
(2015) 08 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1536 of 2014

Raj Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:

Citation : (2015) 08 P&H CK 0019

Hon'ble Judges : S.J. Vazifdar, A.C.J; Tejinder Singh Dhindsa, J

Bench : Division Bench

Advocate : Surya Parkash, for the Appellant; Rahul Dev Singh, Deputy Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J—The present petition is directed against the resumption of a built up booth in Sector 4, Mansa Devi Complex, Panchkula, Haryana.

2. In the year 1998, Haryana Urban Development Authority (for short "HUDA") floated a rehabilitation scheme in aid of the small time vendors doing their business along side the road leading to Mata Mansa Devi Temple and offered booths/kiosks on free hold basis in the new Shopping Centre in Mansa Devi Market, Panchkula. Upon an application having been made, petitioner was offered booth No. 246, Sector 4, Mansa Devi Market, Panchkula measuring 22.68 sq.mtr. under the rehabilitation scheme for a premium of Rs. 2.79 lacs. The petitioner having deposited 10% of the total premium amount i.e. Rs. 27,900/-, he was issued allotment letter dated 3.4.2000 and was even offered possession of the booth. A sum of Rs. 41,850/- i.e. 15% of the premium was deposited on 1.5.2000 so as to make good 25% of the price of the booth. As per condition No. 6 of the allotment letter, the allottee had the option to make the balance payment i.e. 75% price in lump sum without interest within 60 days from the date of issue of allotment letter or in ten half yearly instalments along with interest @ 15% on the remaining amount. It is the petitioner's case that even

though he had opted to pay the balance amount in ten half yearly instalments, but on account of the illness of his son, he could only deposit a sum of Rs. 15,000/- on 20.12.2002. A number of show cause notices were issued by the Estate Officer, HUDA, Panchkula to the petitioner in the years 2001 and 2002 calling upon him to deposit the instalments that had become due along with 15% interest. Failure on the part of the petitioner to deposit the instalments led to the passing of a resumption order dated 27.2.2003, Annexure P1, by the Estate Officer, HUDA, Panchkula in respect of the booth in question along with forfeiture of 10% of the consideration money. Appeal preferred by the petitioner was also dismissed in the light of order dated 2.9.2003, Annexure P2, passed by the Chief Administrator, HUDA, respondent No. 2.

3. Pleaded case of the petitioner is that his son having recovered from the kidney ailment that he was suffering from and having been discharged from Hospital in the month of October, 2004 after having undergone an invasive procedure, amounts were deposited on regular and short intervals with the HUDA authorities in the year 2005 itself. A tabulation reflecting the precise amount deposited by the petitioner at different points of time against the booth which had been allotted for a total premium of Rs. 2.79 lacs is indicated below:

4. After the passing of the order dated 2.9.2003 by the Appellate Authority rejecting the appeal against the order of resumption, the petitioner even filed a revision petition before respondent No. 1 i.e. the Financial Commissioner and Principal Secretary to Government Haryana, Town and Country Planning Department albeit with some delay. The revision petition also stands dismissed vide order dated 14.7.2008 passed by respondent No. 1 at Annexure P3.

5. Petitioner prays for the issuance of a writ of certiorari setting aside the order of resumption dated 27.2.2003, Annexure P1, order dated 2.9.2003, Annexure P2, passed by the Appellate Authority, as also order dated 14.7.2008, Annexure P3, passed by respondent No. 1 dismissing the revision petition and thereby upholding the resumption of the booth.

6. Counsel for the parties have been heard.

7. The question that falls for our consideration is as to whether the power of resumption and forfeiture has rightly been exercised?

8. The answer to such question would depend upon the factual matrix and circumstances obtaining in each case.

9. Concededly, the petitioner has made a total deposit of Rs. 4,32,850/- till 29.04.2005 against the total premium of Rs. 2.79 lacs for the booth in question. The petitioner was liable to pay the last installment along with 15% interest on 3.4.2005. Even though he had defaulted in depositing three instalments but the fact remains that prior to 3.4.2005, the petitioner had made a deposit of Rs. 3.75 lacs approximately with the HUDA authorities against the allotment price of Rs. 2.79 lacs. The order of resumption and forfeiture has been passed on

27.2.2003 i.e. while the schedule for payment of instalments was still alive. Such payments having been deposited have been noticed by the revisional authority in the order dated 14.7.2008, Annexure P3, but still no consideration has been afforded in such regard and the resumption proceedings have been upheld.

