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**(2013) 04 P&H CK 0181**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 21111 of 2010**

Madhu Batla

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

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**Date of Decision :** 10-04-2013

**Acts Referred:**

**Citation :** (2013) 04 P&H CK 0181

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

**Bench :** Division Bench

**Advocate :** D.K. Bhatti, for the Appellant; Rahul Sharma, Addl. A.G. Haryana for the Respondent No. 1 and Ajay Nara, Advocate for the Respondents No. 2 to 5, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Amol Rattan Singh, J.—This writ petition challenges the resumption of a commercial booth in Sector 15, Panchkula.

The petitioner in this case, is a general power of attorney holder of two persons, i.e. Sh. Manjeet Bedi and his wife Smt. Dalbir Bedi, who were allotted commercial booth No. 30(P), Sector 15, Urban Estate, Panchkula, measuring 23.636 sq.mts., vide allotment letter dated 30.01.1996/05.02.1996.

The power of attorney was executed on 27.05.1996, a copy of which has been annexed as Annexure P-2 with the petition.

As per the petitioner, 10% of the total value of the booth, which was allotted for a sum of Rs. 9,55,000/-, was deposited at the time of auction, as bid amount, by her principals (allottees).

Another 15%, to total 25% of the bid amount, was to be deposited within 30 days of the issuance of the allotment letter. This is borne out by a perusal of the allotment letter, which is annexed as Annexure P-1 with the petition. The balance 75% was to be paid either in lump sum, without interest, within 60 days from

the date of issuance of the allotment letter, or in 10 half yearly installments, along with interest at the rate of 15% on the remaining amount. The first installment would become due in six months after the issuance of the allotment letter and each installment thereafter, became due at regular six monthly intervals till the complete payment was made, i.e. on expiry of 5 years, the last installment falling on 05.02.2001.

2. As per the petitioners' contention, the original allottees, vide letters dated 16.02.1996 and 22.03.1996, informed the Estate Officer that the booth in question was occupied by the Haryana State Electricity Board and that despite depositing the additional 15% of the bid value, possession of the same was not given to them.

The second letter further states that the allottees would not be liable to pay interest on the balance amount of the bid value, till possession of the booth was given.

Though a copy each, of both the above mentioned letters, has been annexed with the petition, the same are specifically denied by the respondents in their reply. The presence of the Electricity Department in the said booth has neither been accepted or denied, but in view of the silence on the issue and the reasoning projected in the reply, to the effect that the petitioners had bid for the booth with open eyes, it is taken to be accepted that, at that point of time, the Electricity Board was probably in possession of the booth, for some time at least.

3. The petitioner further contends that "being the purchaser through power of attorney", she ran from pillar to post to get the booth vacated and, eventually, in the month of May 1996 the booth was got vacated and possession handed over to the petitioner, after it had been received by the original allottees. A possession certificate dated 08.05.1996 (Annexure P-5) was also issued, duly signed by the allottees, which has also been annexed with the petition.

4. The trouble began thereafter. As per the petitioner, the condition of the booth was in a bad state and the petitioner had spent a huge amount in order to make the booth fit for use. It is further alleged that despite handing over of the booth after a lapse of four months, the respondent authorities charged interest from the date of allotment, in contravention of Clause 5 of the allotment letter, which reads as under:-

The balance amount i.e. Rs. 7,16,250.00 of the above price of the plot/building can be paid in lump-sum without interest within 60 days from the date of issue of the allotment letter or in 10 half yearly instalments. The first instalment will fall due after the expiry of six months of the date of issue of this letter. Each instalment would be recoverable together with interest on the balance price @ 15% interest on the remaining amount. This interest shall, however, accrue from the date of offer of possession.

(emphasis supplied)

Thus, it is obvious that interest on the balance amount due, was only chargeable from the date of offer of possession.

It may be mentioned here that though the petitioner is taking the date of possession as the date of offer of possession, the possession was actually offered by way of a note at the end of the allotment letter itself, probably by way of routine printing with such like letters.

