
(2010) 02 P&H CK 0313
In the Punjab And Haryana At Chandigarh

Subash Chander and Another

APPELLANT

Vs

Haryana State

RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Citation : (2010) 158 PLR 532 : (2010) 2 RCR(Civil) 789

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The writ petition challenges the order of resumption made for non-payment of an installment for a plot, which was allotted to him in an open auction in Mandi Ellnabad. The facts leading to the petitioners are that in an auction held on 22.11.1977, the petitioners had purchased a residential plot for Rs. 17,500/- and the petitioners had paid 25% of the amount namely Rs. 4375/- on the spot and the remaining 3/4th price namely Rs. 13,125/- was to be paid in three installments. The first installment of Rs. 5,556.25 fell due on 30.03.1979 was paid after a little delay. The 2nd installment was not deposited at all and for the third installment, which fell subsequently was paid after the date stipulated. The petitioner was served with notice on 27.01.1982 for making the payment that remained due but the petitioner did not respond. The Administration exercising its powers u/s 13(2) of the New Mandi Township Act of 1960 ordered the forfeiture of the plot allotted to him for non-payment of the second installment and had also imposed the penalty of 10% as per law. He had preferred an appeal against the order of resumption, which affirmed the decision of the Administrator and a further revision to the Financial Commissioner met with the same fate.

2. The ground of challenge before this Court is only that in two other cases where there had been default in payment of installments, there had been favourable intervention in favour of the allottees by condoning the non-payment and giving them opportunity to make the payment and when the resumption orders had been cancelled, a similar treatment ought to have been made for the

petitioners also but the affirmation of the order of resumption passed was discriminatory. Learned Counsel appearing for the petitioners refers to the other instances of persons when in Regular Appeal No. 130 of 1981-82, while setting aside the order, one Ramesh Chander, who had not paid the money had been granted an opportunity to make the payment within 30 days. Similarly, in another case in Regular Appeal No. 181 of 1981-82, the Appellate Authority similarly granted an opportunity to make the payment and provided to him a period of 30 days for making the deposit. To an argument urged by learned Counsel for the petitioners that there had been a discriminatory treatment, learned Counsel for the respondent would submit that while the other plot owners had been willing to make the failed deposit at the level of the Appellate Authority, the petitioner was not so willing and therefore a favourable order could not be passed. He also would submit that merely because an opportunity had been given to the other owners, it did not mean that the petitioner should also be offered the same kind of privilege. Learned Counsel appearing for the petitioner refers to a Division Bench ruling of this Court in Harbinder Singh Dhillon and Another Vs. Union Territory and Others, non-payment of installment in the context of a right of resumption and how a non-discriminatory conduct ought to be expected by a public authority and if a non-payment was condoned and installment was collected with interest and penalty, the same facility could not be denied to yet another person.

3. In my view, a State action ought to be fair and nondiscriminatory. If a discretion was possible to extend to some allottees, who had failed to pay their installments, there was no reason why the same facility ought not to have been extended to yet another person. I notice from the orders passed by the Appellate Authority that there had been no offer voluntarily by the respective appellants to make any payment of installments. On the other hand, the opportunity had been granted by the orders themselves and the payments were themselves to be made only subsequent to the disposal of appeals. It is only the appellate orders that allowed to those allottees to make the payment and it is not correct to contend that the payments had been made by the respective allottees before orders were passed by the Appellate Authority. While allowing the appeal and granting to other persons the opportunity to remedy their default and setting aside the orders of resumption to two others, there was no justification for denying such a relief to the petitioners only.

4. At the time when the writ petition was filed and when interim order is passed, it appears that the Authority was directed to keep the plot vacant and not allot to any person. The order is still in force. The claim for setting aside the order of resumption is resisted by the respondent also on the ground that the amount paid by the petitioner less 10%, which was forfeited had been paid in to the Treasury and the petitioners had also been informed about the same. Mere deposit of the amount by the State will not make any difference, so long as the petitioners had not withdrawn the amount and created a situation of estoppel against the claim again for withdrawing the order of resumption.

5. The orders of resumption impugned in the writ petition are set aside. Needless to say that amount which was attempted to be refunded by the respondents by depositing the amount in Treasury will be claimed back by the State itself. With no definite evidence placed before me about what is the present market price for the plot, I only direct that the amount of installment namely of Rs. 5,162.50, which fell to be payable as on 30.03.1980 shall be paid with interest @18% from the date when it fell due till date. The amount shall be deposited within two weeks from today. If the amount is not paid, the petitioners shall forfeit the allotment and the order already passed shall stand confirmed.

6. The writ petition is disposed of on the above terms. Copy of the order be given dasti on payment of usual charges.