

the learned trial Court is reduced to rigorous imprisonment for 1 ½ years each. The sentence of fine is anyhow ordered to be maintained. So, the impugned order of sentence to the above-said extent is ordered to be modified accordingly and this appeal to this extent stands partly accepted and disposed in accordance thereof.

(34) Copy of this judgment be sent to learned trial Court as well as Chief Judicial Magistrate, Fatehgarh Sahib for the strict compliance and to commit the appellants to jail for undergoing the remaining sentence of imprisonment, if any, as per law and record after procuring their presence, if they do not surrender at their own within 15 days from today.

---

*Arihant Jain*

*Before S.J. Vazifdar, ACJ & Tejinder Singh Dhindsa, J.*

**KAMAL KUMAR** — *Petitioner*

*versus*

**STATE OF HARYANA AND OTHERS**—*Respondents*

**CWP No.17065 of 2014**

September 24, 2015

*Constitution of India, 1950 — Art. 226 — Haryana Urban Development Authority Act, 1977—S.17 — Petitioner, a successful auction purchaser of a booth site deposited 10% of the price on the spot on 05.03.1980 — In terms of the allotment letter, 15% of the price deposited within 30 days — Thereafter, the petitioner defaulted in the payment of half yearly installments after paying three installments, because no development had been carried out in the area — However, the petitioner deposited a sum of Rs. One Lakh between Sept. 1996 and Sept. 1997 — Against the purchase price of Rs.38,600/- a sum of Rs.1,25,000/- was deposited before the order of resumption was passed — Court held that resumption is an ultimate civil sanction and has to be used as weapon of last resort—Order of resumption set aside — Writ petition allowed.*

*Held* that Section 17 of the Haryana Urban Development Authority Act, 1977 confers a confiscatory power that empowers the respondents to resume a plot and forfeit part of the consideration amount. Under Clause 8 of the allotment letter dated 28.7.1980,

Annexure P1, it was open for the Estate Officer to proceed to take action for imposition of penalty and resumption of the plot in the eventuality of the instalments not being paid by the allottee. The power of resumption is the ultimate civil sanction and has, therefore, to be used as a weapon of last resort. Such power is to be used with great caution and circumspection. In our view, the Estate Officer before passing a resumption order was obligated to determine whether there was a breach of terms and conditions of allotment including that of default of deposit of instalments by the allottee, if any, and thereafter to also examine if such default was “wilful and deliberate”. For reasons that we would now indicate, the respondents have failed to discharge such obligation.

(Para 5)

*Further held* that we have already noticed that after deposit of 25% of the auction purchase price, the petitioner had deposited three instalments as also a sum of Rs.1 lac between different dates in the years 1996 and 1997.

(Para 9)

Sharad Aggarwal, Advocate *for the petitioner*.

Deepak Balyan, Additional Advocate General, Haryana.

Anil Chawla, Advocate for respondents No.2 and 3.

### **TEJINDER SINGH DHINDSA, J.**

(1) The instant petition is directed against the resumption of a booth site by the Haryana Urban Development Authorities.

(2) A commercial booth site admeasuring 20.25 sq.mts. in Urban Estate, Faridabad was purchased by the petitioner through open auction held on 5.3.1980 upon his bid of Rs.38,600/- having been accepted. 10% of the auction purchase price i.e. Rs.3,860/- was deposited on the spot. Allotment letter dated 28.7.1980 was issued in favour of the petitioner. In terms of Clause No.4 thereof, an amount of Rs.5,790/- i.e. 15% of the auction price was deposited within 30 days of the issuance of allotment letter to make good 25% of the total price. The balance amount of Rs.28,950/- was required to be deposited in lump sum without interest within 60 days or in ten half yearly instalments along with interest @ 10%. It has been averred that the petitioner deposited three instalments i.e. on 2.3.1981, 16.2.1982 and 20.1.1983 respectively. It is the case of the petitioner that since no development had been carried out in the area, the balance instalments

were not deposited. Thereafter, a sum totalling Rs.1 lac was deposited on five different dates between 20.9.1996 to 22.9.1997. However, vide order dated 12.2.2001 passed by the Estate Officer, HUDA, Faridabad, the booth was resumed on the ground of having defaulted in depositing instalments. Such action was impugned by the petitioner by instituting a civil suit bearing No.939 dated 8.5.2001 and which was decreed by the Civil Judge (Junior Division), Faridabad vide judgment and decree dated 21.9.2006. The Civil Court set aside the resumption order and directed the HUDA Authorities to furnish statement of accounts after charging 10% simple interest upon the amount due and which the petitioner was held liable to pay. The respondents filed an appeal against the judgment and decree dated 21.9.2006 and counsel for the petitioner conceded before the 1<sup>st</sup> Appellate Court, that a statutory remedy of appeal was available against the order of resumption and, accordingly, in terms of order dated 17.4.2007 passed by the Additional District Judge, Faridabad, the judgment and decree passed by the Civil Court was set aside and liberty was granted to the petitioner to prefer an appeal within a period of one month. The appeal filed by the petitioner against the order of resumption was dismissed by Administrator, HUDA, Faridabad vide order dated 5.7.2011, Annexure P14. Even a revision petition preferred before the first respondent has been dismissed in terms of order dated 15.7.2014 at Annexure P15.

