CM 9552
11-12-13 Status Dismissed

301
4/12/13

W-10 -70-

DP No.-

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

To,

1. State of Haryana through Financial Commissioner-Principal Secretary, Department of Town and Country Planning, Mini Secretariat, Haryana, Sector 17, Chandigarh.
2. Haryana Urban Development Authority through its Chief Administrator, C-3, Sector 6, Panchkula, Haryana.
3. Estate Officer, Haryana Urban Development Authority, Sector 12, Faridabad, Haryana.

Excellent judgement. DAs [NS & SS] may also note.

9-12-13 PSTCP

Subject:- Civil Writ Petition No. 2557 of 2013

DA [NS & SS] Shashi Taneja and another

Petitioner(s)

Receipt No. 1315
Date 9/12/13
O/o F.C.T.C.P.

CM/IMDA — Pl issue intimation to Deputy immediately.

Versus

State of Haryana and others

D.O. to EO/[illegible] be put up.

Respondent(s)

11-12-13

Sir,

In continuation of this Court's order dated _____ I am directed to forward herewith a copy of Order dated 19.11.2013 passed by this Hon'ble High Court in the above noted Civil Writ Petitions, for immediate strict compliance along with ~~copy~~ of memo of Cost

DA 12-12-13

2A (N. Malik) 2A (Sonia) 12/12

DA 1393 12/12/13

Given under my hand and the seal of this Court on this 2nd day of December 2013.

BY ORDER OF HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2/12/13

Superintendent (Writ)
For Assistant Registrar (Writ)

2/12/13

Seal of the High Court of Punjab and Haryana

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04

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 957 /2013

MEMO OF PARTIES

1. Shashi Taneja wife of R.K Taneja resident of House Number 12, Sector 19, Faridabad (Haryana).
2. R.K Taneja son of Sh. Bhawani Dass, resident of House Number 12, Sector 19, Faridabad (Haryana). ....Petitioners

Versus

1. State of Haryana through Financial Commissioner-Principal Secretary, Department of Town and Country Planning, Mini Secretariat, Haryana, Sector 17, Chandigarh.
2. Haryana Urban Development Authority through its Chief Administrator, C-3, Sector 6, Panchkula, Haryana.
3. Estate Officer, Haryana Urban Development Authority, Sector-12, Faridabad, Haryana. Respondents

PLACE: CHANDIGARH [SHEKHAR VERMA] [BHAVNA JOSHI]

DATED: 25.0 /.2013 P-1285/02 2190/2007

[VIKRAM VIR SHARDA] [AMARJIT S. GILL]

P-2903/2007 P-1610/2009

ADVOCATES, COUNSEL FOR THE PETITIONERS

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Civil Writ Petition under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction in the nature of *Certiorari* for quashing of communication/order dated 21.06.2001 bearing endorsement number disclosed vide communication dated 28.07.2008 (Annexure P-6), Order dated 31.03.2009 received on 15.11.2010 (Annexure P-8) and Order dated 31.07.2012 issued/conveyed on 21.11.2012 (Annexure P-10);

Further; writ, order or direction in the nature of *Prohibition* for staying the communication/order dated 21.06.2001 bearing endorsement number disclosed vide communication dated 28.07.2008 (Annexure P-6), Order dated 31.03.2009 received on

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15.11.2010 (Annexure P-8) and Order dated 31.07.2012 issued/conveyed on 21.11.2012 (Annexure P-10) during the pendency of the present writ petition and directing the respondents to not take any coercive steps for taking over the possession of the Booth Site Number 9, Sector-19, Part-II, Faridabad;

Further; for issuance of writ, order or direction in the nature of *Mandamus* against the respondents directing them to accept the balance amount of sale consideration and other charges and restore the Booth Site Number 9, Sector-19, Part-II, Faridabad, in favour of the petitioners.

Any other writ, order or directions which this Hon'ble Court may deem appropriate in the facts and circumstances of the present case.

RESPECTFULLY SHOWETH:

1. The Petitioners are residents of Faridabad, Haryana and are citizens of India. Therefore, they are entitled to invoke the extraordinary writ jurisdiction of this Honorable Court under Article 226 of the Constitution of India.

