
(2015) 01 P&H CK 0261

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 24813 and 24834 of 2012

Shashi Kumar Dhaka and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : (2015) 01 P&H CK 0261

Hon'ble Judges : Hemant Gupta, J; Hari Pal Verma, J

Bench : Division Bench

Advocate : Raman Gaur, for the Appellant; P.K. Jangra, Add. A.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

Hari Pal Verma, J.—This order shall dispose of aforementioned two writ petitions i.e. CWP No. 24813 of 2012 and CWP No. 24834 of 2012, whereby the petitioners in both the writ petitions have challenged the order of resumption dated 28.10.2011 (Annexure P-5) passed by respondent No. 2. Challenge has also been laid to order dated 15.2.2011 (Annexure P-7), whereby the appeal against the order of resumption (Annexure P-5) has been dismissed. Since the facts of both the writ petitions are similar and common issue is involved, for the facility of reference, the facts are being taken from CWP No. 24813 of 2012.

2. Briefly stated, the facts of the case are that the Department of Urban Development, Haryana floated a scheme for allotment of plots for shops on free hold basis under the scheme known as Vyapar and Vyavsaai Kunj Pariyojna, Hisar located at Ambala Rajgarh National Highway No. 65. The booking for allotment of plots was to commence on 21.06.2001 and its closing date was 20.7.2001, as provided under the brochure. Accordingly, applications for allotment of shops, showrooms, workshops etc. were invited. The applications were required to be submitted with respondent No. 3 along with 10% earnest money.

3. The petitioner submitted his application along with 10% earnest money with

respondent No. 3. An intimation for draw of lots of Phase-1 was sent to the petitioner, which was held on 26.9.2001 at Mini Secretariat Complex, Hisar. Being successful in the draw of lots, the petitioner received the letter of allotment dated 1.11.2001 (Annexure P1), whereby plot measuring 60 square yards in the vicinity of Trade and Business Complex, Phase-1, Hisar was allotted to the petitioner for a consideration of Rs. 9 lacs. As per the allotment letter, the allottee/petitioner was required to pay an amount of 25% within 30 days from the date of issuance of allotment letter, which included the 10% amount paid at the initial stage, as earnest money and the balance amount of the plot can be paid either in lump sum within 60 days from the date of issuance of the letter of allotment or in six half yearly instalments. The first instalment shall fall due after expiry of six months from the date of issuance of the allotment letter.

4. The petitioner opted the second mode of payment and started paying the instalments of the plot regularly, as per the allotment letter and deposited Rs. 6,75,000/- against the tentative price of Rs. 9 lacs. However, respondent No. 3 stopped accepting the instalments of the plot on the ground that a notice has been received from the Archeological Department, according to which, constructions cannot be raised on the site due to existence of historical monuments. A resolution No. 11 dated 24.8.2004 was also passed, whereby the possession of the allotted plots has been stopped by the Department of Archeological and Museum and for this reason, it was informed that the remaining instalments of the plot should not be accepted till the matter is settled between the Department of Archeological and Museum and respondent No. 3 i.e. Improvement Trust, Hisar.

5. The Department of Urban Development intimated the respondent No. 3 Improvement Trust, Hisar that considering the problems of allottees of the Vyapar and Vyavsai Kunj Pariyojna, Phase-I, which has arisen because of its location within 100 meters restricted zone and within 200 meters regulated zone around the historical monuments of Ferozeshah Mahal, Gujjari Mahal Taikhana etc. notified by the Archeological Survey of India vide notification dated 22.6.1992 under the Asian Monuments and Archeological Remaining, 1959, it has been decided to rehabilitate the allottees of earlier scheme to an alternative site. The Government desired that the proposal for alternative site be sought from the Improvement Trust, Hisar and accordingly, a request was made to send the alternative proposal for preparation of scheme to rehabilitate the allottees of the earlier scheme.

6. After getting the sanctioned for an alternative site opposite to the land of earlier scheme, the Director, Urban Development, Department of Urban Development, Haryana wrote a letter to the Department Animal Husbandry for transferring of land measuring 17 acres 1 kanal 4 marlas to the Town Improvement Trust i.e. respondent No. 4 for rehabilitation of allottees in Vyapar and Vyavsai Kunj Pariyojana, Phase-I, Hisar along with the map of land proposed and khasra numbers to be transferred to the Improvement Trust, Hisar. However,

when no allotment was made at the alternative site, some of the allottees filed CWP Nos. 3720, 4427, 4428 and 6942 of 2007, wherein a direction was given to the Chief Secretary, Government of Haryana to decide the matter in question. After the passing of the aforesaid order by this Court, respondent No. 3 was allotted plot No. 143 at the alternate site of Trade and Business Complex, Phase-I, Hisar in lieu of plot No. 195, earlier allotted to the petitioner vide allotment letter dated 27.12.2005 at a higher price from the actual allotment made way back in the year 2001. The allotment letter was issued on 14.6.2011 (Annexure P3), but the same was not received by the petitioner, as he had shifted his residence.