(3) It is against such brief factual backdrop that the issuance of a writ of certiorari has been prayed for quashing of resumption order dated 12.2.2001, Annexure P11, as also the orders dated 5.7.2011, Annexure P14, and 15.7.2014, Annexure P15, passed by the Appellate and Revisional Authorities affirming the order of resumption. Mandamus has also been sought for directing the respondents to restore the booth site in question to the petitioner.

(4) Counsel for the parties have been heard at length.

(5) Section 17 of the Haryana Urban Development Authority Act, 1977 confers a confiscatory power that empowers the respondents to resume a plot and forfeit part of the consideration amount. Under Clause 8 of the allotment letter dated 28.7.1980, Annexure P1, it was open for the Estate Officer to proceed to take action for imposition of penalty and resumption of the plot in the eventuality of the instalments not being paid by the allottee. The power of resumption is the ultimate civil sanction and has, therefore, to be used as a weapon of last resort. Such power is to be used with great caution and circumspection. In our

view, the Estate Officer before passing a resumption order was obligated to determine whether there was a breach of terms and conditions of allotment including that of default of deposit of instalments by the allottee, if any, and thereafter to also examine if such default was “wilful and deliberate”. For reasons that we would now indicate, the respondents have failed to discharge such obligation.

(6) In the writ petition, it has been categorically averred that after having paid 25% of the total auction price, three instalments were deposited i.e. Rs.4342.50/- on 2.3.1981, Rs.4197.75/- on 16.2.1982 and Rs.3908/- on 20.1.1983. Even a tabulation has been furnished in para 3 of the petition giving out details of a total sum of Rs.1 lac having been deposited between 20.09.1996 to 22.9.1997. It would be useful to extract the tabulation here under:

Amount deposited	Receipt No.	Date
Rs.15,000/-	138693	20.09.96
Rs.40,000/-	145788	27.02.97
Rs.20,000/-	147724	17.04.97
Rs.15,000/-	151552	23.07.97
Rs.10,000/-	153618	22.09.97

(7) In the joint written statement filed on behalf of respondents No.2 and 3, the receipt of the payments detailed above stand admitted. Even in the judgment and decree dated 21.9.2006 passed by the Civil Court, an admission of the Clerk of the concerned HUDA office i.e. defendant witness DW1 had been recorded that a sum of Rs.1,26,150/- had already been deposited by the petitioner against purchase of the booth site. As such, it clearly emerges that against the purchase price of Rs.38,600/-, a sum of Rs.1,25,000/- approximately already stood deposited by the petitioner upto 22.9.1997. However, in the resumption order that was passed on 12.2.2001, Annexure P11, the Estate Officer has given no credit to the petitioner for the payments made apart from the initial deposit of 25% of the auction price.

(8) The Principal Secretary to Government, Haryana, Town & Country Planning & Urban Estates Department in the impugned order dated 15.7.2014, Annexure P15, affirming the order of resumption passed by the Estate Officer has furnished the following reasoning:

“.....The petitioner could have shown his bonafides by making payment of the amount due as per his own

calculations but the petitioner did not deposit any amount of instalments till resumption of the booth which shows his intention to retain public property without making payment as per his contractual obligations.”

(9) Such reasoning is clearly perverse and contrary to the record. We have already noticed that after deposit of 25% of the auction purchase price, the petitioner had deposited three instalments as also a sum of Rs.1 lac between different dates in the years 1996 and 1997. All these payments were made prior to the passing of the order of resumption. Deposit of such payments stands conceded in the written statement filed to the instant petition. The resumption proceedings have been finalized by the authorities without even adverting to the record. We would have no hesitation in observing that the resumption of the booth in question has been directed in a perfunctory manner. The action, as such, cannot sustain.

(10) In view of what has been stated hereinabove, we allow the writ petition and set aside the impugned orders dated 12.2.2001, 5.7.2011 and 15.7.2014, Annexure P11, P14 and P15 respectively. The booth site in question shall stand restored in favour of the petitioner. The respondents shall be free to levy interest and penalty in accordance with law after making adjustment of the amount that the petitioner has already deposited. It is, however, clarified that the petitioner would not be liable to pay extension fee for the period the plot had stood resumed.

(11) Petition allowed in the aforesaid terms.

---

*P.S. Bajwa*