the amount outstanding; and (ii) Under the Act to forfeit the amount and to resume the plot or to have the amount realised by way of arrears of land revenue.

5. It may be noticed that the Apex Court in Jagdish Chand Radhey Shyam Vs. The State of Punjab and Others, held that an allottee becomes owner of the property after the payment of 25 per cent of the price has been made. The aforesaid provision, i.e. Section 13 had been held to be ultra-vires the Articles 14 and 19(1)(f) of the Constitution of India. In this regard, reference may be made to a judgment of this Court in Dharam Pal and Ors. v. The State of Punjab and Ors. 1979 Revenue Law Reporter 58.

6. It was on 2.7.1981 that the 1960 Act was amended by the Amending Act to be known as "Punjab New Mandi Township (Development and Regulation) Validation Act, 1981."

7. Respondents framed various policies, i.e. on February 27, 1979, August 30, 1979, December 18, 1986 January 1, 1987, for the purpose of restoration of plots which were resumed under the old Act. However, these policies were not widely circulated but were kept close to the chest. It shall be apposite to note that in some cases, the aforesaid policies were invoked and reliefs granted accordingly.

8. The impugned order has been challenged inter-alia on various grounds including the one that no notice or opportunity had been granted to the petitioner before passing of the impugned order.

9. The stand of the official respondents is that the writ petition is not maintainable as the petitioner has not availed of the remedy of appeal/revision provided under the provisions of the Act. It is contended that notice dated 31.7.1975 and show-cause notice dated 9.10.1975 were served upon the petitioner which were duly received by the petitioner. The plot in question was resumed after waiting for a long period of 10 months from the date of issuance of the show-cause notice. Since the petitioner did not watch his interest, the

respondents were left with no other alternative but to resume the plot and forfeit the amount deposited accordingly. However, the respondents have stated that the amenities like pucca roads, sewerage etc. have since been provided in the Anaj Mandi, therefore, it does not lie in the mouth of the petitioner to take such a weak plea. It may be apt to notice that no date or year has been mentioned as to when such amenities had been provided in the Anaj Mandi. Since the petitioner had been duly served with the notice and the show-cause notice, it is now not open to him to take a plea that no such notice had been served upon him.

10. Replication has been filed to the written statement wherein the pleas of the respondents have been emphatically denied and it has been categorically stated that the notice and show-cause notice, as mentioned in para 9 of the written statement, were never ever received by the petitioner nor any order of resumption was served upon him. It shall be appropriate to notice that no corroborative document has been produced on record showing the acknowledgment issued by the petitioner in token of receipt of the notice and the show-cause notice.

11. Learned counsel for the petitioner has argued that the petitioner was never served with any notice for payment of defaulted instalments and that neither show-cause notice had been served before passing the impugned order of resumption of the plot allotted to the petitioner. In fact, impugned order dated 27.7.1976 (Annexure P-1) was also not served upon the petitioner. It is upon the visit of the petitioner to the office of the respondents it came to his knowledge that the said order has been passed. All these facts have been specifically averred in the relevant paras of the writ petition and while submitting reply to the same except from making bald statement that the said notices and [he impugned order had been duly served upon the petitioner, no supporting document has been placed on record to corroborate the averment/plea taken in the written statement. On the other hand, the petitioner has again emphatically denied the said averments by way of replication. Thus, in the absence of any such supporting document brought on record, the plea of the petitioner is said to be un-rebutable and it can be inferred that the petitioner was neither served with notices nor served with the impugned order and the impugned order came to his notice only on his visit to the office of the respondent. In view of this the age-old principle "No one should be condemned unheard" has to be followed and the impugned order deserves to be set aside accordingly.

