

(2011) 09 P&H CK 0222
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1656 of 2011

Evergreen Properties Pvt. Ltd.

APPELLANT

Vs

Haryana Urban Development Authority and others

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Citation : (2011) 4 RCR(Civil) 523

Hon'ble Judges : M.M. Kumar, Acting C.J.;Rajiv Narain Raina, J

Bench : Division Bench

Advocate : Deepak with Mr. Pritam Saini, for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.

C.M. No. 4507 of 2011-

-C.M. No. 4508 of 2011-

For the reasons mentioned in the application, which is supported by an affidavit, delay of 6 days in filing the appeal is condoned. C.M. stands disposed of.

-L.P.A. No. 1656 of 2011-

1. This appeal under Clause X of the Letters Patent is directed against the judgment and order dated 22.3.2011 passed by the learned Single Judge dismissing CWP No. 4381 of 2011 and upholding the order of resumption dated 20.2.2003 in relation to plot bearing No. 4317-P, Sector 23, 23-A, Gurgaon and the further order dated 27.9.2010(P-1) passed by the Administrator, Haryana Urban Development Authority (in exercise of the powers of the Chief Administrator), It is significant that against the resumption order dated 20.3.2003 for non-payment of installments beyond 25 %, an appeal was filed belatedly on 19.8.2009, which was dismissed by the Administrator, Haryana Urban Development Authority, Gurgaon on 27.9.2010, the second order

impugned in the petition. The brief facts of the case are that the appellant before us is a Private Limited Company (registered under the Companies Act, 1956), and was an auction purchaser of plot bearing No. 4317-P, Sector 23, 23-A, Gurgaon on having made a successful bid on 3.3.1990. On 23.3.1990, the appellant was informed of the terms and conditions and of the payment schedule required to be adhered to. The appellant had deposited 10% of the amount of the auction price of Rs. 4,84,000/- at the fall of the hammer and then deposited 15% of the price on 23.4.1990. Thereafter, the appellant sat back and did not pay any further amount and engaged himself in a correspondence with HUDA with a view to wriggle out of the situation and deferred payment of its dues on the lame excuse of rendition of accounts knowing full well its liability and the consequences of nonpayment of balance amount. A spate of notices was issued to the appellant company by respondent HUDA calling upon it to pay the balance amount. On its failure to pay the balance amount with interest, penalty etc., an order of resumption was passed in 2003.

2. In the writ petition and in this appeal, the appellant company has disclosed that there was litigation between the parties pending before the Civil Court at Gurgaon. No further details of the Civil Suit were disclosed. After passing of the resumption order, no appeal was filed till 2009. This appeal has been dismissed on 27.9.2010.

3. The appellant then filed CWP No. 11752 of 2008 challenging the resumption order of 2003. In those proceedings, an objection was taken by HUDA that an appeal lies against the resumption order and Ld counsel for the respondent-HUDA made a statement then that in case an appeal is filed within two weeks from the date of the order of this Court i.e., 7.8.2009, the appeal would be entertained and decided on merits. It is in these circumstances that the statutory appeal was filed which came to be decided by the second impugned order of 2010.

4. We have heard learned counsel for the appellant at some length in his challenge to the order of the learned Single Judge in the present appeal.

5. Learned counsel for the appellant has vehemently argued that an amount of Rs. 7,98,600/- was paid to HUDA on 9.6.2006 and that this is a mitigating circumstance in his client's favour to set aside the order of resumption and put the appellant company in possession of the plot. The further plea is that resumption should be the last resort. On perusal of the order dated 27.9.2010 passed by HUDA, Gurgaon, we find that the appellant company had managed to inveigle the amount of Rs. 7,98,600/- surreptitiously on 9.6.2006 for the plot resumed in 2003 which was immediately refunded to the appellant vide Cheque No. 635200 dated 28.6.2006. This unilateral act of the appellant cannot breathe life into the carcass of the resumption order. There was no conscious acceptance of the amount by HUDA or waiver by it sufficient to undo the resumption order. We do not consider this submission based on a trick played by the appellant and thwarted immediately by HUDA as a valid legal argument meriting acceptance or

that we should pin HUDA down to revive a right to property that died with the resumption order passed long back. No order could be produced either on record or at the hearing which measures to a tacit or express act of conscious acceptance of money on the part of HUDA.

6. This Court had pointedly asked learned counsel for the petitioner-appellant at the time of hearing as to the fate of the suit and he confessed and conceded that the suit was dismissed. If the suit between the same parties was dismissed, whatever its nature might have been we fail to see what remains to be decided by the writ court. The nature of the suit lies buried in non disclosure in the petition and in the appeal. A whisper of it in the petition is not sufficient to bridge the gap. Since Learned counsel did not dilate further on the suit we take it that its result must be against it. This is a further circumstance that this Court should exercise no equitable jurisdiction in this case in favour of a Company playing ducks and drakes with HUDA and the Court.

7. The Learned Single Judge in his well considered judgment has gone through the entire gamut of facts and the yawning gaps in the appellants story as presented in the writ petition and in the pleadings and has justifiably come to the conclusion that the present was not a fit case for interference against the order of resumption passed way back in 2003 against an original auction of 1990. More than 20 years have flown by and this Court cannot remain oblivious of the fact that there has been an extraordinary rise in real estate prices of comparable land in Gurgaon. This court would barricade in limini any road that leads to unjust enrichment of anyone.

8. This Court would also not exercise its equitable jurisdiction in favour of a trickster company, whose conduct throughout remains suspect. This Court also would not permit the appellant to wriggle out of its contractual obligations incurred voluntarily after having successfully participated in an auction in 1990 and having created a situation where the plot even after 20 years remains vacant contrary to public interest.

9. We cannot fail to reiterate what the Learned Single Judge has highlighted in the judgment that the appellant did not even consider it fit to disclose in the list of dates and events the factum of passing of the resumption order of 2003. This conduct of the appellant-company is reprehensible. We wholeheartedly uphold the order of the learned Single Judge as perfectly justified in the circumstances. There is no legal infirmity in the order nor could any error be pointed out. We would normally have dismissed this petition with heavy costs but refrain from doing so as the appellant company has already been served its just desserts by the impact of the resumption order. HUDA would now be free to deal with the plot in question in accordance with law. The appeal fails and is dismissed in limini.