

C.W.P. No.6575 of 1986

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.6575 of 1986
DATE OF DECISION : 12.08.2013

Krishan Lal (dled) through L.R.

....Petitioner

Versus

....Respondents

The State of Haryana and others

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN**

Present: Mr. Sudhir Mittal, Advocate,
for the petitioner.

Mr. Indresh Goel, Additional Advocate General, Haryana,
for respondent Nos.1, 2 and 4.

Mr. Ajay Kumar Kansal, Advocate,
for respondent No.3.

MAHAVIR S. CHAUHAN, J.

In an open auction held on 05.07.1974, petitioner (being represented by his sole legal representative) was the highest bidder, at Rs.21,000/- for a one kanal residential plot. He deposited an amount of Rs.5,250/- (being 25% of the auction money) at the fall of the hammer and, as such, was allotted site No.114-B, New Mandi, Sirsa, vide letter of allotment dated 21.10.1974 (Annexure A-1). As per condition No.4 of the letter of allotment, balance amount of price of the site was to be paid in three instalments as per schedule given below:-

Sr. No.	Date	Amount of Instalment	Interest	Total
1	21.10.1975	Rs.5,250.00	Rs.1,102.50	Rs.6,352.50
2	21.10.1976	Rs.5,250.00	Rs.735.00	Rs.5,985.00
3	21.10.1977	Rs.5,250.00	Rs.3,67.50	Rs.5,617.50

The petitioner did not deposit even a single penny out of the balance amount of 75% of the price of the site in question. Administrator, New Mandi Township, Haryana, issued a notice under Section 12(1) of the Punjab New Mandi Township Act, 1960 (hereinafter

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referred to as 'the 1960 Act'), calling upon the petitioner to show cause why the site in question be not resumed. Petitioner did not respond to the notice. It led to award of penalty to the petitioner in terms of Section 12(2) of the 1960 Act, directing him to pay the amount of penalty and instalments within 30 days. Petitioner did not care and was given a notice, dated 21.10.1976, under Section 13(1) of the 1960 Act to show cause why an order of resumption be not passed against him. The petitioner neither replied the notice nor appeared before the Administrator on the day appointed for personal hearing. In the situation, order dated 25.09.1978 (Annexure P-1) was passed under Section 13(2) of the 1960 Act and thereby the site in question, along with construction, if any, raised thereon, was resumed and 10% of the amount of consideration, as also the amount of penalty was ordered to be recovered from the amount deposited by the petitioner.

Petitioner filed an appeal on 04.08.1980 and thereby assailed order dated 25.09.1978 (Annexure P-1) under Section 15 of the 1960 Act, but the appeal came to be dismissed vide order dated 29.07.1982 (Annexure P-3) by holding:-

"5. I am not agreeable with the submissions made by the counsel for the appellant. The ruling cited by him is not applicable on the Haryana Act as under the Haryana Act, recovery cannot be effected as Arrears of land revenue. Such a provision has already been amended. Therefore, the above said ruling is not applicable in the present case. So far as the question of limitation is concerned, on perusal of this file, it is clear that the appellant has been issued show cause notices from time to time and in reply thereto, the appellant has submitted reply to the Administrator. Some notices were also sent through registered post, acknowledgment or which is available on the file. According to the provisions contained in

Section 13 of the Act, notice No.12097, dated 11.07.78 was sent and the same has been received on 15.07.78 and the same is available at pages 75-77 of the file. Thereafter, a refund voucher has also been sent to the appellant. In this situation, the submission of the appellant is without any force that no notice has been given by the Administrator for hearing. It may be relevant to state here rather that the appellant has been avoiding giving instalments of the plot. Even, otherwise, an appeal has been filed against the orders dated 25.09.78 on 4.8.80, although the time prescribed for filing the appeal is 30 days. Therefore, I find no force in this appeal, being time-barred and the same is hereby rejected.

Announced."

To seek quashing of order dated 25.09.1978 (Annexure P-1) and order dated 29.07.1982 (Annexure P-3) petitioner has invoked extra-ordinary jurisdiction of this Court by way of the instant writ petition under Articles 226 and 227 of the Constitution of India, alleging that he had filed a revision petition against order dated 29.07.1982 (Annexure P-3) but the respondents have not communicated its fate to him and, instead, are trying to take forcible possession of the site in question as also construction made thereupon.

