
(2018) 01 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : 2708 of 2017 (O&M)

Neelam Badera

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 19-01-2018

Acts Referred:

[Haryana Urban Development Authority Act, 1977](#), [Section 17\(4\)](#), [Section 17\(1\)](#), [Section 17](#), [Section 17\(2\)](#), [Section 17\(3\)](#)

Citation : (2018) 01 P&H CK 0058

Hon'ble Judges : S.J. Vazifdar, Harinder Singh Sidhu

Bench : Division Bench

Advocate : Rajiv Sharma, Deepak Balyan, ?Deepak Sabharwal

Judgement

Sector

No.", "Name of Urban

Area", Plot No., "App. Dimension description as notified at the time

of auction", "Area in Sq.

Mts", "Price of plot/

bldg.

8, Faridabad, "Booth site

No.98(P)", 9"x27" = 27 sq. yds., "2,66,000/-

question. Respondent-HUDA filed an appeal against the said order before the State Consumer Disputes Redressal Commission, Faridabad, ", , , , ,

which, vide its order dated 15.1.2010 accepted the appeal, set aside the order of the District Consumer Forum and dismissed the complaint.", , , , ,

6. Meanwhile, the petitioner had also filed a revision petition on",,,,,

7. 11.2006 against the order of the Administrator HUDA, which was dismissed by respondent No.1, vide order dated 3.12.2013. Thereafter, the",,,,,

Estate Officer, HUDA, issued show cause notice dated 20.5.2014 to the petitioner for eviction from the booth in question.",,,,,

8. Hence, this writ petition.",,,,,

9. Learned counsel for the petitioner argued that the petitioner has always been ready and willing to deposit the balance installments. It was only on,,,,,

account of total absence of development work in the area that the petitioner was not able to deposit the balance amount. He submitted that even,,,,,

now the petitioner is ready and willing to deposit the outstanding installments including interest and penalty as may be payable.,,,,,

10. Mr. Sabharwal, learned counsel, on the other hand, argued that the resumption order was fully justified as the petitioner has willfully defaulted",,,,,

in paying the installments. She even failed to comply with the order of the appellate authority which had granted her one more opportunity to make,,,,,

the payment of due amount along with interest and penalty as per HUDA policy.,,,,,

11. We have heard learned counsel for the parties and perused the record.,,,,,

12. As per the terms and conditions of the letter of allotment dated 8.12.1993, after the deposit of 25% of the amount (10% at the time of auction",,,,,

and 15% within 30 days of the issue of letter of allotment), the petitioner was required to pay the balance amount i.e. Rs.1,99,500/- either in lump-",,,,,

sum without interest within 60 days from the date of issue of allotment letter or in 10 half yearly installments. The first installment was to fall due,,,,,

after the expiry of six months from the date of issue of the letter of allotment. Each installment was to be recoverable with interest on the balance,,,,,

price at 15% per annum on the remaining amount. In respect of 75% balance amount which was to be paid in 10 half yearly instalments, the",,,,,

petitioner only made three deposits i.e. Rs.25,000/- on 8.1.1996, Rs.20,000/- on 9.12.1996 and Rs.45,000/- on 7.10.1997. Nothing was paid",,,,,

thereafter.,,,,,

13. The Estate Officer issued notices to the petitioner under Sections 17(1), 17(2) 17(3) and 17(4) of 1977 Act dated 30.05.1994, 06.07.1994",,,,,

29.08.1996, 21.11.2000, 10.04.2001, 02.06.2001, 17.07.2001 calling upon her

to clear the arrears which had amounted to Rs.4,90,520/-. On",,,,,

the failure of the petitioner to make the payment or furnish any satisfactory explanation for the default, respondent no.4 passed order dated",,,,,

4.9.2001 resuming the property and forfeiting 10% of the consideration money. The petitioner filed an appeal against the same, which was",,,,,

allowed. The petitioner was granted one more opportunity for making payment of the due amount alongwith interest and penalty as per HUDA,,,,,

policy upto 15.2.2003. It was ordered that in case of default, the resumption order would revive. It is the case of the petitioner that though the",,,,,

order is dated 7.1.2003 but it was actually conveyed to her on 22.5.2003 i.e. after the expiry of the last date for deposit of the due amount as,,,,,

specified in the order dated 15.02.2003. Be that as it may, in our view, the petitioner cannot claim any advantage because of this, for, if the order",,,,,

of the Administrator (Appellate Authority) had been received after the date of compliance had already expired it was open to the petitioner to,,,,,

apply to the Administrator and seek extension of time for depositing the amount. However, the petitioner did not do so. Instead, she chose to file a",,,,,

complaint before the District Consumer Forum, Faridabad on 10.6.2004 with the allegation that there was no development in the area at the time",,,,,

of handing over the possession. In the complaint, it was prayed that the respondents be directed not to dispossess her from the booth in question;",,,,,

not to charge interest of any kind towards the balance price of the booth; that the demand of Rs.6,01,214/- be declared as null and void and that",,,,,

the respondents be ordered not to resume the booth in question. Compensation of Rs.1,00,000/- was demanded, besides litigation expenses.",,,,,

