

78

895185

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).14864/2013

(From the judgement and order dated 01/10/2012 in CWP No.15184/2011 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

SMITRA JAIN

Certified to be true copy
Assistant Registrar (Judl.)

Petitioner(s)

VERSUS

16/04/2013
Supreme Court of India

HARYANA URBAN DEVELOPMENT AUTHORITY & ANR.

Respondent(s)

(With prayer for interim relief and office report)

Date: 29/04/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ANIL R. DAVE
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Petitioner(s) Mr. Neeraj Kumar Jain, Sr. Adv.
Mr. Sanjay Singh, Adv.
Mr. Pratham Kant, Adv.
Mr. Ugra Shankar Prasad, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

The petitioner is aggrieved by order dated 1.10.2012 of the Division Bench of the Punjab and Haryana High Court whereby the writ petition filed by her was dismissed and the resumption of Booth Site No.170, Sector 31-32A, Gurgaon was upheld.

In response to an advertisement issued by Administrator, Haryana Urban Development Authority (HUDA), Gurgaon, the

petitioner participated in the auction conducted on 9.2.1996 for commercial sites in different sectors of Gurgaon. She gave highest bid of Rs.11,50,000/- for the Booth Site described hereinabove. Her bid was accepted by the competent authority and the site was allotted to her subject to the terms and conditions embodied in Memo dated 27.2.1996, paragraphs 2, 3, 4, 5, 6 and 8 of which are reproduced below:

"2. Your bid for plot No. 170 in Sector 31-32A at Gurgaon has been accepted and the plot/building, as detailed below, has been allotted to you on freehold basis as per following terms and conditions and subject to the provisions of the Haryana Urban Development Authority Act-1977 (hereinafter referred to as the Act) and the rules/regulations applicable thereunder 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.	Appr. Dimension as notified at the time of auction	Area in Sq. mtrs.	Price of the plot
31-32A	Gurgaon	Booth site No. 170	2.75 x 8.25	2268	Rs. 11,50,000/-

3. The sum of Rs.11,50,000/- deposited by you of bid money at the time of bid will be adjusted against the said plot.

4. You are requested to remit Rs. 1725000/- in order to make the 25% price of the said plot/building within 30 days from the date of acceptance of your bid. The payment shall be made by a bank draft payable to the (Line missing) and drawn on any scheduled Bank at Gurgaon. In case of failure to deposit the said amount within the above specified period, the allotment shall be cancelled and the deposit of 10% bid money deposited at the time of bid shall stand forfeited to the Authority, against which you shall have no claim for damages.

5. The balance amount i.e. Rs.862500/- of the above price of the plot can be paid in lump sum without interest within 60 days from the date of issue of allotment

letter or in 10 half yearly. The first instalment will fall due after the expiry of six months of the date of issue of this letter. Each instalment 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. 8

6. The possession of the site will be offered to you on completion of the development works in the area

8. In case the instalment 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 and resumption of plot in accordance with the provisions of section 17 of the said Act."

The possession of the site was offered to the petitioner on 29.7.1996. Notwithstanding this, the petitioner did not pay the instalments of price. The Estate Officer issued notices to the petitioner under Section 17(1), (2) and (3) of the Haryana Urban Development Authority Act, 1977 (for short, 'the 1977 Act') and ultimately resumed the Booth Site vide order dated 16.1.2002 passed under Section 17(4) of the 1977 Act. He also forfeited 10% of the total cost and refunded the balance amount.

The appeal filed by the petitioner against the resumption of booth site was dismissed by Administrator, HUDA, Gurgaon. Thereafter, the petitioner filed complaint under Section 12 of the Consumer Protection Act, 1986 (for short, 'the 1986 Act') with the prayer that the order of resumption may be set aside and the booth site may be restored to her. By order dated 21.7.2003, District Consumer Disputes Redressal Forum, Gurgaon allowed the complaint, set aside the order of resumption and directed the respondents to hand over possession of the booth site without charging any interest on the balance amount. The District Forum also directed the respondent to pay interest at the rate of 18%

per annum.

The respondents challenged the order of the District Forum by filing an appeal under Section 17 of the 1986 Act. They also filed an application for condonation of 287 days delay. 82

The State Consumer Disputes Redressal Commission, Haryana relied upon the judgment of this Court in State of Nagaland v. Lipok AO (2005) 3 SCC 752 and condoned the delay. On merits, the State Commission took cognizance of the fact that the order of resumption was passed after giving multiple notices to the petitioner, referred to the judgment of this Court in UT Chandigarh Administration v. Amarjeet Singh (2009) 4 SCC 660 and held that the complaint filed by the petitioner was not maintainable because she cannot be treated as a consumer.

