

Before Hemant Gupta, J.
**ESTATE OFFICER, HUDA, PANCHKULA
AND ANOTHER—Petitioner**

versus

DARYODHAN SINGH—Respondent

R.S.A. No. 2317 of 2009

17th September, 2009

Constitution of India, 1950—Art. 226—Haryana Urban Development Authority Act, 1977—Ss. 17 & 50—Courts below holding order of resumption illegal, null and void—Challenge thereto—Whether jurisdiction of Civil Court is barred in terms of S. 5 of 1977 Act—Plaintiff failing to deposit any installment after initial deposit before filing of suit—Breach of terms and conditions of letter of allotment—Plaintiff could not ask for any indulgence either in law or in equity—Order of resumption passed by the Authorities under 1977 Act could not have been set aside only on ground of claim of interest @ 18%—Bar of jurisdiction of Civil Court in terms of S. 50 would be applicable—Plaintiff defaulting in payment of balance sale consideration held not entitled to any declaration while challenging order of resumption nor entitled to any injunction.

Held. that there is not even an iota of allegation that the order passed by the Authorities under the Act is nullity. It is not stated to be in violation of the principles of natural justice. The same is proved to have been passed after granting of opportunity of hearing to the plaintiff-respondent. Therefore, the trial Court could not have been exercised jurisdiction over the matter as if it is an Appellate Authority.

(Para 16)

Further held. that the reasoning given by the learned trial Court to set aside the order of resumption is untenable. The fact remains that the plaintiff has not deposited any installment after initial deposit of 25% except a sum of Rs. 20,000 before the filing of the suit. There was a breach of terms and conditions of the letter of allotment, which contemplated deposit

of installments on half yearly basis. The dispute regarding rate of interest is a smokescreen. One could understand if the plaintiff has deposited the principal amount along with interest @ 10% so as to raise a dispute about the claim of the defendants regarding levy of 18% rate of interest. But, present is a case, where the plaintiff has not deposited a single installment in terms of letter of allotment. Therefore the plaintiff could not ask for any indulgence either in law or in equity.

(Para 18)

Further held, that the order of resumption passed by the Authorities under the Act, could not have been set aside only on the ground of claim of interest @ 18%. Therefore, the bar of jurisdiction of Civil Court in terms of Section 50 of the Act, would be applicable. Since the plaintiff has defaulted in payment of 75% of the balance sale consideration, he is not entitled to any declaration. The plaintiff enjoyed possession of the property in question for almost 8 years without payment of the balance sale consideration before the order of resumption was passed. Thus, the plaintiff is not entitled to the declaration challenging the order of resumption nor is entitled to any injunction.

(Para 20)

Sachin Kapoor, Advocate, *for the appellants.*

H. S. Sethi, Advocate, *for the respondent.*

HAMANT GUPTA, J. (ORAL)

(1) The defendants are in second appeal aggrieved against the judgment and decree granted by the Courts below in respect of a booth allotted to the plaintiff.

(2) The plaintiff-respondent, was the highest bidder in respect of Booth No. 93, Sector 9, Panchkula, in the sum of Rs. 3,72,000. 10% of the bid amount i.e. Rs. 37,200 was deposited by the plaintiff at the spot. An allotment letter was issued on 15th June, 1988 thereafter. A sum of Rs. 55,800 was deposited within 30 days from the date of issue of the said letter by the plaintiff. The balance of Rs. 2,79,000 could be deposit within the 60 days of the date of issuance of the letter or in 10 half yearly

instalments. The plaintiff deposited an amount of Rs. 55,800 within the time prescribed. The physical possession of the booth was obtained by plaintiff on 28th April, 1993. The plaintiff deposited a sum of Rs. 20,000 on 5th September, 1993.

(3) The plaintiff filed a suit for declaration on 22nd January, 2001 challenging the proceedings initiated by the defendants under Section 17 of the Haryana Urban Development Authority Act, 1977 [for short 'the Act'], primarily on the ground that firstly, defendant No. 2 ought to have imposed penalty if there was any violation of the terms and conditions of the allotment and that too after giving proper opportunity of hearing to the plaintiff. It was also asserted that in terms of Section 16 of the Act, the amount due towards the allottee can be recovered as arrears of land revenue and powers under Section 17(4) of the Act, ought not have been exercised. It was also pleaded that defendant No. 2 has illegally imposed interest @ 18% p.a. on the earlier instalments, which is illegal and only 10% p.a. interest could be claimed.

(4) The suit was accompanied by an application for grant of ad-interim jurisdiction. The learned trial Court on 27th January, 2001 directed to maintain status-quo qua possession. On 26th April, 2001, the Estate Officer has passed an order of resumption. After such order of resumption was passed, the plaintiff sought amendment of the plaint,—*vide* application dated 7th June, 2001 so as to challenge the aforesaid order passed by the Estate Officer. The amendment sought was allowed. Thereafter, the defendant filed written statement and contested the suit. The suit was decreed by the Courts below,—*vide* judgment and decree under challenge in the present appeal.