10. The petitioner has also placed on record and appended as Annexure P-5 documents issued by the Government Medical College and Hospital, Sector-32, Chandigarh, which would demonstrate that his son had been admitted in the hospital for a period in excess of two weeks and had undergone an operation relating to a kidney ailment. The date of discharge is reflected as 5.10.2004. We would have no reason to doubt the veracity of such documents/discharge and follow up card issued by a premier medical institution of the city. Such documents substantiate the plea of the petitioner that the default in deposit of instalments was on account of circumstances beyond his control. Furthermore, the willingness of the petitioner to deposit the outstanding amount with the HUDA authorities can also be seen from the tabulation indicated hereinabove, whereby soon after the discharge of his son from the hospital i.e. in October, 2004, the petitioner made a total deposit of Rs. 3.5 lacs at short and regular intervals in the year 2005 itself.

11. The petitioner has also furnished instances relating to Booth No. 195, Sector-4 Mansa Devi Complex, Panchkula and Kiosk No. 62, Sector-4, Mansa Devi Complex and which had been resumed on account of non-payment of installments but had been restored by the Competent Authority either at the stage of appeal or in revision on the ground that the payment schedule was yet to expire. Such factual aspect has not been denied in the written statement filed to the writ petition.

12. In our view, the power of resumption is to be used only as a last resort. It is only in a situation where the default on the part of the allottee is found to be wilful or dishonest, then the action of the authority concerned to resume the property may be considered as appropriate. Adverting to the facts of the present case, the conduct of the petitioner does not show the default in payment of instalments to be either wilful or dishonest. The petitioner apparently was the victim of adverse circumstances on account of his son's illness. It is not even the case made out that the petitioner has attempted to profiteer or has indulged in speculation. Rather the petitioner is a small time vendor who had been allotted the booth in question under a rehabilitation scheme and is earning his livelihood by selling parshad etc. to the devotees at the Mansa Devi shrine.

13. The action of the respondent-authorities in directing resumption and forfeiture of 10% of the consideration money would also be termed as arbitrary inasmuch as in other similarly situated allottees wherein resumption had been directed on account of non-payment, the property had been restored on the basis that the payment schedule was yet to expire. Even on the ground of parity, the petitioner is entitled to restoration of the booth in question as the resumption order was passed on 27.2.2003 whereas the last instalment payable was on

3.4.2005.

14. Even otherwise as per terms and conditions of the allotment letter dated 03.4.2005, it was open for the Estate Officer to proceed and take action for imposition of penalty and also for resumption of the plot on account of default of deposit of installments. As per condition No. 27, interest at the rate of 18% per annum (compounded) was to be charged in case the instalment is not paid by the due date. We are of the considered view that in the peculiar facts and circumstances of the present case, it was not imperative upon the Estate Officer to have resorted to the extreme measure of resumption, but rather should have charged the penal interest as envisaged under the allotment letter. Another fact that has weighed with us is that concededly the petitioner has remained in possession of the booth all this while inspite of the resumption order having been passed in the year 2003.

15. For the reasons recorded above, the writ petition is allowed. The impugned order of resumption dated 27.02.2003, Annexure P1, as also the orders dated 02.09.2003, Annexure P2, and 14.07.2008, Annexure P3, passed by the Appellate and Revisional Authority are set aside. The booth in question is directed to be restored to the petitioner. In the written statement it has been stated that the HUDA has amended its policy of charging compound interest on delayed payments and w.e.f. 1.09.2000 is charging simple interest only. Accordingly, while setting aside the resumption order, the petitioner is held liable to pay the interest at the rate of 18% per annum (simple interest only) from the date the respective instalments had become due. The respondents, however, shall give credit to the petitioner for the amounts of money that he has already deposited. The petitioner shall pay such amount, which is found due and payable by the respondents, within a period of one month from the date of receipt of the demand letter after calculations as indicated above.

16. The writ petition is allowed in the aforesaid terms.