Thus, it is clear, that the petitioner was not inclined to deposit the amount despite opportunity having been granted. The District Consumer Forum",,,,,

allowed the complaint and issued various directions. However, its order was reversed by the State Consumer Disputes Redressal Commission",,,,,

vide its order dated 15.01.2010.,,,,,

14. The petitioner filed revision petition on 7.11.2006 impugning the order of the Administrator dated 7.1.2003 which was dismissed vide order,,,,,

dated 3.12.2013. Before the revisional authority, it was contended on her behalf that she was not a wilful defaulter and had been forced to commit",,,,,

default because of lack of development in the area where the booth is situated.

Respondent No.1 in its order noted that before passing the order of,,,,,
resumption the petitioner had been given sufficient opportunities by issuing
notices under Section 17 of the 1977 Act. Hence, there was no infirmity" ,,,,,
in the order. It referred to a decision of this Court in CWP No.9503 of 2010 titled
as Suresh Chand vs. State of Haryana and ors. wherein it has,,,,,
been observed that the order of resumption cannot be set aside merely because
the allottee subsequently contends that he is ready and willing to,,,,,
make payment of the entire auction amount with penalty and interest. It was
noticed therein that the allottees after getting allotment in public auction,,,,,
do not pay the installment in time with an intention that they will subsequently
pay the dues alongwith penalty and interest after many years and earn,,,,,
huge profits in case the price of property increases. In such cases the orders of
resumption ought not to be interfered with. ,,,,,

15. Respondent No.1 in his order has also referred to a decision of Hon"ble the
Supreme Court in Municipal Corporation Chandigarh and others, ,,,,,

v. Vipin Kumar Jain, (SLP No.12968 of 2006, decided on 20.9.2007), wherein it
was observed that time is the essence of the contract in matters" ,,,,,

of auction. Property prices increase by the day and if within stipulated period
contractual obligations are not fulfilled then the State suffers losses, ,,,,,

which cannot be compensated in terms of interest or penalty for the delay. It was
emphasized that when the allottee offers to pay interest and, ,,,,,

principal after years it amounts to pegging of the price which cannot be
allowed. ,,,,,

The relevant observations of the Supreme Court are as under:- ,,,,,

Auction is a price-discovery mechanism which falls in the contractual realm. In
the present case, we are concerned with commercial sites. Auction" ,,,,,

is basically an exercise in raising revenues for the Government. When the price is
not paid within time it results in loss of revenue to the State. Time, ,,,,,

is the essence of the contract in matters concerning auction. Property prices rise
by the day. ,,,,,

In the present case there was no illegality in the holding of auction. Despite
repeated notices issued to the respondent calling upon him to make, ,,,,,

payment, respondent failed to pay within the stipulated period. Despite repeated
indulgence being shown to the respondent by the competent" ,,,,,

authorities payments were not made. Property prices increase by the day and if

within stipulated period contractual obligations are not fulfilled then,,,,,

in that event the State suffers losses which cannot be compensated in terms of interest or penalty after four years. Ultimately auction is an exercise,,,,,

for detecting or discovering the price prevalent in the particular area in a particular year and if time overruns are to be allowed on flimsy excuses for,,,,,

not paying the money in time then the entire exercise would fail.,,,,,

We are therefore, of the view that the High Court should not have interfered in the process in which the Corporation was fully justified and entitled",,,,,

to forfeit 10% of the amount and to invite fresh offers on new terms and conditions.,,,,,

It has been submitted on behalf of the respondent that during the aforesaid period he had to undergo bypass operation and financial difficulties and,,,,,

therefore, delay in depositing be condoned. In our view ample opportunities were given to the respondent to make payment and therefore there",,,,,

was no question of condoning the delay. It is important to bear in mind that when the respondent offers to pay interest and principal after years it,,,,,

amounts to pegging of the price which cannot be allowed."",,,,,

16. The plea of lack of development for non payment of instalments has also been rightly negated by respondent No.1. It has been held by a,,,,,

Division Bench of this Court in Ajay Kumar Jain v. State of Haryana 2016(3) R.C.R.(Civil) 345 that in case where a plot is purchased in open,,,,,

auction, the allottee cannot withhold payment of instalments on the ground that the authorities have not carried out development works in the area."",,,,,