2. That the Respondent Haryana Urban Development Authority has been constituted as a statutory authority under the 1977 Act, in place of the Department of Urban Estate for ensuring speedy and economic development of urban areas in the State of Haryana. It is a body corporate as well as a local authority with perpetual succession and a common seal. It has the power to acquire, hold and dispose property and by name sue and be sued. For all purposes it qualifies to the definition of "State" in terms of Article 12 of the Constitution of India. As such, it is amenable to Writ jurisdiction under Article 226 of the Constitution of India.

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

*****

C.W.P. No. 2557 of 2013
Date of Decision: 19.11.2013

Shashi Taneja and another ....Petitioners

Versus

State of Haryana and others ....Respondents

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

Present: Mr. Sanjeev Sharma, Senior Advocate,
with Ms. Bhavna Joshi, Advocate,
for the petitioners.

Mr. Anjum Ahmed, Additional Advocate General, Haryana,
for respondent No.1.

Mr. Manish Bansal, Advocate,
for respondent Nos.2 and 3.

MAHAVIR S. CHAUHAN, J.

Instant Civil Writ Petition has been brought by petitioners, Shashi Taneja and R.K.Taneja, a wife-husband duo, under Articles 226 and 227 of the Constitution of India, praying for issuance of a writ of Certiorari quashing order dated 21.06.2001 (Annexure P-6), order dated 31.03.2009 (Annexure P-8) and order dated 31.07.2012 (Annexure P-10); a writ of Prohibition restraining the respondents from taking coercive steps to take over possession of Booth Site No.9, Sector 19-II, Faridabad (hereinafter referred to as 'the booth site'); and a writ of Mandamus directing the respondents to accept balance amount of sale consideration and other dues pertaining to the booth site

from the petitioners.

It emerges from the record that Amarnath and Hari Ram (hereinafter referred to as the original allottees), being the highest bidders at Rs.12,10,000/- in an open auction, were allotted, on free hold basis, the booth site vide letter of allotment dated 10.04.1996 (Annexure P-1). The original allottees deposited an amount of Rs.1,21,000/- (being 10% of the bid money) at the fall of the hammer and Rs.1,81,500/- within 30 days of the date of issue of letter of allotment to complete payment of 25% of the bid money. According to Clause (5) of letter of allotment the balance amount of Rs.9,07,500/- could be deposited without interest, within 60 days from the date of issue of letter of allotment or, with interest @ 15% per annum, in 10 half yearly installments. Clause (8) of the letter of allotment stipulated that non-payment of installments on due date(s) would invite action for imposition of penalty and resumption of the booth site in terms of Section 17 of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as 'the Act').

On the application of original allottees the booth site was transferred and a letter of re-allotment dated 09.04.1997 (Annexure P-2) was issued in favour of the petitioners. It was specifically stated in the letter of re-allotment that the petitioners would be bound by the terms and conditions of the letter of allotment as also provisions of the Act and rules/regulations/instructions/guidelines issued thereunder and that as on the date of re-allotment nine installments were due, or say remained unpaid. Petitioners took possession of the booth site on 22.04.1997 but did not pay the

installments towards payment of 75% balance amount of sale consideration. Notices dated 11.12.1997, 16.01.1998, 27.04.1998, 13.03.2001 and 11.05.2011 issued under Section 17 (1), (2), (3) and (4) of the Act failed to evoke any response from the petitioners. In view of failure of the petitioners to pay the outstanding installments and above-stated notices having remained unresponded to, the booth site was resumed vide order dated 21.06.2001, which was sent to the petitioners under registered cover at the address available in the records of the respondents, i.e. House No.12, Sector-19, Faridabad.

