

Before S.J. Vazifdar, CJ & Harinder Singh Sidhu, J.

NEELAM BADERA—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.2708 of 2017

January 19, 2018

Constitution of India, 1950—Art.226—Haryana Urban Development Authority Act, 1977—S.17—After allotment of a plot in public auction, petitioner defaulted in payment of installment—Order of resumption passed—Plea of petitioner that he was ready and willing to pay the entire auction amount together with interest and penalty, negated by the High Court—Further held that an allottee in an auction cannot refuse to pay installment on the ground that development works were not carried out—Writ petition dismissed.

Held that 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 willful 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.

(Para 13)

Further held that 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.

(Para 14)

Rajiv Sharma, Advocate
for the petitioner.

Deepak Balyan, Addl. A.G., Haryana.

Deepak Sabharwal, Advocate
for respondents No. 2 to 4.

HARINDER SINGH SIDHU, J.

(1) This petition has been filed praying for directions to quash the orders dated 04.09.2001 passed by the Estate Officer, HUDA, Faridabad- respondent No.4, whereby, the plot of the petitioner was ordered to be resumed; the order dated 7.1.2003 passed by the Administrator, HUDA- respondent No.3, whereby, the resumption order was set aside subject to the petitioner paying the entire outstanding amount with interest and penalty and the order dated 3.12.2013 passed by the Financial Commissioner and Principal Secretary to Govt. of Haryana, Town and Country Planning-respondent No.1, whereby, the revision filed by the petitioner was dismissed. The petitioner has also prayed for quashing the notice dated 20.5.2014 (Annexure P-7) passed by respondent No.4 calling upon the petitioner to show cause as to why she should not be evicted.

(2) The petitioner was allotted Commercial booth No.98 Sector 8, Faridabad, measuring 27 sq. yards on 8.12.1993 through open auction for a total consideration of Rs.2,66,000/-. She deposited 10% of the bid amount i.e. Rs.26,600/- at the time of auction and thereafter deposited 15% of the consideration i.e. Rs.39,900/- on 15.1.1994.

(3) As per the terms and conditions of the allotment, the remaining 75% amount i.e. Rs.1,99,500/- could be deposited either in lump sum without interest within 60 days from the date of issue of allotment letter or in 10 half yearly installments alongwith interest @ 15% per annum. The interest was to accrue from the date of allotment. The relevant terms and conditions in the letter of allotment are as

under:-

“xxx xxx xxx

2. Your bid for plot/ building Booth site No.98(P), Sector-8 at Faridabad has been accepted and the plot/building as detailed below, has been allotted to you on free-hold basis as per the following terms and conditions and subject to the provision of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the Act) and the rules/ regulations applicable the reunder and as amended from time to time including terms and conditions as already announced at the time of auction and accepted by you.

Sector No.	Name of Urban Area	Plot No.	App. Dimension description as notified at the time of auction	Area in Sq. Mtrs	Price of plot/ bldg.
8	Faridabad	Booth No. 98(P)	9’X 27’ = 27 sq. yds.		2,66, 000/-

5. The balance amount i.e. Rs.1,99,500/- of the above price of the plot/building can be paid in lum-sum without interest within 60 days from the date of issue of the allotment letter or in 10 half yearly installments. The first installment will fall due after the expiry of six months of the date of issue of this letter. Each installment would be recoverable together with interest on the balance price at 15% interest on the remaining amount. The interest shall, however, accrue from the date of offer of possession.

6. The possession of the plot/building may be taken immediately after making payment of balance 15% amount as demanded in para no.4 above.

xxx xxx xxx

8. In case the installment is not paid by the 10th of month following the month in which it falls due, the Estate Officer shall proceed to take action for imposition of penalty & resumption of plot in accordance with the provisions of section 17 of the Act.

9. In the event of breach of any other condition of transfer the Estate Officer may resume the land in accordance with the provision of Section 17 of the Act.

10. The land/building shall continue to belong to the Authority until the entire consideration money together with interest and other amount if any due to that Authority on account of sale of such land or building or booth is paid. You shall have to right to transfer by way of sale gift mortgage or otherwise the plot/building or any right title or interest the rin till the full price is paid to the authority, except with the prior permission of the competent authority.

11. On payment of 100% of the price of the plot/building, you shall execute the Deed of Conveyance in the prescribed form and in such manner as may be directed by the Estate Officer. The charges for registration and stamp duty will be paid by you.”

(4) The petitioner is stated to have taken possession of the plot on 18.01.94. Thereafter, the petitioner only paid three installments i.e., Rs.25,000/- on 8.1.1996, Rs.20,000/- on 9.12.1996 and Rs.45,000/- on 7.10.1997. After that no amount was paid by the petitioner. It is the case of the petitioner that in Sector 8, Faridabad no development was carried out either by HUDA or by the Municipal Corporation Faridabad. Even basic amenities were not provided. The allottees/tenants of shops/booths in Sector 8, Faridabad filed CWP No.5058 of 2008 titled as 'Vijay Sharma and ors. vs. State of Haryana and ors.' with a prayer to develop the area and provide basic amenities and to remove encroachment therefrom. This petition was disposed of vide order dated 20.5.2009 with a direction to the respondents therein to provide basic amenities. Even after the disposal of the said petition, the directions were not carried out forcing some of the petitioners to institute contempt proceedings. It is the case of the petitioner that he was always ready and willing to deposit the balance consideration but could not do so as there was no development in the area.

(5) As the petitioner defaulted in paying the installments, respondent No.4 issued notices under Section 17(1), 17(2), 17(3) and 17(4) of the Haryana Urban Development Authority Act 1977 (for short “1977 Act”) Act calling upon the petitioner to deposit a sum of Rs.4,90,520/- which included the instalments along with interest and penalty as payable by him. On failure of the petitioner to do so, respondent No.4 passed order dated 4.9.2001(Annexure P-2) for

resumption of the plot and forfeiture of 10% of the sale consideration. The petitioner filed an appeal before the Administrator HUDA, Faridabad, who vide his order dated 7.1.2003 set aside the resumption order and granted one more opportunity to the petitioner to pay the due amount along with interest and penalty as per HUDA policy upto 15.2.2003. It was also ordered that in case of default, the site of the booth would stand resumed automatically. The petitioner did not comply with this order. Instead she filed a complaint before the District Consumer Disputes Redressal Forum, Faridabad, (for short "Consumer Forum") on 10.06.2004 which was allowed vide order dated 15.2.2006. HUDA was directed to charge the original balance price of the booth and also undertake necessary development around the site in 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.

(7) Hence, this writ petition.

(8) 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.

(9) 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.

(10) We have heard learned counsel for the parties and perused the record.

(11) 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.

(12) 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.

(13) 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.

(14) Respondent No.1 in his order has also referred to a decision of Hon'ble the Supreme Court in *Municipal Corporation Chandigarh and others* versus *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.

(15) 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 installments has also been rightly negated by respondent No.1. It has been held by a Division Bench of this Court in *Ajay Kumar Jain* versus *State of Haryana*¹ that in case where a plot is purchased in open auction, the allottee cannot withhold payment of installments 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

¹ 2016(3) R.C.R.(Civil) 345

plot in an open auction, can withhold the price of the plot as may be payable in installments 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 '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 installments 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 installments 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. Consequently, this petition is dismissed.

P.S. Bajwa