(5) As per the order dated 26th April, 2001, Exhibit P. 17, nine notices were issued to the plaintiff under Registered Post from 19th April, 1991 till 28th November, 2000 and since the plaintiff failed to deposit the amount of Rs. 17,72,000 which was due and payable to the defendants, the order of resumption of the booth was passed. The plaintiff challenged the aforesaid order in appeal. The appeal was dismissed,—*vide* order dated 27th June, 2002 (Exhibit P. 18). Still aggrieved, the plaintiff filed revision under Section 30(2) of the Act.

(6) It may be noticed that the learned trial court passed an order on 23rd November, 2005 on the application for ad-interim injunction noticing the fact that the plaintiff has deposited the amount of Rs. 3,75,000 upto 6th December, 2002, but has not deposited the interest. It was ordered that if the plaintiff deposits all the instalments with 10% interest, no prejudice shall be caused and the question whether the defendants can charge interest @ 18% on delayed payment or not, would be decided after evidence is led by the parties. One month's time was granted to the plaintiff to deposit the instalments. A perusal of the said order does not show that the factum of passing of the resumption order, or the dismissal of appeal or revision was noticed by the learned trial Court.

(7) The learned trial Court found that the defendants were bound by the terms and conditions of the contractual rate of interest and could charge only 10% interest on the delayed payment, therefore, the defendants can charge only 10% interest and not more than that. Consequently, the order of resumption was found to be illegal, null and void. The said finding was affirmed in appeal as well.

(8) In respect of the objection regarding bar of jurisdiction of the Civil Court in terms of Section 50 of the Act, it was found that the jurisdiction will be barred only when the Authority under the Act acts within the parameter of law and when the authority concerned violates law, the Civil Court can interfere in the matter to correct the wrong.

(9) The appeal was admitted.—*vide* order dated 7th July, 2009 by this Court on the following substantial questions of law :—

- (1) Whether the jurisdiction of the Civil Court is barred in terms of Section 50 of the Haryana Urban Development Authority Act, 1977 ?
- (2) Whether the plaintiff is entitled to declaration and injunction, even when he has defaulted in payment of balance sale consideration ?

However, at the stage of consideration of the application for interim relief, learned counsel for the parties stated that the appeal itself be taken up for hearing.

(10) Having heard learned counsel for the parties, I am of the opinion that in addition to the substantial questions of law framed above. — *vide* order dated 7th July, 2009, the following substantial question of law would also arise for consideration in the present appeal :—

Whether the Civil Court, while exercising the power of judicial review, will act as a Court of appeal or will only examine the decision making process and not the decision itself?

(11) Learned counsel for the appellant contends that the jurisdiction of the Civil Court is expressly barred. It is not the case of the plaintiff that there is any violation of the principles of natural justice or that the order of resumption was passed without giving any opportunity of hearing to the plaintiff. In these circumstances, the order of resumption, could not have been interfered with by the Civil Court, merely on the ground of rate of interest. It is contended that the Civil Court exercising power of judicial review over the orders passed by the authorities under the Act, will examine only the decision making process and not the decision itself.. Therefore, the order of resumption could not have been interfered with by the Civil Court.

(12) A Full Bench of this Court in the judgment reported as **State of Haryana and others versus Vinod Kumar and others (1)** has examined the question of bar of jurisdiction when statute expressly bars the same. It has been held that the Civil Court will still have the jurisdiction over the orders passed by the authorities under the Act if such orders violates the principles of natural justice. The relevant extracts from the judgement read as under :—

“.....Applying these two tests it does not appear that the words used in S. 3(4) and S. 16 are clear. Section 16 in terms provides that the order made under this Act to which the said section applies shall not be called in question in any Court. This is an express provision excluding the Civil Courts’ jurisdiction, S. 3(4) does not expressly exclude the jurisdiction of the Civil Courts but in the context, the inference that the Civil Courts’ jurisdiction is intended to be excluded, appears to be

(1) AIR 1986 Pb. & Hy. 406

inescapable. Therefore, we are satisfied that Mr. Goyal is right in contending that the jurisdiction of the Civil Courts is excluded in relation to matters covered by the orders included within the provisions of S. 3(4) and S. 16.

This conclusion, however, does not necessarily mean that the plea against the validity of the order passed by the District Magistrate, or Commissioner, or the State Government can never be raised in a Civil Court. In our opinion, the bar created by the relevant provisions of the Act excluding the jurisdiction of the Civil Courts cannot operate in cases where the plea raised before the Civil Court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is nullity.