Claiming that the order dated 21.06.2001 was not received by them, the petitioners claim to have applied for issuance of a "No Dues Certificate" vide their communication dated 23.06.2008 (Annexure P-5) and to have acquired knowledge of order of resumption on receipt of communication dated 28.07.2008 (Annexure P-6) which they challenged by way of an appeal. The appellate authority, however, dismissed the appeal vide order dated 31.03.2009 (Annexure P-8) in the following manner:-

> *"After hearing both the parties, I am inclined to agree with the DDA regarding the default in making the payments. The office record shows that the present appellant has purchased this plot and at the time of transfer also he was aware of the amount due. The notices were being issued on the address intimated by the appellant in the record and the same was sent through Registered Post. The plea of the appellant that the plan was passed subsequent to the resumption orders cannot extend any benefit to him because two wrongs cannot make a thing right.*

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Otherwise also if any officer/official of the Estate Office passes some wrong order, it does not amount to the change of law and the rules. Therefore, this plea of the appellant cannot be accepted as such. The entire facts of the case reflect that there was a deliberate attempt on the part of the appellant not making the payment for the reasons best known to him and hence for this willful default he cannot claim any relief under the present appeal and accordingly it is dismissed."

Petitioners then filed a revision petition which too came to be dismissed vide order dated 31.07.2012 (Annexure P-10) with the following observations:-

"I have heard both the parties and gone through the record of the case. From the perusal of record, it is crystal clear that all the notices u,s 17 of HUDA Act were issued and sent through registered post of the given address of the petitioners and the same were not received back in the Estate Office undelivered. Therefore, it has to be presumed that notices u/s 17 issued by the Estate Officer before passing the resumption order were duly received by the petitioner. There is no force in the arguments advances by Ld. Counsel of the petitioner that no notices u/s 17 were issued by the Estate Officer before passing the resumption order. It is established beyond doubt that resumption order was passed by the Estate Officer after following procedure laid down in Section 17 of HUDA Act. Further both the appeal as well as Revision Petition were filed by the

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petitioners with inordinate delay. Even then, these were taken up for consideration on merits. Further it is an admitted fact that the allottees badly failed to deposit the due installments at appropriate time as mentioned in the allotment letter. The site was rightly resumed by the Estate Officer after giving ample opportunity to the petitioners by serving proper notices. The allottees came forward for setting aside the resumption order passed by the Estate Officer at a stage when the prices of the commercial property have shot up and showed their willingness to deposit the outstanding dues along with interest. Commercial/public property cannot be restored this way as the prices rise by the day. In the given circumstances I find no justification to interfere in to the well reasoned order passed by the Estate Officer and confirmed by the Administrator. Accordingly, I order dismissal of the Revision Petition. The order was reserved in this case on 17.07.2012 and was announced in the presence of the parties on 31.07.2012. Be communicated to them."

The revisional authority also noted that:-

"The Revision Petition was heard on various dates from 06.04.2011 onwards. On the request of the petitioner/petitioner counsel the case adjourned several time. Effective hearing of the case was taken on 13.09.2011. The Ld. Counsel of the petitioner stated that notices u/s 17 of HUDA Act were not served by the Estate Officer upon the petitioners before passing the petition order. The record of

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sending the notices through registered post i.e. through registered post alongwith the dispatch register were called. The perusal of resumption order passed by the Estate Officer on 21.06.2001, revealed that the notices u/s 17(1), (2), (3) and (4) of HUDA Act were issued vide Memo No.2586 dated 11.12.1997, 214 dated 16.01.1998, 743 dated 13.02.2001 and 1603 dated 11.05.2011 respectively. The order of resumption was sent through registered post to Mrs. Shashi Taneja and R.K.Taneja at the same address which was mentioned in the re-allotment letter i.e. House No.12, Sector 19, Faridabad. Hence the assertion of the petitioner that the gained the knowledge of order dated 21.06.2001 in the year 2008 does not appear to be believable. Further the order of appeal was passed in the presence of the parties therefore the plea of the petitioner that they gained knowledge of the order dated 31.03.2009 on 15.11.2010 is also not tenable. However, Ld. counsel for the petitioners stated that he is ready to make the payment as per terms and conditions of the allotment letter if the plot is restored to them. The case was adjourned for further hearing on 29.11.2011.