Be that as it may, this issue has a very limited bearing on the totality of the case.

5. As per the petitioner, despite various representations and personal visits to the office of the respondent, re-scheduling of installments, as sought by her, by calculating interest from the date of actual delivery of possession, was not done.

The above fact is specifically denied by the respondents, stating that the petitioner made no representations and no visits to their office. However, the reply states that even presuming that such representations were made, what cannot be denied is that after payment of the initial 25% of the bid amount, not even a single penny was paid by the allottees, or the petitioner.

6. Consequent upon non-payment, notices were issued to the original allottees who, the petitioner contends, never bothered to inform her of the same; however, when she came to know about the notice issued on 16.04.2001 (17.04.2001?), u/s 17(4) of the Haryana Urban Development Authority Act, 1977 (in short, "the Act") she appealed against the same to the Administrator, and the same was dismissed as being premature on 18.10.2001.

The respondents have categorically stated that notices u/s 17 of the Act were issued to the original allottees as follows:-

1. U/s. 17(1) on 18.03.1997
2. U/s. 17(2) on 28.11.2000 and 20.12.2000
3. U/s. 17(3) on 22.02.2001
4. U/s. 17(4) on 17.04.2001, 10.12.2001, 09.01.2002 and 25.02.2002.

(No notices were issued to the petitioner as transfer of the property had not been made to the petitioner)

Before we proceed further, it is necessary to reproduce Section 17 of the Act, as it stood on the date of the allotment letter, i.e. 30.01.1996.

17. Resumption and forfeiture for breach of conditions of transfer:-

(1) Where any transferee makes default in the payment of any consideration money, or any instalment, on account of the sale of any land or building, or both, u/s 15, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why a penalty which shall not exceed ten percent of the amount due from the transferee, be not imposed upon him.

(2) After considering the cause, if any, shown by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order imposing the penalty and direct that the amount of money due along with the penalty shall be paid by the transferee within such period as may be specified in the order.

(3) If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub-section (2) or commits a breach of any other condition of sale, the Estate Officer may, by notice in writing call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building, or both, as the case may be and forfeiture of the whole or any part of the money, if any paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the land or building or both should not be made.

(4) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order resuming the land or building or both, as the case may be, and directing the forfeiture as provided in sub-section (3) of the whole or any part of the money paid in respect of such sale.

(5) Any person aggrieved by an order of the Estate Officer u/s 16 or under this section may, within a period of thirty days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner, as may be prescribed.

Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(6) The Chief Administrator may after hearing the appeal, confirm vary or reverse the order appealed from and may pass such order as he deems fit.

(7) The Chief Administrator may either on his own motion or on an application received in this behalf at any time within a period of six month from the date of the order call for the record of any proceedings in which the Estate Officer has passed an order for the purpose of satisfying himself as to the legality or propriety of such order and may pas such order in relation thereto as he thinks fit;

Provided that the Chief Administrator shall not pass an order under this section prejudicial of any person without giving him a reasonable opportunity of being heard.

2. After sub-section (7) of section 17 of the Haryana Urban Development Authority Act, 1977, the following sub-sections shall be added at the end,

namely:-

(8) Any person aggrieved by an order of Chief Administrator under sub-section (6) may within a period of ninety days of the date of the communication to him of such order, prefer a revision petition to the Secretary to Government, Haryana, Town and Country Planning Department, in such form and manner as may be prescribed:

Provided that the Secretary to Government, Haryana, Town and Country Planning Development, may entertain the revision petition after the expiry of the said period of ninety days, if he is satisfied that the petitioner was prevented by sufficient cause from filing the revision petition in time.

(9) The Secretary to Government, Haryana, Town and Country Planning Department may, after hearing the revision, confirm, vary or reverse the order appealed from and may pass such order as he deems fit: Provided that the Secretary to Government, Haryana, Town and Country Planning Department, shall not pass an order under this section without hearing the parties.

