
(2002) 03 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 647 of 1987

Hari Niwas and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:

Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 — Regulation 14

Citation : (2002) 3 RCR(Civil) 42

Hon'ble Judges : Mehtab S. Gill, J

Bench : Single Bench

Advocate : Ajay Kaushik and Arun Jain, for the Appellant; Amol Rattan, Assistant A.G. for Respondent No. 1 and V.K. Vashishta, for the Respondent

Final Decision : Allowed

Judgement

Mehtab S. Gill, J.—The petitioners have filed this writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari/Mandamus directing the respondents to deliver possession of the sites allotted to the petitioners forthwith and in any case to allot alternate commercial plots to them.

2. The petitioners have averred that respondent No.3 conducted auction of plot in Mandi Adampur on 23.12.1981 and 16.9.1982 respectively and the petitioners were the successful bidders in the auction. As a result of the auction, letter of allotment were issued in favour of the petitioners in the year 1982 and a copy of one such allotment letter is at Annexure P-1. As per the terms and conditions of allotment letter, the petitioners deposited 25% of the bid amount at the spot and the remaining 75% was to be deposited: in equal instalments as per the terms of the allotment letter issued under the provisions of New Mandi Township (D&R) Act, 1960 and rules made thereunder, it is contended that in some cases 2nd and 3rd instalment has already been deposited with the respondent-authorities, however, the possession of the plot was not given and the petitioners issued legal

notice u/s 80 of the CPC to the respondents to hand over the possession of the plots. Copy of the legal notice is attached as Annexure P-2 with the writ petition. Respondent No.3 while replying to the legal notice asked the petitioners to approach the Naib Tehsildar to take possession of the plots and a copy of reply sent is at Annexure P-3. However, on approaching the Naib Tehsildar the petitioners came to know that the plots were in illegal occupation of certain persons and those persons approached the Hon'ble Supreme Court by way of writ petition (Civil) No.871 of 1986 challenging the notice issued by the Additional Director, Urban Estate, Haryana exercising the powers of Collector under the Colonization of Government Lands Act, 1912 for getting the land vacated. The respondent-authorities i.e. respondent No. 3 in spite of service of notice did not appear before Hon'ble the Supreme Court and as a result of non-appearance of respondent No.3, the petition was allowed ex parte. No steps whatsoever were taken by the respondent to have ex parte order vacated nor any review was filed. Copy of the orders passed by the Supreme Court is Annexure P-4.

3. Notice of motion was issued, written statement was filed on behalf of respondent No.2 and 3.

4. Learned counsel for the petitioners has stated that as there was no fault of the petitioners the amount deposited by them as 25% of the bid amount deposited at the spot and the instalments which have been deposited by some of the petitioners, be refunded to them along with interest of the rate of 18% per annum.

5. Learned counsel for the respondents No.2 and 3 has stated that some persons at the time of giving possession of the allotted sites were found to be in illegal possession of the same. He has further stated that a writ petition was filed in the Hon'ble Supreme Court against the notices issued to the alleged illegal occupants of the sites but the Hon'ble Court quashed the notices. The respondents filed review petition and the same was also dismissed.

6. From the above, it is clear that the petitioners were not at fault and all along they were ready and willing to take possession of the plots but it seems that respondent Nos.2 and 3 did not take any steps to have the plots vacated from those persons who were in illegal occupation of the same and also did not appear before the Hon'ble Supreme Court to defend the petition filed by those persons. Thus, the respondents are clearly at fault and for the fault of the respondents, the petitioners cannot be punished.

7. Learned Counsel for the respondents has stated that as per Section 14 of the Haryana Urban Development (Disposal of Land & Buildings) Regulation, 1978 if a transferee/lessee is unable to raise construction on the land disposed of to him due to certain compelling circumstances the Estate Officer may allow the surrender of the land which though is his discretion, subject to the policy guidelines laid down by the Chief Administrator from time to time. In the case of

acceptance of surrender, the interest amount recovered from the transferee or the lessee shall not in any case be refunded. It has further been contended that as per memo No.A-IIP-95/33924-51 dated 14.12.1995 issued by respondent No.3 a copy of which has been placed on the record, it has been decided that surrender of residential plots may be allowed by the Estate Officer concerned after forfeiting an amount upto 10% of the total amount of the consideration money, interest and other dues payable. This is not a very fair proposition being put to the petitioners.

8. In the case in hand clearly respondent No.3 is at fault. It did not take any step to defend itself in the Hon"ble Supreme Court not did it take any step to get the plots vacated from illegal occupants. Despite service of notice issued by the Hon"ble Supreme Court, no one appeared and thus exparte order was passed against the respondents.

9. The respondents are directed to refund the entire amount i.e. 25% bid amount and the amount of instalments, if deposited by the petitioner, to the petitioners with interest at the rate of 9% per annum on the total amount from the date of deposit till its realisation.

10. No order as to costs.