On 29.11.2011 Sh. Raghubir Singh Assistant, O/o Estate Officer, HUDA, Faridabad brought the file which shows that the notices were sent on the given address which were available on CP-44, 59 and 60. The calculation of the due amount were also brought by the dealing hand which were also taken on record. The Estate Officer was directed to

produce the dispatch register so as to ascertain that the notices as mentioned above were duly sent by the Estate Officer.

Thereafter on 13.03.2012 Sh. Ram Krishan Assistant O/o Faridabad produced the record of notices issued and dispatch register. The photocopy of the notices as well as proof of dispatch was taken on record. As the counsel of the petitioner was not available for arguments the case was adjourned for hearing on 08.05.2012. On the adjourned date Ld. Counsel of the petitioner pleaded for restoration of site on the ground that ina similar case of Booth no.15, Sector 19-II, Faridabad, revisional Authority has restored the site. The case was listed for arguments on 17.07.2012 and the file pertaining to booth No.15, Sector 19-II, was also called."

Having thus lost before the appellate and revisional authorities, petitioners have approached this Court with a prayer that the order of resumption as affirmed by the appellate and revisional authorities be quashed, the plot be restored to them and respondents be directed to receive from them outstanding amount, if any.

Responding to the notice of motion, respondents have filed a written statement wherein it has been stated that the petitioners did not pay the due installments despite service of various notices upon them and grant of opportunity of personal hearing and, therefore, the booth site has been rightly resumed. It is also added in the written statement that after issuance of a notice dated 19.07.2001 under Section 18(1) of the Act, order of eviction dated

06.09.2001 has been passed against the petitioners and appeal and revision preferred by the petitioners against that order have also been dismissed; and that on account of acts and conduct of the petitioners the respondents are suffering huge financial loss.

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

Learned senior counsel for the petitioners argued that the petitioners could not pay the installments as development work of the market was not complete insofar as even basic amenities, such as parking area etc., were not provided and they were prevented from making payment by circumstances beyond their control while the respondent did not raise demand of outstanding installments even while sanctioning the building plan on 13.08.2001 and during the period when the petitioners were raising construction on the booth site.

The learned senior counsel further argued that neither any notice as required by Section 17 of the Act nor the order dated 21.06.2001 was served upon the petitioners and, as such, the order of resumption is bad in law. Further, according to the learned senior counsel, the petitioners came to know of the order of resumption only on receipt of letter dated 28.07.2008 (Annexure P-6) vide which request of the petitioners for grant of "No Dues Certificate" was declined by saying that the booth site had already been resumed vide order dated 21.06.2001 but the appellate and revisional authorities have failed to take into account these circumstances and have dismissed petitioners' claim with

closed mind.

Learned senior counsel also argued that in similar circumstances resumption of Booth No.15, Sector 19-II, Faridabad has been set aside by accepting the outstanding dues from the allottee thereof but petitioners' claim has been rejected without a valid reason and, as such, the petitioners have been gravely discriminated against.

On the contrary, on behalf of the respondents the learned counsel argued that the petitioners were obliged to deposit the due installments without waiting for a demand being raised in this regard, but have failed to do so inspite repeated notices, which were sent to them on the address available in the records of the respondents, and then filed the statutory appeal after a delay of more than seven years even though the order of resumption was also sent to the petitioners' above-stated address by registered post.

With regard to restoration of booth site No.15, Sector 19-II, Faridabad, learned counsel for the respondents argued that each case has to be decided on its peculiar facts and the petitioners cannot claim parity therewith.

No other or further point has been urged on either side.

We have given thoughtful consideration to the submissions made at the bar.

It needs to be pointed out at the very outset that the revisional authority, in order dated 31.07.2012 (Annexure P-10), and the appellate authority, in order dated 31.03.2009 (Annexure P-8), have observed in quite unambiguous manner that the notices and order of resumption were sent to the

petitioners under registered covers to the address available in the records of the respondents. It is not the case of the petitioners that their address as given in the notices and order of resumption, is not correct or that they ever intimated the respondents change of their address. The petitioners have also avoided to say in the petition that observations of the appellate and revisional authorities in this regard are wrong or incorrect. While going through the record of the office of the respondents we have also found that the notices and order of resumption were sent to the petitioners at their address, i.e. House No.12, Sector 19, Faridabad. Rather, this is the address of the petitioners in various communications appended by them with the petition and in the petition as well. The situation makes a reference to Section 27 of the General Clauses Act, 1897 necessary. It reads as under:-