12. It has been further argued that admittedly, the amenities like pucca roads, sewerage connection, electrification/electric cables etc. had not been laid/provided for all this while which resulted its non-user of the plot for the achievement of the object for which allotment had been accepted by the petitioner. It is settled law that if such like amenities are not provided by the authorities, it does not lie within the competence of the respondents to charge interest and penalties though leviable as per provisions of the statute an"or the conditions spelt out in

the letter of allotment. In this regard, reliance has been placed upon a Division Bench judgment of this Court in *Shanti Kunj Investment (Pvt.) Ltd. v. U.T. Administration, Chandigarh and Ors.* (2001)127 P.L.R. 838. [t has also been substantiated that the respondents while submitting reply to the pleas taken by the petitioner have not been able to spell out as to on which date and year such like amenities had been provided by the respondents, thus, it is imperative that this matter should be gone into by giving an opportunity to the petitioner before any penalty such as interest etc.. is levied and is made recoverable from the petitioner. It is also well-settled that the mere allotment of plot is not enough but the right to use and enjoy the property should also be made available by the respondents. The deficiencies by virtue of which the right of the petitioner suffers, stand corroborated from the averments contained in the petition and the vague reply submitted thereto by the respondents.

13. On the other hand, the learned counsel for the respondents has submitted that the factual matters could have been gone into by the appellate Authority provided under the Statute if the petitioner had availed of such remedy. In writ jurisdiction, the disputed questions of facts cannot be determined. It is the settled law that where-ever disputed questions of facts are involved, the parties are relegated to the alternative remedies available under the statutory provisions. In this view of the matter, the writ petition deserves to be dismissed as the petitioner did not avail of the alternative remedy provided under the Statute. However, learned counsel for the respondents has not been able to substantiate his argument in the absence of any documentary evidence brought on record showing the receipt of notice show-cause notice and the impugned order of resumption.

14. So, far as the right to charge interest and penalties is concerned, it has been argued that the right to enjoy property cannot be said to be subject to the fetters of the provisions of pucca roads, sewers and electricity connections. The amenities are required to be provided as and when construction initiated by the petitioner comes up near completion. In any case, this cannot give any benefit to the petitioner for not making payment of instalments on the due dates. Such a plea had never been taken by the petitioner before any Authority prescribed under the Statute. Thus, in the absence of such a plea having been taken, it is too late in the day for the petitioner to take shelter of such pleas.

Therefore, the writ petition deserves to be dismissed as being not maintainable.

15. I have considered the rival contentions of learned counsel for the parties and am of the opinion that the respondents have not been able to corroborate their plea that notice show-cause notice had been duly served upon the petitioner as no date for effecting service upon the petitioner has been spelt out in the written statement. More so no document in this regard has been brought on record. Thus, it is obvious that the plea of the petitioner remained unrebutted. It is settled law that no one should be condemned unheard. Statorily, it was incumbent upon the respondents to have served notice/show-cause notice for

the recovery of instalments before passing the impugned order of resumption. I am supported by a string of authorities of this Court and so also of the Apex Com. in this regard. It is not necessary to refer to such authorities as the said principles has been reiterated time and again.

16. The claim of the petitioner that the respondents are not entitled to charge interest or penalties leviable by virtue of the provisions of the Statute or the terms of letter for allotment, finds force from the admitted fact that the respondents have not been able to spell out as to when such amenities had been provided in respect of the plot allotted to the petitioner. Further, this matter can be gone into by the competent Authority after ascertaining the facts relating thereto and giving a proper opportunity to the petitioner.

17. The plea of the respondents that the alternative remedy by way of appeal has not been a valid of by the petitioner, as such, the writ petition is not maintainable, is not tenable. The basic objection that the petitioner has not been served with notice/show cause notice before passing of the impugned order of resumption can be pressed into support by invocation of the extra-ordinary jurisdiction of this Court under Article 226/227 of the Constitution of India. It is well-established that alternative remedy is not a bar to invoke the extra-ordinary writ jurisdiction of this Court. The respondents, in my view, having failed to bring on record corroborative evidence to the effect that notice/show-cause notice had been duly served upon the petitioner, it shall be in the interest of justice, equity and fair play to give indulgence to the petitioner under the extra-ordinary jurisdiction.

18. In view of the above, the writ petition is allowed and impugned order dated 27.7.1976 (Annexure P-S) is quashed. However, the respondents shall be at liberty to proceed in accordance with law while exercising powers of resumption and also keeping in mind their own policies derived at from time to time in such cases. No order as to costs.