(13) In the present case, there is not even an averment that the plaintiff was not given notice before the order of resumption was passed. In fact, the plaintiff invoked the jurisdiction of the Civil Court, even before the order of resumption could be passed. The dispute raised was regarding rate of interest alone. In fact, communication Exhibit P. 16 would show that the plaintiff has received notice dated 28th November, 2000 and has sought adjournment on account of death of a near relation. After the order was passed, the plaintiff filed an appeal. Such appeal was heard in the presence of the representative of the appellant. The revision was filed by the plaintiff through his counsel. It shows that it was not the case of the plaintiff that adequate and sufficient opportunity has not been provided to the appellant.

(14) The judgment reported as **G. M. Worsted Spinning Mills (P) Ltd. versus Haryana Urban Development Authority, (2)** and **Giani Ram and others versus Ompati and others (3)**, are not helpful to the case set up by the plaintiff as those are the cases where notices were not served upon the affected parties. The judgments reported as **Surinder Singh versus The Chief Administrator, Haryana Urban Development Authority, Manimajra, (4)** and **Ved Parkash versus Administration and others, (5)** are the judgments in the writ petitions under Article 226 of the Constitution of India and have no applicability to the present case.

(2) 1994 (1) P.L.R. 268

(3) 2008 (1) P.L.R. 811

(4) 1996 (2) P.L.R. 159

(5) 1992 (2) R.C.R. (Rent) 11

The order passed in Regular Second Appeal No. 3204 of 2009 [**Haryana Urban Development Authority and another versus Om Parkash Sharma**] decided on 4th September, 2009, does not deal with the objection relating to the bar of jurisdiction of the Civil Court.

(15) On the other hand, in the judgment reported as **East India Cotton Mfg. Co. Limited versus Haryana Urban Development Authority Faridabad**, (6) and the order dated 13th February, 2007 passed in Regular Second Appeal No. 457 of 2007 [**Sada Wanti and others versus The Haryana Urban Development Authority and another**], it has been held that the jurisdiction of the Civil Court is barred in terms of Section 50 of the Act.

(16) In the present case, there is not even an iota of allegation that the order passed by the Authorities under the Act is a nullity. It is not stated to be in violation of the principles of natural justice. The same is proved to have been passed after granting of opportunity of hearing to the plaintiff-respondent. Therefore, the trial Court could not have exercised jurisdiction over the matter as if it is an Appellate Authority.

(17) The learned trial Court has interfered with the order of resumption only on the ground that the payment of interest @ 18% p.a. is not tenable as the dedendants are entitled to charge 10% interest only. Reliance is placed upon **Roochira Ceramics versus H.U.D.A. and others** (7). The learned trial Court has concluded to the following effect :—

‘.....While placing reliance upon the aforesaid authority and in view of the submission made by learned counsel on behalf counsel on behalf of the plaintiff, I find that defendants can charge only 10% interest and not more than that. It is laid down in **Gian Inder Sharma versus HUDA**, PLR 2003(1) (P&H) D.B. by the Hon’ble Punjab and Haryana High Court that HUDA could not point out to any provisions of law, Act or Regulations of 1978 or any conditions in the allotment letter which authorise the respondent to charge compound interest on delayed payments and directed to charge simple interest. In this case HUDA had gone in SLP, but the same was dismissed.

(6) 2003 (3) P.L.R. 842

(7) (2002) 9 S.C.C. 599

17. In view of the aforesaid discussion, the issue Nos. 1, 2 and 3 are decided in favour of the plaintiff and against the defendants.”

(18) The reasoning given by the learned trial Court to set aside the order of resumption is untenable. The fact remains that the plaintiff has not deposited any instalment after initial deposit of 25% except a sum of Rs. 20,000 before the filing of the suit. There was a breach of terms and conditions of the letter of allotment, which contemplated deposit of instalments on half yearly basis. The dispute regarding rate of interest is a smokescreen. One could understand if the plaintiff has deposited the principal amount along with interest @ 10% so as to raise a dispute about the claim of the defendants regarding levy of 18% rate of interest. But, present is a case, where the plaintiff has not deposited a single instalment in terms of letter of allotment. Therefore, the plaintiff could not ask for any indulgence either in law or in equity.

(19) The judgment of the Division Bench of this Court in **Gian Inder Sharma's** case [supra], arises out of writ of *Mandamus* challenging the payment of interest @ 15%. The issue raised in the aforesaid writ petition was levy of interest and not of resumption. In **Roochira Ceramics'** case [supra], the Hon'ble Supreme Court has ordered the restoration of plot on payment of the entire arrears as demanded by HUDA. Subsequently, in view of an earlier judgment, it was found that HUDA is entitled to claim interest @ 10% and that since the allottee has deposited interest @ 18%, the excess amount was ordered to be refunded. The dispute regarding rate of interest arose independent of the order of resumption.