> *"27. **Meaning of service by post** -*
> *Where any (Central Act) or Regulation made after the commencement of this Act authorizes of requires any document to be served by post, where the expression "serve" or either of the expressions "give" or "send" or any other expression in used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."*

Therefore, the notices and order of resumption are deemed to have

been duly served upon the petitioners and averment of the petitiones that these notices and order of resumption were not served upon them is found to be false. Falsity of this statement of the petitioners is further confirmed by the fact that they got the building plan sanctioned, could know what was happening to booth site No.15 in their neighbourhood, could raise construction over the booth site and were anxious to obtain a "No Dues Certificate" but did not make any effort to deposit the due installments in spite of a very specific mention in the letter of re-allotment that nine installments remained unpaid and terms and conditions of the letter of allotment, as also provisions of the Act and rules/regulations framed thereunder were to bind them, according to which the installments were payable half yearly and failure to pay the installments on due date, imposition of penalty and resumption of the booth site were bound to follow. The petitioners also did not try to find out from the office of the respondents what was due against the booth site.

It seems that the petitioners have developed a habit of not speaking the truth or say to twist the facts to their convenience. They claim that the notices and order of resumption were never received by them even though these were sent to the address to which letter dated 28.07.2008 (Annexure P-6) was sent and which is the address given by the petitioners in memorandum of appeal (Annexure P-7) the revision petition (Annexure P-9) and the instant Civil Writ Petition. The appellate order dated 31.03.2009 (Annexure P-8) was passed in the presence of counsel for the petitioners, which amounts to presence of the petitioners themselves, but in spite of that it was projected by

the petitioners before the revisional authority that they gained knowledge of the order dated 31.03.2009 only on 15.11.2010.

Similarly, order dated 31.07.2012 (Annexure P-10) of the revisional authority was announced in the presence of the parties but the petitioners, in paragraph 15 of the petition, have attempted to project that even this order was conveyed to them on 21.11.2012. We cannot help expressing our strong disapproval of the manner in which the petitioners have been projecting the things.

Be that as it may, the petitioners have tried to justify non-payment of installments on the plea that the respondents had not provided basic amenities viz. Parking area etc. This, in our opinion, is hardly an excuse for not paying the due installments. We may refer to a judgment of the Hon'ble Supreme Court of India rendered in ***Punjab Urban Planning & Development Authority*** **v.** ***Raghu Nath Gupta,*** **(2012) 8 SCC 197 :(2012) 4 SCC (Civ) 397** wherein it has been held as under:

> *"14. We notice that the respondents had accepted the commercial plots with open eyes, subject to the abovementioned conditions. Evidently, the commercial plots were allotted on 'as-is-where-is' basis. The allottees would have ascertained the facilities available at the time of auction and after having accepted the commercial plots on 'as-is-where-is' basis, they cannot be heard to contend that PUDA had not provided the basic amenities like parking, lights, roads, water, sewerage, etc. If the*

allottees were not interested in taking the commercial plots on 'as-is-where-is' basis, they should not have accepted the allotment and after having accepted the allotment on 'as-is-where-is' basis, they are estopped from contending that the basic amenities like parking, lights, roads, water, sewerage, etc. were not provided by PUDA when the plots were allotted."

Learned senior counsel representing the petitioners has not been able to point out any clause in the letter of allotment or any provision of law whereby making payment of installments, interest and penalty etc., is dependent upon provision of infrastructural facilities/amenities. A similar contention raised in ***Municipal Corporation Chandigarh & others Vs. M/s Shantikunj Investment Pvt. Ltd., 2006(2) RCR (Civil) 26***, was answered by the Hon'ble Apex Court, as under:

"On a plain reading of the definition "amenities" read with Rule 11 (2) and Rule 12, it cannot be construed to mean that the allottees could take upon themselves not to pay the lease amount and take recourse to say that since all the facilities were not provided, therefore, they are not under any obligation to pay the installment, interest and penalty, if any, as provided under the Act and the Rules.....It has never been the condition precedent. It is true that in order to fully enjoy the allotment, proper linkage is necessary. But to say that this is a condition precedent, that is not the correct approach in the matter..... It is true the word, "enjoy" appearing in the definition of the word "premium" in

Rule 3(2) of the Rules, means the price paid or promised for the transfer of a right to enjoy immovable property under the Rules. It was very seriously contended before us that the word, enjoy immovable property necessarily means that the Administration should provide all the basic amenities as appearing under Section 2(b) of the Act for enjoying that allotment. The expression "premium" appearing in the present context does not mean that the allottees/lessees cannot enjoy the immovable property without those amenities being provided. The word "enjoy" here in the present context means that the allottees have a right to use the immovable property which has been leased out to them on payment of premium i.e. the price..... It is the common experience that for full development of an area it takes years. It is not possible in every case that the whole area is developed first and allotment is served on a platter. Allotment of the plot was made on an as –is-where-is basis and the Administration promised that the basic amenities will be provided in due course of time. It cannot be made a condition precedent. This has never been a condition of the auction or of the lease. As per the terms of allotment upon payment of the 25 per cent, possession will be handed over and rest of the 75 per cent of the leased amount to be paid in a staggered manner i.e. in three annual equated installments along with interest at the rate of 10 per cent. If someone wants to deposit the whole of the 75 per cent of the amount he can do so. In that case, he will not be required to pay any

interest. But if a party wants to make payment within a period of three years then he is under the obligation to pay 10 per cent interest on the amount of installment. This is the obligation on the part of the allottee as per the condition of lease and he cannot get out of it by saying that the basic amenities have not been provided for enjoying the allotted land, therefore he is not liable to pay the interest".

We asked the learned counsel for the parties to tell us which is the obligation of the lessor in the lease deed which says that they will not charge interest on the installments before providing the amenities. There is neither any condition in the lease nor any obligation under the auction. If the parties have given their bids and with their eyes wide open, they have to blame themselves. It cannot be enforced by any mandamus as there is no obligation contained in the lease deed or in the auction-notice."

The proposition of law adumbrated in the case of *Municipal Corporation Chandigarh & others Vs. M/s Shantikunj Investment Pvt. Ltd.* (supra) has been reasserted in ***U.T. Chandigarh Administration Vs. Amarjeet Singh, & others, 2009 (2) RCR (Civil) 401***.

This Court was also confronted with a similar question in CWP No. 15768 of 2001, Satwant Singh versus Chandigarh Administration, U.T., Chandigarh and Others (and a bunch of other petitions). A Division Bench of this Court (of which one of us, Satish Kumar Mittal, J.) was a member disposed of the controversy by holding thus:

"*Therefore, on the touchstone of the law laid down by*

the Supreme Court, in the case law cited above, read with the terms and conditions of the letter of allotment and as per the provisions of the Chandigarh (Lease Hold of Sites and Buildings), Rules 1973, it is held that timely payment of instalments, as per the letters of allotment, and payment of interest on such instalments as per the 1973 Rules, as also payment of ground rent, and penal rent for non-payment of instalments and ground rent, is not dependent upon provision of basic amenities. The petitioners, who are allottees of sites leased out to them by auction, would be bound by the terms and conditions of the allotment letter, and payment of installments and ground rent, as also interest and penal interest, would have to be in accordance with the relevant rules, read with the letter of allotment. The interest and penal interest, wherever charged, would be as was stipulated in the 1973 Rules, on the date of auction, in each case".

The contention that the respondents sanctioned the building plan without insisting upon payment of due installments is not even worth noticing because sanctioning of building plan cannot mean to have absolved the petitioners of their liability to pay the due installments.

Even stress laid by the learned senior counsel for the petitioners on the factum of restoration of plot No.15, Sector 19-II, Faridabad to the allottee thereof by the revisional authority is unnecessary and inconsequential firstly because each case has to abide its peculiar facts and circumstances and secondly because the allottee of that booth is not shown to have exhibited a

conduct similar to the one exhibited by the petitioners as has been reflected hereinbefore, say delaying filing of appeal for more than seven years on a manufactured plea that the order of resumption was not served upon them and then delaying filing of revision petition on the pretext that appellate order came to their knowledge late etc.