7. Thereafter, a notice was issued to the petitioner on 22.9.2011 and finally, on 28.10.2011, the allotted plot was resumed. It has been submitted that the petitioner came to know about the order of resumption, as a notice was sent therein. It has been further submitted that nonpayment of amount and execution of the agreement in terms of clause 4 of the resumption order was not intentional. Rather, the petitioner failed to do so because of non-receipt of the same.

8. Against the order of resumption dated 28.10.2011, the petitioner preferred an appeal before respondent No. 1, showing his willingness to pay the outstanding amount, on account of non-receipt of letters/notices pertaining to the alternate allotment made after 10 years i.e. in the year 2011. However, the said appeal was dismissed by respondent No. 1 vide order dated 15.2.2012 (Annexure P7).

9. It is against the order of resumption dated 28.10.2011 and order dated 15.2.2012, passed in appeal, the petitioner has filed the present writ petition.

10. On notice having been issued to the respondents, written statement has been filed. It has been submitted that construction in respect of scheme was opposed by the Archeological Survey of India, as the location of the site under the scheme was within the prohibited distance from the protected monuments and it was for this reason that respondent No. 3 has stopped the process of allotment of plot to the petitioner. The petitioner was allotted plot No. 143 at the alternative site and allotment letter dated 14.6.2011 (Annexure P3) was issued to him. It has been further averred that holding of draw of lots was individually informed to all the applicants as well as through public notice and the petitioner was present during the draw of lots. Even the allotment letter was posted at his available address through speed post and therefore, the petitioner cannot say that he did not receive the allotment letter. It has been further submitted that the action was taken against the petitioner in accordance with the terms and conditions of the allotment letter. Clause 29 of the allotment letter empowers the Improvement Trust to resume a plot for breach of any condition. According to clause 4, 5 and 6 of the allotment letter, acceptance/refusal of the allotment was to be communicated within 30 days of the issuance of the allotment letter, failing which, the allotment was liable to be cancelled and the earnest money was liable to be forfeited. Since the petitioner did not pay the outstanding amount of Rs.

2,25,000/- within 30 days, a notice Annexure P4 was sent to him at the address, as mentioned in allotment letter (Annexure P3), but the petitioner did not take any action on the said notice, resulting into passing of the resumption order dated 28.10.2011 (Annexure P5).

11. We have heard learned counsel for the parties.

12. Learned counsel for the petitioner has argued that as the notice, as referred in the resumption order was not received by the petitioner, therefore, the petitioner could not deposit the outstanding amount. However, learned counsel has fairly conceded that the petitioner is willing to deposit the balance outstanding amount, as he was prevented by sufficient cause for not depositing the amount in question and no notice was ever received by him before invoking the extreme step of resumption of the plot.

13. On the other hand, learned counsel for the respondents has reiterated the stand taken in the written statement, as discussed above.

14. Having heard the rival contentions of the parties, we are of the considered view that the present writ petition deserves to be allowed.

15. This Court vide order dated 14.12.2012, while issuing notice of motion had observed that the alternative plot proposed to be allotted to the petitioner be not allotted to any other person. Thus, the allotted plot stands reserved. We may refer to a judgment of the Hon'ble Supreme Court in Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, (2004) 136 PLR 899 : (2003) 10 SCALE 1016 : (2004) 2 SCC 130 : (2003) 6 SCR 1235 Supp , wherein it has been held that resumption or a cancellation of lease should be resorted to as a last resort. The petitioner has fairly come forward to deposit all the outstanding amount, therefore, the request of the petitioner deserves to be accepted and the order of resumption of the plot in question is liable to be set aside, as the petitioner was prevented on account of sufficient cause for not depositing the amount, as no notice was ever received by him before invoking the extreme step of resumption of the plot.

16. Accordingly, both the writ petitions are allowed and the order dated 28.10.2011 (Annexure P5) of resumption of the plot in question is quashed and the plot allotted to the petitioners is ordered to be restored to them. Resultantly, order dated 15.2.2011 (Annexure P7) passed in appeal is also quashed.

17. Further, we direct the respondents to calculate and communicate the outstanding amount, requiring the petitioners to deposit the amount in question. The respondents shall also communicate the formalities, if any, required to be completed by the petitioners within one month from today. On issuance of such letter, the petitioners shall deposit the amount claimed and shall complete the formalities, if any, within one month thereafter. In case the petitioners fail to make payment within the time granted, the order of resumption shall be revived.