The relevant observations are as under:,,,,,

6. The issue as to whether an allottee, who has purchased a plot in an open auction, can withhold the price of the plot as may be payable in",,,,,

instalments as also the interest accruing thereupon on the plea that development works have not been undertaken by the authority concerned came,,,,,

to be considered by the Hon"ble Apex Court in U.T Chandigarh Administration and Anr. v. Amarjeet Singh and others, 2009 (2) R.C.R (Civil),",,,,,

401 and it was observed as follows:-,,,,,

19. In Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243, it was held that where a developer carries on the activity of",,,,,

development of land and invites applications for allotment of sites in a developed layout, it will amount to `service", that when possession of the",,,,,

allotted site is not delivered within the stipulated period, the delay may amount to a deficiency or denial of service, and that any claim in regard to",,,,,

such delay is not in regard to the immovable property but in regard to the deficiency in rendering service of a particular standard, quality or grade.",,,,,

The activity of a developer, that is development of land into layout of sites, inviting applications for allotment by assuring formation of a lay out with",,,,,

amenities and delivery of the allotted sites within a stipulated time at a particular price, is completely different from the auction of existing sites either",,,,,

on sale or lease. In a scheme for development and allotment, the allottee has no choice of the site allotted. He has no choice in regard to the price",,,,,

to be paid. The development authority decides which site should be allotted to him. The development authority fixes the uniform price with",,,,,

reference to the size of plots. In most development schemes, the applications are invited and allotments are made long before the actual",,,,,

development of the lay out or formation of sites. Further the development scheme casts an obligation on the development authority to provide",,,,,

specified amenities. Alternatively the developer represents that he would provide certain amenities, in the Brochure or advertisement. In a public",,,,,

auction of sites, the position is completely different. A person interested can inspect the sites offered and choose the site which he wants to acquire",,,,,

and participate in the auction only in regard to such site. Before bidding in the auction, he knows or is in a position to ascertain, the condition and",,,,,

situation of the site. He knows about the existence or lack of amenities. The auction is on Rs. as is where is basis". With such knowledge, he",,,,,

participates in the auction and offers a particular bid. There is no compulsion that he should offer a particular price.,,,,,

20. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the",,,,,

auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition",,,,,

of the site. If all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he",,,,,

would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter",,,,,

be heard to say that he would not pay the balance of the price/premium or the stipulated interest on the delayed payment, or the ground rent, on",,,,,

the ground that the site suffers from certain disadvantages or on the ground that amenities are not provided."",,,,,

7. In view of the observations reproduced herein above the justification offered on behalf of the petitioners that the instalments were not deposited,,,,,

on account of development works having not been carried out and that the plot in question suffering from certain disadvantages, cannot be",,,,,

accepted. If there had been any bona fide intention on the part of the petitioners to retain the property, it was always open for them to have",,,,,

deposited the instalments under protest and thereafter sought redressal of their grievance, if any, by taking out appropriate proceedings. Petitioners",,,,,

on the other hand chose not to deposit even a single penny after the initial deposit of 25% of the premium in the year 1988. The action of HUDA,,,,,

authorities to initiate and finalise resumption proceedings, as such, cannot be faulted."",,,,,

17. The facts of this case do not bespeak that the petitioner is an allottee who is genuinely interested in protecting her property. Not only did the,,,,,

petitioner not respond to the many notices calling upon her to pay the installments but she also did not avail of the opportunity provided by the,,,,,

Appellate Authority vide its order dated 07.01.2003 (communicated on 22.05.2003) to get the plot restored by paying the due amounts. Further",,,,,

at every step there has been inexplicable delay in challenging the orders adverse to her. The resumption order was passed on 04.09.2001. She,,,,,

challenged the same by filing an appeal which was disposed of vide order dated 07.01.2003, which was communicated to her on 22.05.2003. The",,,,,

petitioner challenged this by filing a revision petition on 7.11.2006 i.e., after about three and half years. Meanwhile, no doubt, she had filed a",,,,,

consumer complaint before the District Forum on 10.06.2004 which was allowed on 15.02.2006. This order was reversed by the State,,,,,

Commission vide its order dated 15.01.2010 on an appeal filed by HUDA. The revision petition filed by the petitioner was dismissed on,,,,,

3.12.2013. She filed the present petition on 09.12.2016. Thus, she challenged the Appellate order after about three and half years. The revisional",,,,,

order has been challenged after three years. This indicates that the petitioner was not serious about retaining the plot.,,,,,

18. Though before this Court, learned counsel for the petitioner had indicated that the petitioner would be willing to pay all the outstanding amounts",,,,,

with interest and penalty, the said offer cannot be accepted at this late stage in view of the decisions of the Courts referred to above." ,,,,,

19. Thus, we find no infirmity in the impugned orders." ,,,,,

20. Consequently, this petition is dismissed." ,,,,,