7. Coming back to the facts, after dismissal of the appeal on 18.10.2001, the petitioner represented to the Estate Officer to the effect that since delivery of the booth was made too late to her, after about four months, the interest should be calculated from the date of possession and not from the date of allotment. She also relied upon a judgment of the Supreme Court in the case of AIR 2002 SC 2380 to the effect that interest can only be calculated at the rate of 10% per annum, as simple interest and not compoundable interest.

It is also contended that after issuance of the notice on 16.04.2001, the petitioner deposited Rs. 1,00,000/- on 18.05.2001 and another Rs. 50,000/- thereafter. Not being satisfied with the explanations given by the petitioner, the Estate Officer, HUDA, Panchkula passed a resumption order, giving detailed reasons therein, on 07.03.2002 (endorsed on 30.04.2002). In addition to resumption of the site, 10% of the consideration money was also ordered to be forfeited, along with other dues payable up to the date of resumption.

8. Aggrieved of the same, the petitioner then filed another appeal u/s 17(5) of the HUDA Act, to the Administrator, which was also dismissed on 04.10.2002. In the said order the Administrator (exercising powers of Chief Administrator), dealt with the issues as given under:-

(i) That the resumption was very much legal and valid as the period of the payment of installments had expired on 05.02.2001 (final resumption notice having been issued on 16.10.2002).

(ii) That the case of Roochira Ceramics (supra) was not applicable in view of the fact that the rate of interest mentioned in the allotment letter was 10% whereas in the present case it was 15% and 18%, in case of delayed payment.

(iii) The appeal had not been filed on behalf of the original allottee and the

petitioner, as an attorney holder, independently had no right to file the same.

Thereafter, on 16.10.2002, notice u/s 18(1)(b) of the HUDA Act was issued, directing the petitioner to vacate the premises within 30 days from the date of service of the notice and she was directed to appear before the Estate Officer on 13.11.2002.

9. The petitioner then approached this Court by filing CWP No. 17829 of 2002, against the said order, which was permitted to be withdrawn on 11.11.2002.

10. As per the petitioner, she appeared before the Estate Officer on 13.11.2002 and upon alleged assurance from the Estate Officer that her case would be reconsidered, she deposited a sum of Rs. 3,00,000/- towards the consideration amount.

The Estate Officer then adjourned the case to 03.12.2002, on which date she again deposited Rs. 1,00,000/-.

11. Thus, the total break up of money deposited by the petitioner/the allottees, from the initial stage of application till the date she was summoned again by the Estate Officer, i.e. 03.12.2002 is given as under:-

1. Rs. 95,500/- vide receipt dated 29.1.1996.
2. Rs. 1,43,250/- vide receipt dated 25.2.1996.
3. Rs. 15,000/- vide receipt dated 4.12.2000.
4. Rs. 1,00,000/- vide receipt dated 22.5.2001.
5. Rs. 50,000/- vide receipt dated 13.9.2001.
6. Rs. 4,00,000/- vide receipt dated 13.11.2002.
7. Rs. 1,00,000/- vide receipt dated 3.12.2002.

Total = Rs. 9,03,750/-

12. Factually, her payment schedule of the remaining 75% of the auction price was to be as under:-

Thus, not having made any payment towards principal and interest (except a meager Rs. 15,000/- on 04.12.2000), the petitioner finally woke up when she started receiving notices for resumption.

13. Of course, by 03.12.2002, i.e. the date when the Estate Officer summoned her, she had made a payment of Rs. 9,03,750/-, against the original bid price of Rs. 9,55,000/-. Thus, actually even the complete bid price was not paid till she was served with the notice of eviction, thereafter. Further, the interest accruing upon each installment, the last of which was due on 05.02.2001, was not paid at all.

