
(1991) 09 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11176 of 1990

Mohinder Singh

APPELLANT

Vs

Chief Administrator, HUDA

RESPONDENT

Date of Decision : 13-09-1991

Acts Referred:

Citation : (1993) 3 LJR 115 : (1993) PLJ 140 : (1993) 3 RRR 294 : (1993) 2 RRR 393

Hon'ble Judges : Jawahar Lal Gupta, J

Advocate : Mr. A. Mohunta, Advocate, Mr. P.M. Anand, Advocate., Advocates for appearing Parties

Judgement

Jawahar Lal Gupta, J.—The petitioner was allotted a residential plot No. 982, Sector 2, in Urban Estate, Ambala. On account of certain defaults in payment of the instalments, the Estate Officer vide orders dated July 1, 1988 ordered the resumption of the plot. Petitioner's appeal against the order having been dismissed by the Administrator, Haryana Urban Development Authority (hereinafter referred to as "HUDA"), he has approached this Court through the present writ petition. A few facts may be noticed.

2. The petitioner avers that the tentative price of the plot was originally fixed at Rs. 19,500/. This amount had to be paid in instalments. It is further averred that the petitioner had initially paid an amount of Rs. 2,425/ and thereafter instalments amounting to Rs. 10,120/ were deposited by him. The Estate Officer enhanced the price payable by the allottees of the plots. The petitioner claims that he as also others, who were similarly situated, filed a civil suit challenging the enhancement and requested for a grant of stay regarding recovery of the enhanced amount. It is averred that the Senior Subordinate Judge, Ambala ordered that the status quo shall be maintained and the impugned recovery shall be made except in due course of law. A copy of this order has been produced on record as Annexure P.1. The petitioner further avers that a notice dated April 3, 1987, under Section 17(1) of the Haryana Urban Development Authority Act,

1977 for imposing a penalty of Rs. 2605.50. was served on him. The petitioner claims that an amount of Rs. 5,000/ was paid in response to this notice. Finally, on July 1, 1988, the Estate Officer, respondent No. 2 ordered the resumption of the petitioner's plot. A copy of this order is at Annexure P.3. The petitioner's appeal against this order was rejected vide orders dated September 19, 1988. A copy of the order is at Annexure P.5. Aggrieved by the orders of resumption and the dismissal of appeal, the petitioner has approached this Court through the present petition.

3. In the written statement filed on behalf of the respondents, it has been inter alia averred that the price of the plot was enhanced and that the petitioner was not one of the parties in the civil suit filed before the Senior Subordinate Judge, Ambala. It has been further averred that showcause notice under Section 17(1) had been served on the petitioner because he had failed to deposit the amount demanded from him. It is further averred that vide a notice dated July 14, 1987 the petitioner was called upon to appear for personal hearing on July 24, 1987. He was asked to clear the arrears. He failed to do so. Accordingly a penalty at the rate of 10 per cent was levied and the petitioner was called upon to make the deposit within 15 days. He failed to comply with the directions. Thereafter, a registered notice dated September 8, 1987 was served upon the petitioner to show cause within 30 days as to why an order of resumption of plot should not be passed. In spite of an opportunity having been granted, the petitioner failed to attend the office and to showcause as to why he had not been able to deposit the amount. As a last resort, the respondents were forced to resume the plot in accordance with the terms and conditions of the allotment. On these premises, it is maintained that impugned orders were absolutely just and fair.

4. While the matter was at the preliminary stage before this Court, the petitioner in pursuance of the directions of this Court claims to have appeared before the respondents. A letter dated September 14, 1990 (Annexure A1 to C.M. No. 7953 of 1990) is stated to have been given to the petitioner by the Chief Administrator, HUDA. According to this letter, a total amount of Rs. 49,351 was due from the petitioner. The petitioner has further averred in the Misc. Application that he has got the calculations done from a Chartered Accountant, according to whom the amount due was much less.

5. Mr. P.M. Anand, learned counsel for the petitioner submits that, in fact, the payment of the enhanced amount had been stayed by the Civil Court and as such the petitioner was actually not a defaulter. In any event, the learned counsel submits that the petitioner has constructed a twostoreyed house on the plot and the extreme step of resumption of the plot was unjustified in the circumstances of the case. Mr. A. Mohunta, learned counsel for the respondents, on the other hand contends that the petitioner is not one of the plaintiffs before the Civil Court and is, therefore, not entitled to any consideration on that account. He further submits that the default of the petitioner having been proved the order of resumption is absolutely legal and valid.

6. A copy of the order passed by the Senior Subordinate Judge, Ambala is at Annexure P1 on the file. A perusal of this order shows that Messrs Bal Krishan Kapoor and three other persons have filed the suit "for themselves and for and on behalf of the plotters of Urban Estates, Sector 2, Ambala City." Alongwith this a list of 30 plotters is also attached, in which the petitioner's name appears at Sr. No. 5. It thus appears that the petitioner is one of the persons on whose behalf the suit has been filed in the Civil Court at Ambala. However, neither of the parties has brought on record anything about the further proceedings in the civil suit. Whatever be the position, the fact remains that the petitioner has committed a default even in the payment of instalments of the original price. A perusal of the account prepared by the Chartered Accountant of the petitioner (Annexure P.2) shows that the petitioner had not paid the instalments which fell due for the year, 1983, 1984, 1985, 1986 and 1987. This default had no relation with the enhancement of the price. Even the pendency of the civil suit was of no consequence so far as these defaults are concerned. Further in spite of the receipt of a notice dated July 14, 1987 and the repeated opportunities thereafter, the petitioner took no steps to rectify the mistake. Still further, he did not even dispute the factum of different dates on which he had been required to appear before the competent authority for hearing in the writ petition. The conduct of the petitioner is not proper. He is a defaulter.

7. On the other hand, even HUDA has claimed enhancement of price without disclosing any basis therefor. Even the response to the averment in the writ petition that the order of enhancement "does not give any idea about what has necessitated the enhancement", the reply does not even remotely indicate the basis for the enhancement of the original price.

8. In this situation, should the default on the part of the petitioner have attracted the extreme penalty of a resumption of plot ? The order of resumption is clearly passed as a last resort. In this case, there were certain mitigating circumstances like the pendency of the civil suit challenging the enhancement of the price and the failure of the respondents to disclose the basis for enhancement of price. Taking the totality of the circumstances into consideration, I think it would be fair to give the petitioner one opportunity to make the deposit of the amount due from him. It is consequently directed that the HUDA would furnish to the petitioner the details of the amount of money due within one month from the receipt of a copy of this order. The petitioner shall deposit that money (without prejudice to his right to later recover the excess amount of money, if any, deposited by him) within one month from the date of the receipt of the letter from HUDA. In case, the petitioner makes the deposit, the impugned orders shall be deemed to have been set aside. In case the petitioner does not make the deposit aforesaid, the writ petition shall stand dismissed.

9. The writ petition is accordingly disposed of. In the circumstances of the case, I make no order as to costs.