

- Haryana Urban Development Authority Act, 1977, Section 17 allows for the resumption of plots in cases of non-payment of installments.
- Resumption should be the last resort according to the Act.
- Authorities have a duty to determine whether the default was willful or deliberate.
- The appellate authority dismissed the appeal based solely on the ground of limitation without considering the question of willful or deliberate default.
- More than half of the plot price has been paid, indicating that there is no deliberate attempt to avoid payment.
- The petitioners are willing to make the payment.
- The court sets aside the harsh resumption order, subject to the payment of all outstanding dues for the plot, including penalties.
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2014 PLRonline 0209

(ID 310702)

HIGH COURT OF PUNJAB AND HARYANA

Before: Mr. Justice Hemant Gupta, The Hon'ble Ms. Justice Jaishree Thakur

CWP No. 3197 of 2014

Smt. Fana alias Maina Devi v. Financial Commissioner and Principal Secretary to Government of Haryana

17.10.2014

Haryana Urban Development Authority Act, 1977, S.17-Resumption of Plot-Non-payment of installment-Resumption should be last resort— Duty cast upon the authorities to go into the question whether or not the default was 'willful' or 'deliberate' - appellate authority has dismissed the appeal only on the ground of limitation without going into this question - More than half of the plot price has been paid and that it cannot be said that there is a deliberate attempt in not paying the plot price - Petitioners are ready and willing to make the payment - Resumption order being harsh, is set aside subject to the payment of all outstanding dues against the said plot along with penalties etc. [Paras 9 , 10]

Cases Referred:

1. *Suresh Chand v. State of Haryana & Ors., CWP No 19503 of 2010 D/d 10.01.2013. (Para 8) - Referred*

2. *Dheera Singh v. UT, Chandigarh Administration, (2013-1)169 PLR 1 (FB) (Para 8) - Referred*
3. *S.K. Khosla v. HUDA & Ors., CWP No 23482 of 2011 D/d 25.09. 2011. (Para 8) - Referred*
4. *Teri Oat Estates (P) Ltd. v. UT Chandigarh & Ors., (2004) 2 SCC 130. (Para 8) - Referred*

For the Petitioner: Mr. C.R. Dahiya, Advocate. For the Respondents No. 2 & 3: Mr. Amit Jaiswal, Advocate.

JUDGMENT

Ms. Jaishree Thakur, J.: - The challenge in the present writ petition is to order of resumption dated 14.12.1988 passed by the Estate Officer, HUDA; order dated 23.4.1996 passed by the Administrator as an Appellate Authority and the order dated 3.12.2013 passed by the Principal Secretary, Town and Country Planning Department, Government of Haryana, upholding the resumption order.

2. The petitioners herein are the legal heirs of late Devi Lal, who was purchaser of Plot No. 49-CC-III, Mandi Township, Fatehabad, in an auction hold on 14.12.1977 for a sum of Rs.30,200/-. 25% of the total cost was required to be deposited at the time of allotment. Balance payment was to be made in six half yearly installments. Late Devi Lal deposited 25% of the total costs at the time of allotment and paid the amount of 1st, 2nd and 3rd installments falling due in the months of December 1979, June 1980 and December 1980 as well. However, on account of financial constraint, Devi Lal could not deposit the balance amount, as per the petitioners herein, as he was taken seriously ill with cancer and required the money for his treatment. The Estate Officer passed the order of resumption on 14.12.1988 for nonpayment of the last three installments. An appeal was preferred by Devi Lal before the Administrator, HUDA in the year 1996 stating that because of the financial constraints, the remaining installments could not be deposited. The appeal was dismissed on the grounds of delay and laches. In the meantime, Devi Lal died on 18.6.2001 after a prolonged illness. The petitioners came to know about the orders of the respondents authorities when physical possession of the said plot was forcibly sought in the year 2006.

3. In a revision before the State Government, the petitioners pleaded that Devi Lal had expired and that the widow and children had no knowledge at all about the pendency of the resumption proceedings. It was argued that on account of floods in the area and on account of illness, there was a financial constraint in making payments. However, they were ready and willing to pay the outstanding amount towards the plot. The revision petition was dismissed on 3.12.2013.

4. Aggrieved by the orders of resumption and the subsequent orders passed, the present writ petition has been filed, inter alia, pleading that the petitioners are in possession of a plot and that it was only on account of great financial constraints that the amount could not be deposited. It was pleaded that Devi Lal, the original allottee and husband and father of

the petitioners, suffered from cancer and money was spent on his treatment. It was also pleaded that the respondent authorities have restored plots in similar manner to others.

5. Notice of the petition was issued to the respondents, who filed their reply submitting that there was in-ordinate delay on behalf of the petitioners in approaching the respondents authorities for restoration of the plot and that full installments had not been paid.

