

Ashwani Pathak and Others Vs Haryana Urban Development Authority and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 1, 2014

Citation: (2015) 177 PLR 549

Hon'ble Judges: Kuldip Singh, J; Hemant Gupta, J

Bench: Division Bench

Advocate: Yogesh Goel, Advocates for the Appellant; D.V. Sharma, Senior Advocate and Gitish Bhardwaj, Advocates for the Respondent

Judgement

Hemant Gupta, J.

The challenge in the present writ petition is to an order passed by the Estate Officer, Haryana Urban Development

Authority (for short "HUDA"), Panchkula on 21.01.1993 and the order in appeal passed by the Administrator, HUDA, Panchkula on 21.04.1998

communicated on 12.06.1998 resuming Booth Site No. 2, Sector 4, Panchkula for non-payment of the balance installments. The facts leading to

the present writ petition are that the petitioners were successful bidders in auction of Booth Site No. 2, Sector 4, Panchkula in respect of which a

letter of allotment was issued on 14.11.1990. The petitioners deposited Rs. 55,000/- at the time of the bid. According to the allotment letter, the

petitioners were to deposit Rs. 71,250/- within 30 days from the date of issuance of the allotment letter and the balance amount of Rs. 3,78,750/-

in lump sum without interest within 60 days or in 10 half yearly installments with interest. The petitioners deposited Rs. 71,250/- within the

prescribed period and thereafter took possession of the booth site. The petitioners did not make the balance amount which led to the issuance of

the notices for resumption of the plot. It was on 21.01.1993, the plot was resumed for the reason that the petitioners have willfully defaulted in

making the due payment and even evaded the receipt of various notices. An appeal against the said order was partly accepted on 21.04.1998.

The order was communicated on 12.06.1998. The relevant extract from the order reads as under:-

I have heard both the parties and have gone through the record carefully. The main contention of the counsel for the appellants is that the

appellants are ready to deposit the entire due amount within the time granted to him if an opportunity is extended to them. ADA appearing on

behalf of the respondent has stated that the order of the Estate Officer is legal and valid as the appellant failed to pay the dues in time and the same

may be upheld. Keeping in view the arguments of both the parties, facts on record and circumstances of the case and pleading of the parties to

clear the dues if, opportunity is provided, shows interest of appellant. I set aside the order of Estate Officer, HUDA, Panchkula dated 21.01.1993

and restore the Booth site No. 2, Sector 4, Panchkula with the direction that the appellant will pay entire outstanding installments alongwith penal

interest as per policy of HUDA in 4 equal installments of 45 days each from the receipt of this order. In the event of failure to clear all payments

within 6 months order of Estate Officer will stand operative automatically without any further notice to the party. This appeal is decided

accordingly.

2. Instead of making payment in terms of the order passed, the petitioners filed a civil suit challenging the levy of penal interest. The civil suit was

decreed by the trial Court on 06.09.1996 but the appeal was accepted by the learned Additional District Judge, Panchkula on 25.11.2006 holding

that the jurisdiction of the Civil Court is barred. However, the second appeal and the civil suit were dismissed as withdrawn on 13.09.2012. It is,

thereafter, the petitioners invoked the jurisdiction of this Court challenging the levy of penal interest.

3. Learned counsel for the petitioners also referred to the communication (Annexure P-4) dated 01.09.1998 wherein in response to the

communication of the petitioners for issuance of the possession certificate, the petitioners were informed by the Estate Officer, Panchkula that since

the booth is already constructed at site, the petitioners should apply for occupation certificate instead of possession certificate.

