
(1997) 10 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14775 of 1997

M/s. Roochira Ceramics

APPELLANT

Vs

Haryana Urban Development Authority, Faridabad

RESPONDENT

Date of Decision : 01-10-1997

Acts Referred:

Haryana Urban Development Authority Act, 1977 — Section 15, 17, 54

Citation : (2001) 2 RCR(Civil) 744

Hon'ble Judges : M.L. Singhal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Mr. I.K. Mehta and Mr. M.S. Kholi, for the Appellant;

Judgement

G.S. Singhvi, J.—After having taken advantage of the orders passed by the Supreme Court on 23.10.1996 and 4.12.1996 (Annexures P.2 and P.3), the petitioner has filed this petition for quashing the communication dated 13.2.1997 issued by the Estate Officer and for directing the respondents to refund the alleged excess amount demanded and recovered from it but as acceptance of petitioner's prayer would amount to violation of Apex Court's order, we see no justification to entertain this petition.

2. The facts of the case show that the Estate Officer, on the basis of the application filed by it, allotted industrial plot No. 5-B in Sector 15-A at Faridabad to the petitioner. In terms of para 2 of the allotment letter, the petitioner was required to pay Rs. 2,61,360/- as the tentative price for 1.80 acre plot. It was required to pay the 25% of the total price in the form of earnest money within a period of 30 days. The balance amount of Rs. 1,96,020/- was payable in lumpsum within 60 days or in six equated annual instalments together with interest @ 10%. For a period of more than one decade the petitioner did not pay the tentative price to the respondents but continued to retain the possession of the public property. The Estate Officer, Faridabad initiated action against the petitioner u/s 17. Show cause notice was issued to the petitioner on 5.9.1994, Opportunity of personal hearing was also afforded to it but the petitioner

persisted with the default. Ultimately, the Estate Officer passed the order for resumption of the site. Having failed to persuade the appellate and the revisional authorities to pass order, in its favour, the petitioner filed CWP No. 14676 of 1995. While accepting the writ petition on 11.3.1996 (reported as 1996 PU 462) a Division Bench of this Court passed the following order:

"Keeping in view the financial stringency of the petitioner, interest of the parties, readiness and willingness of the petitioner to pay the remaining unpaid amount and to set the controversy at rest, orders Annexures P.5 to P.8 are quashed. The petitioner shall deposit the balance amount of instalments, including enhancements of price alongwith interest at the rate of 10% per annum on the unpaid amount within a period of three months. The respondents shall calculate and convey to the petitioner the total amount payable by it within two weeks from the date of receipt of copy of judgment. After the receipt of intimation regarding the total amount of its liability, the petitioner shall deposit the said amount within two months thereafter positively. In case, the petitioner fails to deposit the amount within the time specified despite intimation in terms of our judgment, he shall be liable to pay whole of the amount to the respondents as per the demand and the calculations made by the respondents according to the order impugned and he shall not be held entitled to any further time to make the payment. It is relevant to mention here that as per stipulation in the allotment letter, copy Annexure P.I to the writ petition, interest at the rate of 10% per annum is being charged from the petitioner."

3. The Haryana Urban Development Authority challenged the order of the Division Bench mSLP No. 15110 0/1996 : 1997(1) RCR 696 The Haryana Urban Development Authority and another v. Roochira Ceramics and another. On 23.10.1996, the Supreme Court accepted the appeal filed by the respondents (reported as Haryana Urban Development Authority and Another Vs. Roochira Ceramics and Another, and passed the following order :-

"The respondent was allotted an industrial plot. He had to pay 25% of the price in the beginning and the balance in 6 equal instalments. He only paid the first instalment but not the rest. A show cause notice was given to him on 5.9.1994 u/s 17(3) of the HUDA Act. A notice proposing imposition of penalty was also issued. These notices could not be served upon him and, therefore, notices were served by affixture. A notice dated 10.1.1995 was also given providing personal hearing. The respondent never appeared. Accordingly, the plot was resumed u/s 17(4) of the Act and the amount deposited was forfeited. The appeal preferred by the respondent was dismissed by the Appellate Authority who held that though several notices were issued to the respondent, he has been evading service. It dismissed the appeal holding that in view of the persistent defaults made by the respondent, there was no ground for interference in appeal. The respondent therefore approached Punjab and Haryana High Court by way of a writ petition. He pleaded certain financial difficulties. Without recording a finding as to the correctness of the said plea assuming for the sake of argument that such a

course was permissible in a writ petition the High Court allowed the writ petition "keeping in view the financial stringency of the petitioner, interest of the parties, readiness and willingness of the petitioner to pay the remaining unpaid amount and to set the controversy at rest". The High Court farther directed that interest shall be charged only at 10% per annum on the amount due and not at the rate of 18% as calculated by the authority for a part of the period.

We are of the opinion that in a writ petition it was not open to the High Court to entertain the plea of financial stringency for the first time. The respondent who had not responded to repeated notices and had not availed of the personal hearing offered to him, could not be allowed to plead such financial stringency for the first time before the High Court. Indeed the High Court could not . have entertained such a plea. It has been held repeatedly by this Court that the power under Article 226 is the power of judicial review. The High Court can only examine the procedural correctness. It cannot get into the merits of the controversy like an appellate authority. No finding is recorded by the High Court in this case that the procedure adopted by the Estate Officer was either not in accordance with the statutory provisions or was in violation of the principles of natural justice. The High Court obviously acted as an Appellate Authority. There is no room for any benevolence the perils and pitfalls are too many to recount. There will be no objective standards of judging. Justice becomes personalised. It would vary from Judge to Judge. In the absence of any procedural irregularity, the High Court had no jurisdiction to interfere in the matter. The High Court also failed to notice that the respondent is guilty of not paying the instalments as undertaken by him. By interfering on the basis of unverified and unsubstantiated plea of financial stringency, the Court would be encouraging continuous conduct and breach of undertakings.

