D.P. No. 44420, 43855 W- 10

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

To,

1. State of Haryana through Financial Commissioner and Principal Secretary to Government, Haryana, Town & Country Planning Department, Haryana, Chandigarh
2. Financial Commissioner and Principal Secretary to Government, Haryana, Town and Country Planning Department, Haryana, Chandigarh.
3. Administrator, Haryana Urban Development Authority exercising the powers of the Chief Administrator, C-3, Sector 6, Panchkula
4. Haryana Urban Development Authority, through its Chief Administrator Sector 6, Panchkula.
5. Estate Officer, HUDA, Sector 6, Panchkula.
6. Haryana Urban Development Authority through its Chief Administrator, C-3, Sector 6, Panchkula

Seal of the High Court of Punjab and Haryana सत्यमेव जयते

SUBJECT :- CIVIL WRIT PETITION No. 9915 **of** 2011.

Satish Pal and others

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

Sir,

In the continuation of this Court's order dated _____, I am directed to forward herewith a copy of order dated 02.07.12 passed by this Hon'ble High Court in the above noted Civil Writ Petition, for immediate strict compliance.

Given under my hand and the seal of this Court on 16th day of July, ~~2011~~ 2012.

BY ORDER OF THE PUNJAB AND HARYANA HIGH COURT,CHANDIGARH.

17/7

Superintendent(WRITS)
for Assistant Registrar (WRITS)

17/7

IN THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(CIVIL WRIT JURISDICTION)

*****

Civil Writ Petition No. _____of 2011

1. Shish Pal]
2. Pawan Kumar] sons of Om Parkash
3. Sanjeev Kumar S/o Shri Vijay Kumar

Residents of House No. 362, Vasant Avenue, Amritsar.

...Petitioners

Versus

1. State of Haryana through Financial Commissioner and Principal Secretary to Government, Haryana, Town & Country Planning Department, Haryana, Chandigarh
2. Financial Commissioner and Principal Secretary to Government, Haryana, Town and Country Planning Department, Haryana, Chandigarh.
3. Administrator, Haryana Urban Development Authority exercising the powers of the Chief Administrator, C-3, Sector 6, Panchkula
4. Haryana Urban Development Authority, through its Chief Administrator Sector 6, Panchkula.
5. Estate Officer, HUDA, Sector 6, Panchkula.
6. Haryana Urban Development Authority through its Chief Administrator, C-3, Sector 6, Panchkula

...Respondents

CIVIL WRIT PETITION under Articles 226/227 of the Constitution of India, praying for issuance of a writ in the

nature of CERTIORARI quashing the impugned orders dated February 2, 2000, Annexure P/6, passed by respondent no. 4, whereby the site SCO No. 6, Sector 15, Panchkula purchased by the petitioners in auction and the building constructed by them thereupon, has been ordered to be resumed, dated September 6, 2000, Annexure P/7, passed by respondent no. 3, dismissing the appeal filed by the petitioners against the aforesaid resumption order and order dated December 3, 2001, Annexure P/8 passed by respondent No. 2.

AND

For issuance of a writ in the nature of MANDAMUS directing the respondents to allow the petitioners to deposit the outstanding amount, if any, in accordance with the terms and conditions of the allotment letter, Annexure P/1 and the settled law, within a reasonable time as fixed by this Hon'ble Court and to direct the respondents to restore SCO No. 6, Sector 15, Panchkula to the petitioners.

AND/OR

For the issuance of any other writ, order or directions which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Respectfully showeth:

1. That the petitioners are citizens of India and residents of State of Haryana, the cause of action has arisen within the territorial jurisdiction of this Hon'ble Court and, as such, the petitioners are competent to invoke the extra ordinary writ jurisdiction of this Hon'ble Court under Articles 226/227 of the Constitution of India.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 9915 of 2011

Date of decision: 2.7.2012

Shish Pal and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR.JUSTICE R.P. NAGRATH

PRESENT: Mr. Ashwani Chopra, Senior Advocate with
Ms. Devki Anand, Advocate for the petitioners.

Mr. DV Sharma, Senior Advocate with
Ms. Shivani Sharma, Advocate for respondents No. 3 to 6.

SURYA KANT, J. (ORAL)

The petitioners seek quashing of order dated 2.2.2000 (Annexure P-6) passed by HUDA, resuming the site SCF No. 6, Sector-15, Panchkula, purchased by them in an open auction. The petitioners are also aggrieved by the order dismissing their appeal against the aforesaid resumption order.

2. The petitioners being the highest bidders were allotted the subject site by Estate Officer, HUDA, Panchkula vide allotment letter No. 4524 dated 20.4.1989 (Annexure P-1) on the stipulated terms and conditions, some of which being relevant are reproduced below:

> "21. All payment shall be made by means of the demand draft payable to the Estate Officer, Haryana Urban Development Authority, Panchkula draw on

any scheduled bank situated at Panchkula.

22. No separate notice will be sent for payment of instalments. However, (illegible)ation regarding the instalment the amount, the due date etc. may be sent (illegible) of courtesy.