14. As per the petitioner, though, on 03.12.2002, she was again granted a date

by the Estate Officer for 03.03.2003, for calculation of interest, however, in the meanwhile, she was served with the eviction notice dated 13.12.2002, on 18.12.2002.

15. Against the said eviction notice, she filed a civil suit on 19.12.2002 along with an application under Order 39 Rules 1 and 2, C.P.C. The said application was decided vide order dated 05.08.2004, by which the respondents (HUDA) were restrained from disposing of the booth in question if the petitioner deposited all the installments, along with interest at the rate of 15% per annum, within two months of the order of the court.

Thereafter, she approached the respondents for deposit of the installments, as per directions of the civil court, but the plea was not accepted on the ground that an appeal had been filed against the order dated 05.08.2004. The petitioner still deposited a sum of Rs. 2,00,000/- on 19.10.2004 in the account of the respondent. Thereafter, she also deposited Rs. 51,250/- on 16.10.2004, Rs. 30,000/- on 08.11.2004.

Meanwhile, the appeal of the respondents was dismissed by the learned Single Judge but, as per the petitioner, the exact amount to be deposited by her in terms of the trial court order was never intimated to her.

16. After this set of events, the petitioner has stated in her petition, and as argued by Sh. D.K. Bhatti, learned counsel, that the lawyer who was looking after her case left India to settle abroad though this fact was never intimated to her. According to her, it was on account of this that her civil suit was dismissed for non-prosecution and that she had filed a restoration application which was still stated to be pending at the time of filing of this petition. In the writ petition a plea has been taken that she undertakes to withdraw the same on the next date of hearing, in view of the filing of the present writ petition. We are told that it has since been withdrawn.

17. On 23.08.2010, a notice was again served upon her, giving her seven days" time to vacate the premises, though an opportunity of hearing was granted to her to appear on 31.08.2010.

Against the said notice she again filed a suit for declaration and mandatory injunction on 30.11.2010 which is stated to have been dismissed as withdrawn.

In the meanwhile, she again appeared before the Estate Officer, stating that she is ready to pay the entire amount due, provided the same is intimated to her with authentic record. This not having been done, she filed an appeal to the Administrator, again pleading that she is ready to de-posit the due amount. On 17.09.2010 she is stated to have deposited another amount of Rs. 1,00,000/-, then again a sum of Rs. 3,00,000/- on 22.09.2010 and yet again Rs. 1,00,000/- on 27.10.2010, totaling Rs. 5,00,000/-. Though, she has averred that, initially, an amount of Rs. 12,74,856/- was stated to be due, however, the same was not given to her as an authentic figure.

Her appeal was adjourned on 19.09.2010 to 22.09.2010, with a direction that complete updated account statement be filed by the Estate Officer, HUDA, Panchkula. In the meanwhile, operation of the order of eviction was stayed.

Thereafter, the appeal came up for actual hearing on 27.10.2010. Though it is pleaded that she submitted before the Administrator that she is willing to deposit all the dues, however, she was orally told that the matter would be adjourned to 30.11.2010, by which date she would have to vacate the booth, failing which coercive action would be taken. Consequently, the present petition was filed.

The pleaded case now is that the petitioner is willing to pay all outstanding dues, if the resumption and eviction order is revoked and the booth is transferred to her name.

18. At the time when she filed the petition on 25.11.2010, notice was issued by the learned Single Judge; On the next date, due to non-filing of reply, eviction of the petitioner was stayed. Thereafter, the interim order was ordered to be continued.

19. In the reply filed by the respondents, the factual position has been by and large admitted and, in a nutshell, the plea taken on the merits of the case is, that substantive payments started coming only after the resumption order had already been passed on 07.03.2002/30.04.2002, and that too without any interest.

20. Preliminary objection has also been taken to the effect that the petitioner not being a transferee of the plot in question, has projected herself to be a vendee, on a general power of attorney granted by the original allottee, which is impermissible in law.

It is further contended that, in any case, the booth continues to belong to the authorities, in view of non-payment, as stipulated in the letter of allotment.