It is borne out from the record that during the pendency of the appeal filed by the respondents before the State Commission, the petitioner filed a petition under Sections 25 and 27 of the 1986 Act, which was disposed of by the District Forum vide order dated 28.5.2007, the operative portion of which reads as under:

"This order of this Forum shall dispose of a controversy between the parties regarding the period of completion of the development work at the spot and the settlement of accounts as to how much amount is to be paid by the complainant or owned by the complainant to the opposite party. The report of the JE concerned dealing with the area in question was called by order dated 24.4.2007. The JE concerned submitted his report through XEN, HUDA which is annexure OP1 stating that the development work where the booth in question situates was completed on 31.12.1995. As per the order under execution dated 21.7.2003 the contention was raised by the complainant that the development work at the post was not complete when the letter dated 29.7.1996 offering the possession of the site in question was issued. No enquiry with regard to the fact that at the time of the offer of possession the development work at the spot was

complete or not was made. The complainant in support of his contention only placed a photo copy of the letter issued by the XEN to the Contractor Shri Narender Singh for construction of roads/parking slots in the shopping centre in Sector 31-32A Gurgaon which is annexure C-1, according to which the time limit of one month has been given to the contractor w.e.f. 17.12.1997. There is nothing on record after the above letter to show that despite the above direction the development work was not completed at the spot. The report of the JE annexure OP-1 that the development work was on 31.12.1995 is false and is not in accordance with the facts at the spot, which shows that the opposite party is concerning the true facts from this Forum. In view of the above circumstances to clinch the controversy between the parties it is ordered that the completion of the development work could be deemed to be complete after three months from the date of letter annexure C-1 dated 17.12.1997. The opposite party therefore not to charge interest over the balance amount of installments upto 17.3.1998 and to pay interest at the rate of 8% per annum over the entire deposits from the date of deposit till the offer of possession of the resumed plot was made by the opposite party to the complainant as the offer of possession on behalf of the opposite party always deemed to be the intention to deliver the physical possession of the plot/shop in question and after that it is the plot holder who applies for taking actual physical possession on the spot oh. the prescribed performa after completing all the necessary formalities. It is not the case of the complainant that the opposite party despite filing such application did not deliver the physical possession of the plot in question to the complainant except letter dated 5.3.2007. Parties to submit their respective calculations as per the observations indicated above. To come up for the same on 5.7.2007."

Feeling dissatisfied with the aforesaid order, the petitioner filed an appeal under Section 17 of the 1986 Act. The same was dismissed by the State Commission vide order dated 7.1.2011 on the ground that the main order of the District Forum had been set aside.

The petitioner did not challenge the orders of the State Commission by filing revisions under Section 21 of the 1986 Act. Instead, she filed Civil Writ Petition No.15184/2011 under Articles 226/227 of the Constitution for quashing order dated

16.1.2002 passed by Estate Officer, HUDA, Gurgaon and also prayed for issue of a mandamus to the respondents not to charge interest and penalty on the amount of instalments till the delivery of actual physical possession. A

In the counter affidavit filed by the respondents, reliance was placed on the judgment of the High Court in Sukhpal Singh Kang v. Chandigarh Administration 1999 (1) RCR (Civil) 288 and order dated 12.8.2011 passed by this Court in SLP (C) No.12589/2011 titled Satpal v. HUDA and it was pleaded that the Estate Officer did not commit any illegality by ordering resumption of the Booth Site because the petitioner did not pay the instalments of price despite the fact that possession thereof was offered to her in 1996 itself.

The Division Bench of the High Court dismissed the writ petition by relying upon the judgments of this Court in Haryana State Agricultural Marketing Board v. Raj Pal (2011) 13 SCC 504, UT Chandigarh Administration v. Amarjeet Singh (supra) and order dated 12.8.2011 passed in Satpal v. HUDA.

We have heard learned counsel for the petitioner and carefully perused the record.

In our opinion, the special leave petition is thoroughly misconceived and is liable to be dismissed summarily.

For the reasons best known to her, the petitioner did not challenge order dated 7.1.2011 passed by the State Commission by filing revision under Section 21 of the 1986 Act. Therefore, that order will be deemed to have become final and the same could not have been indirectly nullified by the High Court by entertaining

the writ petition filed by the petitioner against the order passed by the Estate Officer for resumption of the Booth Site.

In terms of order dated 7.1.2011 passed by the State Commission, the petitioner could have filed civil suit and also applied for condonation of delay. That having not been done, the petitioner was not entitled to invoke the extraordinary/supervisory jurisdiction of the High Court under Articles 226/227 of the Constitution.

We also agree with the High Court that the Estate Officer did not commit any illegality by resuming the Booth Site because the petitioner had persistently failed to pay the instalments of price despite the notices issued to her under Sections 17(1) (2) and (3). A ranked defaulter like the petitioner is not entitled to relief under Article 226 or 227 of the Constitution. This is also the ratio of the judgments of this Court in *Municipal Corporation Chandigarh v. Shantikunj Investment (P) Ltd.* (2006) 4 SCC 109, *UT Chandigarh Administration v. Amarjeet Singh* (supra) and *Haryana State Agricultural Marketing Board v. Raj Pal* (supra).

In *Sukhpal Singh Kang's* case, the Punjab and Haryana High Court considered a somewhat similar issue and observed:

"the petitioners cannot avoid their liability to pay the installments of premium and ground rent. That apart, after having taken in part in the auction with full knowledge of the terms and conditions notified by the respondents and having accepted the leases of the sites on the basis of terms and conditions incorporated in the letters of allotment without any protest, the petitioners will be deemed to have agreed to pay the amount of premium along with interest and ground rent in terms of Rules 12 and 13 of the 1973 rules. In our considered opinion, the petitioners cannot seek intervention of the court for getting themselves relieved of their obligation to pay the amount due to the

respondents in accordance with the terms of contract"

86

With the above observations, the special leave petition is dismissed.

[Handwritten signature]
30/4/19

[SUMAN WADHWA]
A.R.-cum-P.S.

[Handwritten signature]
30/4/19

[PHOOLAN WATI ARORA]
COURT MASTER

[Handwritten signature]
30/4