4. Learned counsel for the petitioners also pointed out that a sum of Rs. 7,33,500/- has been deposited after the order was passed by the

Administrator as communicated on 12.06.1998 i.e. a sum of Rs. 2,53,500/- on 19.08.1998; Rs. 1,30,000/- on 17.02.2006; Rs. 1,00,000/- on

03.03.2006; Rs. 2,00,000/- on 12.05.2008 and Rs. 50,000/- on 14.07.2008. The learned counsel for the petitioners refers to a Division Bench

judgment of this Court in LPA No. 933 of 2009 titled as Haryana Urban Development Authority and another v. Vinod Mittal and others, decided

on 16.10.2012, to contend that this Court has considered the levy of penal interest and its compounding. It has been held that though, the HUDA

is entitled to charge penal interest for nonpayment of the installments on due dates but it has no right to charge compound interest. The relevant

extract from the judgment reads as under:-

61. In view of the discussion above, we hold that:

(i) xx xx xx xx

(ii) In the event of non-payment of installments along with interest thereon, the Authority is justified in charging interest at the rate of 18% p.a. Such

interest is to ensure the timely payment of the installments and is aimed at mitigating the extreme hardship which may result from resort to the last

measure of resumption of land or building. However, the rate of interest at the rate of 18% cannot be compounded, as there is no provision either

in the Act or in the Regulations or in the Circular for compounding of such interest....

5. On the other hand, Mr. Sharma, learned counsel for the respondents, vehemently argued that the petitioners have constructed booth without

submission of building plans and are willful defaulters in making the due amount. He refers to a Division Bench judgment of this Court in CWP No.

19503 of 2010 titled as Suresh Chand v. State of Haryana and others, decided on 10.01.2013, wherein in almost identical facts, the resumption

order was not interfered with. It is also pointed out that a sum of Rs. 5,44,137/- has been refunded vide Cheque No. 193055 dated 06.04.2012.

An amount of Rs. 2,00,000/- deposited without demand was also refunded and the Pay Order of Rs. 3,36,500/- was also returned.

6. We find that the entire action of the respondents in resuming the plot to be wholly illegal, Unwarranted and unjust. Though, there was a default

on the part of the petitioners but the fact remains that a sum of Rs. 7,33,500/- was deposited by the petitioners on or before 14.07.2008. It was in

the year 2012, a sum of Rs. 5,44,137/- is said to be sent by Cheque to the petitioners. But no details in respect of date of cheque/refund are

forthcoming in respect of sum of Rs. 2,00,000/- or Rs. 3,36,500/-. Though in respect of Rs. 3,36,500/-, it is stated that pay order was not

accepted. But no such amount is reflected to be paid by the petitioners.

7. There was a dispute regarding charging of penal interest and its compounding. It came to be settled by a Division Bench judgment of this Court

in Vinod Mittal's case (supra). The judgment of this Court in Suresh Chand's case (supra), notices the Supreme Court order reported as Teri Oat

Estates (P) Ltd. Vs. U.T., Chandigarh and Others, The Supreme Court held that the resumption is the last resort but this Court did not interfere

with the order because of the contumacious conduct of the petitioner in not making the payment for almost 15 years. But in the present case, the

petitioners were though irregular in making payments but have made a payment of Rs. 7,33,500/- on or before 14.07.2008. Thus, substantial

amount was remitted by the petitioners. The HUDA has risen from the slumber only in 2012 when a cheque is said to have been issued. But what

was the triggering effect for refunding the amount in the year 2012 has not been explained. The reply does not disclose the details in respect of the

return of the amount of Rs. 2,00,000/- or Rs. 3,36,500/-.

8. We find that simply for delayed payment, the resumption should not be resorted to when the respondent has a right to claim penal interest and

had claimed penal interest, when the petitioners have made substantial payment though after the order of resumption was passed.

9. In view thereof, we allow the present writ petition; set aside the order of resumption, provided the petitioners deposit the entire amount due to

be calculated in terms of the judgment of this Court in Vinod Mittal's case (supra) within 60 days of the due amount being communicated. The

necessary calculation shall be sent by the HUDA to the petitioners within 30 days from today. We further make it clear that the petitioners shall not

charge interest on the amount sent by him on the dates mentioned except on the sum of Rs. 3,36,500/-, the Pay Order of which is said to have

returned.

The writ petition stands disposed of accordingly.