21. Further, it has been stated that notices u/s 17(1) were issued to the allottee on 18.03.1997, u/s 17(2) on 28.11.2000 and 20.12.2000, u/s 17(3) on 22.02.2001 and u/s 17(4) on 17.04.2001, 10.12.2001, 09.01.2002 and 25.02.2002, on account of nonpayment of installments and only thereafter the booth was resumed. As on the date of resumption, it is stated that Rs. 16,28,960/- were outstanding dues with regard to the booth in question. Thus, on account of the above, the booth stands resumed.

22. On the question of charging of compound interest, various judgments have been cited, in reply to the petitioner's reliance upon the case of Roochira Ceramics (supra). Reliance has also been placed on the decision of the Hon'ble Supreme Court in Municipal Corporation, Chandigarh and others v. Vipin Kumar Jain, decided on 20.09.2007, to submit that when the auction price is not paid within time, it results in loss of revenue and resumption is fully justified thereafter. Non-maintainability of the writ petition on the principle of res-judicata has also been pleaded, in view of the civil litigation earlier resorted to. The plea

of delay and laches have also been taken, on account of the fact that the original resumption order was passed on 07.03.2002, the order in appeal on 12.09.2002 and the civil suit was dismissed on 18.12.2006.

23. For the petitioner, after arguing with regard to initial non-liability of payment of interest in view of the non delivery of possession for four months, Sh. D.K. Bhatti, learned counsel, has argued that, in view of the fact that the petitioner had paid almost the entire amount of the auction price in 2002 itself, and was willing to pay the outstanding dues throughout thereafter, a lenient view may be taken and the booth ordered to be re-stored to the original allottee and then immediately thereafter transferred to the petitioner.

24. Sh. Ajay Nara, learned counsel for the respondents, on the other hand, has argued that as per settled law in the case of U.T. Chandigarh Administration and Another Vs. Amarjeet Singh and Others, payment of the installments due as per the auction price must be paid, regardless of the status of the property, in view of the fact that the auction bid was made by the bidder with eyes open, knowing the status and condition of the property. Towards this argument he has also cited the case of Sukhpal Singh Kang and others v. Chandigarh Administration and another, 1991 (1) RCR (Civil) 288. He has further laid stress on the fact that, in such a situation, where the allottee/auction purchaser does not pay the auction price as per terms of allotment, despite notices, resumption is very much justified and has to be resorted to by the authorities. The case of Municipal Corporation v. Vipin Kumar Jain (supra) has been heavily relied upon by him.

25. We have heard learned counsel for the parties and we find that the petitioner/original allottees, i.e. her principals, obviously cannot resile from the fact that due installments, towards payment of the consideration money along with interest accrued thereupon, were not paid as per the schedule set out in the allotment letter. Other than the initial payment of 25% of the consideration money, only a meager sum of Rs. 15,000/- was paid in the year 2000, i.e. before the last date of installments became due on 05.02.2001. Factually, no installment had ever been paid.

In such a situation, the authorities definitely cannot be faulted for having issued notices for resumption and thereafter passing the order of resumption on 07.03.2002.

26. Having said that, we do feel that despite the obvious fault of the petitioner and her principals, i.e. the allottees, the fact of her having deposited large sums as per her obvious capacity, cannot totally be ignored, especially as it is a booth site of small size. Though, of course, at current rate of estate prices, obviously, a commercial booth would also be very valuable property. Her appeal against eviction, is still stated to be pending, her eviction having been stayed on 19.02.2010, with a direction that an up to date again statement be submitted by the Estate Officer, HUDA, Panchkula. After the filing of this petition, we are told it was adjourned sine die, till the date of decision in this case. After discussing the

entire case as above, we, consequently, dismiss this petition, with liberty to the petitioner to pursue her appeal pending with the appellate authority since 2010, who would exercise his discretion, as per law.

No order is made with regard to costs.