6. We have heard learned counsel for the parties and after perusing the record of the case, it is noted that the original allottee Devi Lal did, in fact, deposited 25% amount towards the cost of the plot and also paid three installments towards the same. The default occurred on account of the fact that there was financial constraint.

7. In the present case, the petitioners are in possession of the plot allotted to Late Devi Lal. The resumption order was passed on 14.12.1988 and thereafter, the Appellate Authority passed the order on 23.4.1996 But the respondents did not take any action to take over the possession of the property. The action to take possession was initiated in the year 2006 though the order of resumption was passed and that possession could be taken by the respondents herein.

8. Learned counsel for the respondents relied upon judgments passed in the case of "S.K Khosla v. HUDA, CWP No 23482 of 2011 decided on September 25th, 2011 and "Suresh Chand v. The State of Haryana, CWP No 19503 of 2010 decided on January 10, 2013 to contend that if a plot has been got in open auction, the allottee cannot take the plea that there was a financial constraint in making the payment. The judgments cited are distinguishable from the facts of the present case. In S.K Khosla's case (supra), after making payment of 25% of the sale consideration, neither balance amount was paid nor any building plan was submitted for approval, as stipulated in the allotment letter nor any construction was raised thereon. In the present case the plot was allotted to Devi Lal, who had already deposited 25% of the costs of the plot as well as three half yearly instalments. As has been held by the Hon'ble Supreme Court in "Teri Oat Estates (P) Ltd. v. UT Chandigarh, (2004) 2 SCC 130" that resumption of property should be the last resort and such action must be used with great caution and circumspection. A Full Bench of this Court in the case of "Dheera Singh v. UT, Chandigarh Administration, (2013-1)169 PLR 1 (FB)", following the same principle and taking note of the case of Teri Oat (supra) has held that resumption should be a matter of last resort. It was so observed:

"(81) The doctrine of proportionality as ruled in Teri Oat Estates Pvt. Ltd. is now an integral part of Section 8-A to protect an allottee against unreasonable or arbitrary action by the Authority under that provision. It necessarily means and the respondents cannot be heard to say otherwise except that the power of resumption can be invoked as a last resort and the action of the Estate Officer is required to be judged on the touch-stone of Article 14 of the Constitution. It implies that the Estate Officer before passing a resumption order shall be obligated to determine whether the breach of terms and conditions of allotment or violation of any building byelaw by the allottee is 'willful' and 'deliberate' or it has occurred for the reasons beyond his control? In the case of the latter category it shall not be possible to invoke the power mechanically and resume the property. For example, if an allottee

indisputably rents out his residential premises to a tenant for residential purposes only and the tenant in utter defiance to the terms of tenancy starts misusing the premises for commercial purposes against whom the landlord, without any inordinate delay, initiates eviction proceedings under the East Punjab Urban Rent Restriction Act, 1949 (as applicable to UT Chandigarh) inter alia on the ground of misuse of the premises, how can the allottee be held guilty of wilful and deliberate violation of the building bye-laws? The only recourse in such an eventuality available with the Estate Officer shall be to keep the resumption proceedings in abeyance till the eviction proceedings are decided though he must keep track of the status of eviction proceedings from time to time. Any attempt deviate from such like fait accompli conditions shall vitiate the action rendering the resumption proceedings to nothing but a colourable exercise and/or abuse of power by the Estate Officer. Similarly, the first or stray violation(s) can hardly justify the impaling effect of 'resumption' and any such casual attempt with a bureaucratic approach deserves serious view in exercise of power of judicial review."

9. The resumption being the last resort should be sparingly used. As has been held in Dheera Singh's case (supra) there is a duty cast upon the authorities to go into the question whether or not the default was 'willful' or 'deliberate'. The appellate authority has dismissed the appeal only on the ground of limitation without going into this question. In the present case, we note that more than half of the plot price has been paid and that it cannot be said that there is a deliberate attempt in not paying the plot price. The consistent stand of the petitioners is that they are ready and willing to make the payment. It is to be noted that the plot is still in the possession of the petitioners.

10. Keeping in view the judgments passed by this Court and the Hon'ble Supreme Court, the resumption order being harsh, is set aside subject to the payment of all outstanding dues against the said plot along with penalties etc. The respondents are directed to furnish the details of amount payable by the petitioners after calculating the same within a period of 2 months and thereafter, the petitioners on receipt of such demand shall pay/deposit the said amount with the respondent authorities within a period of next two months.

11. In view of the above, the resumption order dated 14.12.1988 passed by the Estate Officer, HUDA, orders dated 23.4.1996 and 3.12.2013 passed by the Appellate Authorities i.e the Administrator and the Principal Secretary to Government of Haryana, Town And Country Planning Department, Urban Estates, HUDA, are hereby set aside subject to the outstanding payments. The writ petition is allowed with the aforesaid direction and conditions.