In the counter, respondents have admitted the facts leading to resumption of the site in question and dismissal of appeal brought by the petitioner but have denied filing of a revision petition by the petitioner and have added that physical possession of the site in question has not yet been taken by the petitioner and construction, if any, has been raised by him unauthorisedly.

During pendency of the writ petition, affidavit of Ashwani Sharma, Estate Officer, Sirsa, has been placed on record along with annexures, to say that as per report, Annexure A-2, submitted by a Junior Engineer

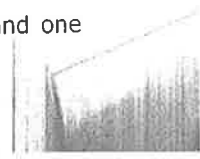
after spot inspection, the petitioner is misusing the site in question by converting the same into a commercial site; and has unauthorisedly raised six shops, seven rooms and a lobby on the ground floor and one room, store and toilet on the first floor.

We have heard learned counsel for the parties and have examined the record.

Learned counsel for the petitioner has argued that the action of the respondents in resuming the site in question and construction raised thereon, is violative of Article 19(1)(f) of the Constitution of India insofar as it places unreasonable restrictions on the right of the petitioner to enjoy his property.

The contention, however, is not available to the petitioner because allotment of the site in question was, indisputably, subject to the terms and conditions of the letter of allotment dated 21.10.1974 (Annexure A-1) which was accepted by the petitioner with open eyes. As has been noticed in the earlier part of this judgment, the petitioner was required to pay the balance amount of consideration in three instalments of Rs.5,250/- each, together with interest, as indicated in Clause (4) of the letter of allotment.

Since the allotment of the site in question made in his favour in the year 1974, the petitioner has not paid even a single penny towards payment of instalments of the consideration money. As such, it ill lies in the mouth of the petitioner to say that his enjoyment of the property has been unreasonably restricted. The fact is that he has not acquired any right, title or interest in the site in question. Rather, to the contrary, as stated in the report, Annexure A-2, the petitioner has unauthorisedly raised seven rooms, six shops and a lobby on the ground floor and one



room, toilet and store on the first floor of the site in question and is, thus, misusing the site. We have no hesitation to state that the petitioner, who has raised construction over the site in dispute even though possession of it has not yet been delivered to him, has been thriving at the cost of public exchequer and, as such, is not entitled to any relief.

Learned counsel for the petitioner has further argued that revision petition filed by the petitioner under Section 15 of the 1960 Act, before respondent No.2, is still pending and, has not been decided only with a view to throw the petitioner out of the site in question.

The submission is without substance. Receipt of revision petition in the office of respondent No.2 has been specifically denied by the respondents in the counter filed by them. The petitioner has neither denied this assertion of the respondents nor has he placed on record copy of the revision petition or proof of its filing. So much so, he has not even mentioned the date on which the revision petition was statedly filed by him. In the situation, the averment is found to be false. Were it true that such a revision petition filed by the petitioner is pending consideration before respondent No.2, the instant writ petition would be premature and thus, not maintainable.

Towards the end, it has been argued on behalf of the petitioner that he is ready and willing to pay the entire amount outstanding against him in respect of allotment of the site in question and allotment of the site be restored in his favour.

Even this prayer of the petitioner cannot be accepted because the learned counsel for the petitioner has not been able to show any rule, regulation or provision of law whereunder retransfer or re-allotment of a resumed site is permissible.

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In the consequence, the writ petition fails and is dismissed, however, leaving the parties to bear their own costs.

(SATISH KUMAR MITTAL)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

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C.M. No.9801 of 2013 in
CWP No.6575 of 1986

Krishan Lal

Versus

The State of Haryana and others

Present: Mr. Sudhir Mittal, Advocate,
for the applicant/petitioner.

Mr. Indresh Goel, Additional Advocate General, Haryana,
for non-applicant/respondent Nos.1, 2 and 4.

Mr. Ajay Kumar Kansal, Advocate,
for non-applicant/respondent No.3.

This application has been filed for bringing on record legal representative of deceased Krishan Lal, petitioner, who has died on 20.05.2004, during the pendency of this writ petition. The application is supported by an affidavit and copy of death certificate.

In view of the facts mentioned in the application and after hearing the counsel for the parties, the application is allowed and legal representative of deceased Krishan Lal, petitioner, whose particulars has been mentioned in para 3 of the application, is impleaded as petitioner.

Amended memo of parties is taken on record.

(SATISH KUMAR MITTAL)
JUDGE



(MAHAVIR S. CHAUHAN)
JUDGE

12.08.2013
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