The appeal is accordingly allowed. The judgment of the High Court is set aside. The writ petition filed by the respondent shall stand dismissed."

4. Soon thereafter the petitioner moved I.A. No. 3 of 1996 with the prayer that the direction issued by the Supreme Court, which had not been recorded in the order dated 23.10.1996, may be incorporated therein. The application was disposed of by the Apex Court on 4.12.1996 (reported as 2001(1) P&H 8) bypassing the following order :-

"Both the counsel state that there has been an omission in the order of this Court which was actually dictated in the Court on the day the SLP was disposed of. The direction does not find a place in the order as ultimately transcribed and issued. It is submitted that the direction given by this Court was that if the respondent pays the entire arrears as demanded by HUDA within a period of three months, the forfeiture effected by HLIDA shall not take effect. The said sentence shall be added towards the end of the penultimate paragraph.

Order accordingly."

5. On 27.12.1996, proprietor of the petitioner requested the Estate Officer to

inform him about the amount demanded by HUDA in order to enable him to effectively comply with the order of the Apex Court. The Estate Officer intimated the petitioner that in the written statement filed before the High Court, it had raised a demand of Rs. 18,21,448.90 as the principal price, additional price and interest. After depositing the amount indicated in the letter dated 30.12.1996 written by the Estate Officer, the petitioner started making demand for refund of Rs. 12,60,721/- by alleging that excess interest had been charged by the HUDA. However, the claim of the petitioner came to be rejected by the Estate Officer vide memo No. 137 dated 13.2.1997. The relevant part of the letter dated 13.2.1997 is reproduced below :

"With reference to your representation dated 31.1.1997 on the above noted subject.

The representation submitted by you has been considered and found no merit. As per policy of HUDA, interest @ 18% per annum will be charged from the defaulter. In your case, the amount has been rightly charged as per policy of HUDA and directions of the Honble Supreme Court of India in SLP HUDA v. Roorchitra Ceramics decided on 23.10.1996 and amended vide order dated 4.12.1996."

6. Shri I.K. Mehta, learned Counsel for the petitioner argued that in terms of allotment letter the respondents could not have charged 18% interest from the petitioner because there is no provision in the Haryana Urban Development Authority Act or in the Regulation framed thereunder for charging of the interest at the enhanced rate. He relied on the orders passed in C.W.P. No. 12499 of 1996, J.V. Gupta v. State of Haryana and C.W.P. No. 11690 of 1993, decided on 30.5.1994.

7. In our opinion, the contention urged by Shri Mehta is entirely without substance and the writ petition deserves to be dismissed summarily being frivolous. Although it may appear to be repetition, we consider it necessary to recapitulate the following salient facts :

(a) The industrial plot was allotted to the petitioner on 1.4.1980 on a tentative price of Rs. 2,61,360/-.

(b) The petitioner was required to deposit Rs. 37,500/- within 30 days. The remaining amount i.e. Rs. 1,96,020/- could be deposited in 60 days without interest or in six annual instalments with interest 10%.

(c) The petitioner did not deposit the balance amount for a period of more than one decade.

(d) The proceedings initiated by the respondent No. 2 vide notice dated 5.9.1994 culminated in the passing of the order of resumption of the site due to persistent failure of the petitioner to deposit the amount.

(e) The petitioner challenged the resumption order as well as the appellate and

the revisional orders in CWP No. 14676 of 1995.

(f) In the written statement filed on behalf of the respondents, it was pleaded that the petitioner was liable to pay 18% interest because it had defaulted in depositing the instalments.

(g) On 11.3.1996, the High Court allowed the writ petition (reported as 1996 PLJ462) quashed the order of resumption etc. and restored the plot to the petitioner with a direction that the petitioner shall deposit the entire amount due within two months along with interest @ 10%.

(h) In the appeal filed by the respondents the Supreme Court quashed the order of the High Court but directed that if the respondent (petitioner herein) pays the entire arrears as demanded by the HUDA within a period of three months, the forfeiture effected by HUDA shall not take effect.

(i) In accordance with the Supreme Court's order, the Estate Officer pointed out that the amount due from the petitioner was Rs. 18,21,448.90.

8. In our opinion, after having taken benefit of the compassionate direction given by the Supreme Court that the forfeiture be not effected in case the respondent pays entire arrears as demanded by HUDA, the petitioner cannot turn around and indirectly challenge the order of the Supreme Court. The acceptance of Shri Mehta's contention would mean that the Supreme Court restored the site to the petitioner on the same terms and conditions on which the High Court had restored the same. After having set aside the order of the High Court, the Apex Court never intended to give the same relief to the petitioner which the High Court had given to it. It is unfortunate that the petitioner is now trying to challenge the order of the Supreme Court by filing the writ petition in the High Court. Such petition cannot but be described as frivolous and vexatious.

9. Hence the writ petition is dismissed.

10. Petition dismissed.