(20) Thus, the order of resumption passed by the Authorities under the Act, could not have been set aside only on the ground of claim of interest @ 18%. Therefore, the bar of jurisdiction of Civil Court in terms of Section 50 of the Act, would be applicable. Since the plaintiff has defaulted in payment of 75% of the balance sale consideration, he is not entitled to any declaration. The plaintiff enjoyed possession of the property in question for almost 8 years without payment of the balance sale consideration before the order of resumption was passed. Thus, the plaintiff is not entitled to the declaration challenging the order of resumption nor is entitled to any injunction.

(21) The plaintiff has deposited the balance sale consideration after the order of resumption was passed on 26th April, 2001. It is only interest @ 10% which was deposited in terms of the interim orders passed by the Civil Court. Such interim orders passed by the Civil Court would not confer any jurisdiction on the Civil Court to entertain the suit. There is no procedural irregularity or other illegality in the decision making process.

(22) It is contended by the learned counsel for the appellant that the payment of the interest @ 18% is claimed in lieu of resumption as the resumption is the last resort. The claim of interest @ 18% is an opportunity provided to an allottee to avoid resumption of plot on payment of such amount. Therefore, the said claim cannot be said unjustified. Reliance is placed upon **Secretary, Bhubaneswar Development Authority versus Susanta Kumar Mishra (8)**, wherein it was held to the following effect :—

“13. It is no doubt true that when the defaulted instalment in entirety is subject to interest, the ‘interest’ component of the defaulted instalment is also subjected to interest. To that limited extent, there may be charging of interest upon interest. Charging of such interest, on the interest part of the instalment, on default in payment of the instalment, at a reasonable rate from the date of default, cannot be termed as charging of compound interest in regard to the entire dues. It is only a provision to ensure that the dues (instalments) are paid promptly and to avoid misuse of the concession given by permitting payment in instalments. But for such a provision, lessees/allottees who have already been given possession will be tempted to delay payments, thereby leading to continuous defaults. A statutory development authority, working on no-profit-no-loss basis, can ill afford to permit such continuous defaults by the lessees/allottees which will paralyse their very functioning, thereby affecting future developmental activities for the benefit of other members of the general public.”

(23) The said argument need not be examined any further in view of the findings on the other issues already arrived at.

(24) Another aspect that needs to be examined is the extent of power of the judicial review of the Civil Court. Does the Civil Court acts as a Court of appeal and thus, could sit over the decision as an appellate Authority and to exercise the powers of Authorities under the Act or will only examine the decision making process ?

(25) It is well settled that the scope of the judicial review is limited to the deficiency in decision making process and not the decision itself. The Hon'ble Supreme Court, while dealing with such aspect in **Union of India and another versus K.G. Soni, (9)**, has held to the following :—

“14. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in **Associated Provincial Picture Houses Ltd. versus Wednesbury Corporation, (1948) 1KB 223**, the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision making process and not the decision.”

(26) Similar is the decision of the Hon'ble Supreme Court, in **Bachan Singh versus Union of India and others, (10)**, wherein it has been held to the following effect :—

“...It is well-known and well settled proposition of law that in proceedings under Article 226 of the Constitution, the High Court cannot sit as a court of appeal over the findings recorded by the GCM. Judicial review under Article 226 of the Constitution is not directed against the decision but is confined to the decision-making process. Judicial review is not an appeal but a review of the manner in which the decision is made. The Court sits in judgment only on the correctness of the decision-making process and not on the correctness of the decision itself.

(9) (2006) 6 S.C.C. 794

(10) (2008) 9 S.C.C. 161

Thus, examining the case of the appellant from all angles we are satisfied that there was no irregularity or illegality in the GCM which was fairly and properly conducted by most qualified members holding very high ranks in army hierarchy.”

(27) A Constitution Bench of the Hon’ble Supreme Court in **Raja Ram Pal versus Hon’ble Speaker, Lok Sabha and others (11)**, concluded that the power of judicial review can be exercised for the following :—

“431. (a) to (t) xx xx xx

(u) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, *mala fides*, non-compliance with rules of natural justice and perversity.”

(28) In view of the judgments referred to above, the Civil Court could exercise jurisdiction only on the ground of lack of jurisdiction or it being a nullity, such as, gross illegality, irrationality, violation of constitutional mandate, *mala fides*, non-compliance with rules of natural justice and perversity. None of the said grounds, is attracted in the present case, which could warrant exercise of judicial review by the Civil Court.

(29) Consequently, the substantial questions of law referred to above, are answered in favour of the appellants and against the respondent-plaintiff.

(30) Resultantly, the present appeal is allowed. The judgment and decree passed by the Courts below are set aside and the suit filed by the plaintiff is dismissed.

R.N.R.