Half yearly instalments of Rs. as under will fall due on 20th April to 20th October every year, as under:-

Sr. No.	Due date	principal	Interest	Total
1	20.10.89	93796.88	75037.52	168834.4
2	20.4.90	93796.88	65657.83	159484.71
3	20.10.90	93796.88	56278.14	150075.09
4	20.4.91	93796.88	46898.45	140695.33
5	20.10.91	93796.88	37518.76	131315.64
6	20.4.92	93796.88	28139.07	121935.95
7	20.10.92	93796.88	18759.38	112556.26
8	20.4.93	93796.88	9379.69	103176.57

(emphasis applied)

3. Since the petitioners failed to deposit the due instalments, HUDA issued show cause notices under Section 17 of the HUDA Act, 1977 (hereinafter referred to as 'the Act) and thereafter resumed the site. The aggrieved petitioners preferred an appeal which was also dismissed on 6.9.2000. Still aggrieved, they preferred revision petition before the State Government, which was allowed conditionally vide order dated 3.12.2001 (Annexure P-8), the operative part whereof reads as under:

" I have heard both the parties and gone through the record of the case. It is an admitted fact

that the allottees have failed to deposit the price of the site as per the given schedule. However they have occupied the building on the site without prior permission. The parties have not paid the principal amount as yet. Hence their arguments about quantum of interest on delayed payment is irrelevant at this stage. However keeping in mind the assurance of prompt payment of all the dues, I give them a chance with the condition that outstanding dues along with interest as per policy of HUDA are to be deposited by the petitioners within three months from the date so conveyed by Estate Officer, HUDA, Panchkula, within the given time, resumption order passed by the administrator on 06.09.2000 would prevail without any further (illegible) to the petitioner."

(emphasis by us)

4. In compliance to the order passed by the Revisional Authority, the Estate Officer, Panchkula, vide notice dated 1.1.2002 (Annexure P-9) raised a demand of ₹ 28,24,700/- to b deposited by the petitioners within a period of three months. The petitioners however, did not pay the aforesaid amount and disputed the claim raised by the Estate Officer. Their counsel sent reply dated 7.1.2002 (Annexure P-10) claiming that about ₹ 16 lacs had already been deposited by the petitioners which was not accounted for and the demand was based upon wrong calculation. The Estate Officer, HUDA, Panchkula, vide second memo dated 22.1.2002 (Annexure P-11)

informed the petitioners that their account was again checked and after adjusting the amount deposited in November, 2000 and on 3rd January, 2001, a sum of ₹ 20,65,485/- was due towards them.

5. The petitioners, however, chose not to make any payment pursuant to the aforesaid or subsequent notices issued to them. Consequently, the resumption order passed against them revived.

6. The petitioners thereafter resorted to another round of litigation and instituted a Civil Suit in the Civil Courts at Panchkula. Their suit was dismissed. On an appeal preferred by them, the Ist Appellate Court decreed their suit. The HUDA Authorities preferred RSA No. 2934 of 2008, which was allowed by this Court vide order dated 16.11.2010 (Annexure P-12) holding that the Civil Suit was not maintainable as jurisdiction of the Civil Court is expressly barred by Section 50 of the Act.

7. The petitioners preferred Special Leave to Appeal before the Hon'ble Supreme Court, which was also declined.

8. In this third round of litigation, the petitioners have again impugned the resumption and appellate orders contending that the demand raised by HUDA pursuant to the order passed by the Revisional Authority included "compound/penal" interest at the rate of 18% instead of simple interest @ 10% as was required to be charged in terms of HUDA Policy as well as the terms and conditions of allotment letter. It is also urged that the petitioners are ready and willing even now to deposit the due amount along with simple interest at the rate of 10% per annum.

9. Respondents have filed their reply maintaining that the

petitioners are chronic and habitual defaulters and did not deposit even a single due instalment despite series of show cause notices served on 16.10.1991, 15.9.1992, 22.10.1992, 11.2.1993, 17.1.1996, 24.1.1996, 26.7.1999 and 14.10.1999 under Section 17 of the Act.

10. We have heard learned counsel for the parties at some length and have carefully gone through the record.

11. The un-disputable legal position is that the inter-se obligations arising out of a bilateral agreement shall be governed by the conditions contained in such agreement subject to overriding effect of provisions contained in the statute if any, regulating such agreements. It may be seen that the petitioners were required to deposit the due instalments on the dates specified in the allotment letter itself for which "no separate notice" was required to be served on them. The petitioners failed to deposit even a single instalment as per the schedule mentioned in Clause 23 of the allotment letter. They did not adhere to the payment schedule despite show-cause notices issued to them, referred to in para 9 above. The Revisional Authority vide its order dated 3.12.2001 (Annexure P-8) went out of the way and came to their rescue and by giving them another chance to clear the outstanding dues alongwith interest as per policy of HUDA. There is no denial to the fact that no payment whatsoever was made by the petitioners even after the abovementioned revisional order.

12. The question whether the interest sought to be charged by HUDA was in excess or contrary to its policy would have been gone into at the instance of the petitioners provided that they had offered the payment of at least the principal amount. The record reveals that in the

Civil suit filed by the petitioners, they acknowledged vide Annexure P-3 that as on 20.4.1993, namely, that date when the last instalment was to be deposited by them as per terms and conditions of allotment, the due principal amount was ₹ 7,50,375/-. Assuming that the petitioners were not liable to pay any interest, no convincing explanation has come forth as to why even the principal amount was not deposited by them? Had there been any bona fide intention to retain the property or clear the dues, the petitioners would have offered the demanded amount under protest and thereafter seek redressal of their grievance before an appropriate forum.

13. The belated offer now made by the petitioners lacks bona fide. We are conscious of the fact the steep rise in the prices real estate, especially in Tricity Chandigarh (including Panchkula) has now prompted the petitioners to make this offer, which cannot be accepted as the petitioners have not approached this Court with clean hands as they have been dragging the respondents in litigation for speculative consideration.

14. For the reasons afore-stated, we do not find any ground to interfere with the impugned orders in exercise of our discretionary jurisdiction.

15. Dismissed.

[redacted]
Sd (SURYA KANT)
JUDGE

[redacted]
Sd (R.P. NAGRATH)
JUDGE

July 2, 2012
rishu

Certified to be true Copy

Examiner Judicial Department
High Court of Punjab & Haryana
Chandigarh