(2011) 09 P&H CK 0161

High Court Of Punjab And Haryana At Chandigarh

Case No: L.P.A. No. 1588 of 2011 (O and M)

Rajendras (India) Ltd.		APPELLANT
	Vs	
Haryana Urban Development Authority		RESPONDENT

Date of Decision: Sept. 2, 2011

Hon'ble Judges: A.K. Goel, Acting C.J.; Ajay Kumar Mittal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Adarsh Kumar Goel, A.C.J.
This appeal has been preferred against order of learned Single Judge, seeking quashing of demand of about Rs. 2.5 crores on account of dues for the cinema site allotted to it in the year 1987.

2. The Appellant had filed two writ petitions which were disposed of by common order passed by learned Single Judge in CWP No. 21646 of 2008 and CWP No. 19027 of 2010. The first writ petition sought direction for delivery of possession of the plot while the second writ petition sought reduction in the amount of dues. Learned Single Judge dealt with both the writ petitions by a common order and observed that having regard to the conduct of the Appellant in making a statement at the time of entertainment of the writ petition and not honouring the same, it was not entitled to be heard. The observations are:

The Petitioner was required to show his bonafide if it was still interested in getting the Cinema Site. Since amount over Rs. two and a half crores was payable, the Petitioner was asked to deposit some amount to show its bonafide. The counsel for the Petitioner then, on proper instructions, had volunteered to pay a sum of Rs. one crore and this was so recorded in order dated 2.2.2011 in Civil Writ Petition No. 21646 of 2008. The Petitioner has failed to deposit this amount. At the time of hearing today, the counsel submitted before the Court that the Petitioner is ready with the payment but would be prepared to deposit the same only if the

Respondents are directed to hand over the possession. This conditional offer was never made by the counsel on 2.2.2011 and this was seen as a ploy to avoid the payment. In fact, during some unguarded moments, the truth came out, when the counsel submitted before the Court that the Petitioner did not want his Rs. one crore to get blocked without any relief coming his way. Obviously, the Petitioner is only indulging in one litigation after another ever since the date of allotment and has never been serious to discharge the liability. The schedule of payment was given in the allotment letter. The Petitioner could pay the remaining amount of consideration either in lump-sum without interest within 60 days of the date of allotment or in yearly instalments with 10 percent interest. The firstly instalment was due after expiry of 6 months from the L.P.A. No. 1588 of 2011 date of issue of the allotment letter. The interest was to accrue from the date of offer of possession. As already noted, the offer of possession was made to the Petitioner on 21.4.1994. The Petitioner was then required to pay an amount of Rs. 49,53,875/-. Instead, the Petitioner filed petition before M.R.T.P. and thereafter an appeal to avoid the payment. It is, thus, clear that the Petitioner is only playing hide and seek and is not interested in making any payment. No case, thus, is made out to issue direction to hand over the possession of the site to the Petitioner.

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The Petitioner was given opportunity and a chance to make mends and show its bonfides but still failed to take advantage of the same. Had the Petitioner been genuine, it could have availed this golden opportunity. This conduct would be enough to decline hearing to the Petitioner once it has gone back from the undertaking made voluntarily before the Court. The Petitioner is desperately sticking to a losing cause. There is, thus, no merit in both the writ petitions and the same are accordingly dismissed.

3. LPA No. 1166 of 2011 filed by the Appellant, arising out of the first writ petition, was heard and dismissed by this Court vide order dated 15.7.2011, inter-alia, having noticed the above observations.

4. We have heard learned Counsel for the Appellant.

5. It is clear from the observations made in the order of learned Single Judge, which are not shown to be erroneous, that the conduct of the Appellant in pursuing the proceedings is not above board, which disentitles the Appellant form being heard on merits. The remedy of writ is not remedy of right and unfair conduct of a litigant can disentitle him to consideration on merits.

6. Having regard to the facts and circumstances of the present case, we do not find any ground to interfere with the view taken by learned Single Judge.

The appeal is dismissed.