From the circumstances appearing on record it comes out that, as per their own saying, the petitioners constructed the booth and starting earning profits from the business run from that booth in the year 1999 but have been employing every tactic, fair or foul, to delay payment of due installments in respect thereof and when it became difficult to delay it any further they invented a methodology to circumvent the provisions of the Act, wrote letter dated 23.06.2008 (Annexure P-5) asking for a "No Dues Certificate" knowing it fully well that such a certificate could not be issued as they had not paid even a single penny since re-allotment of the booth site in their favour in spite of the fact that it was clearly stated in the letter of re-allotment that on the day of its issue, out of total ten installments nine were unpaid. And then, on the basis of reply dated 28.07.2008 (Annexure P-6) they carved out an excuse, though unsuccessfully, for filing the appeal after a long delay. It also transpires that even during the period that intervened receipt of memorandum dated 28.07.2008 (Annexure P-6) and disposal of the revision petition on 31.07.2012 the petitioners did not make any effort to pay the amount outstanding against them. This also indicates that the petitioners did not intend to pay the outstanding installments.

The case under adjudication, undeniably, relates to commercial property sold by way of open auction. Auction is basically an exercise in raising revenues for the Government and it goes without saying that non-payment of price by the purchaser visits the public exchequer with loss of revenue and very purpose of holding an auction to fetch maximum price, is forfeited. We may also remind ourselves that while dealing with resumption of a residential site consideration may be that it is needed by the allottee to provide a shelter to the family but it is not so as regards a commercial property, for, it is used by the allottee to earn profits. The present petitioners, as hereinbefore noticed, are earning profits from the booth site since the year 1999 but have paid nothing towards the outstanding nine installments. The situation reminds of judgment dated 20.09.2007 of the Hon'ble Supreme Court of India in **Municiapl Corporation, Chandigarh Versus Vipin Kumar Jain, Special Leave to Appeal (Civil) No.12968 of 2006**. In that case the auction purchaser of a commercial site had defaulted in payment of second and third installments which led to resumption of the site. After dismissal of his appeal the allottee approached this Court and deposited Rs.10 lacs. Still an amount of Rs.15 lacs was outstanding against him. He then withdrew the writ petition to avail remedy of revision. The revisional authority allowed one month's time to him to clear the outstanding dues. Instead of doing so he again approached this Court and was allowed two months' time to pay the entire outstanding amount. The matter reached the Hon'ble Apex Court and was disposed of by observing :-

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"Auction is a price-discovery mechanism which falls in the contractual realm. In the present case we are concerned with commercial sites. Auction is basically an exercise in raising revenues for the Government. When the price is not paid within time it results in loss of revenue to the State. Time is the essence of the contract in matters concerning auction. Property prices rise by the day.

In the present case there was no illegality in the holding of auction. Despite repeated notices issued to the respondent calling upon him to make payment, respondent failed to pay within the stipulated period. Despite repeated indulgence being shown to the respondent by the competent authorities payments were not made. Property prices increase by the day and if within stipulated period contractual obligations are not fulfilled then in that event the State suffers losses which cannot be compensated in terms of interest or penalty after four years. Ultimately auction is an exercise for detecting or discovering the price prevalent in the particular area in a particular year and if time overruns are to be allowed on flimsy excuses for not paying the money in time then the entire exercise would fail. We are therefore of the view that the High Court should not have interfered in the process in which the Corporation was fully justified and entitled to forfeit 10% of the amount and to invite fresh offers on new terms and conditions."

The Hon'ble Supreme Court also referred to an earlier decision in

the case of **Teri Oat Estates (P) Ltd. vs. U.T.Chandigarh & Ors. reported in 2004 (2) SCC 130** in which Sinha J, speaking on behalf of the Division Bench had observed vide para 57 as follows:

> *"We may, however, hasten to add that we do not intend to lay down a law that the statutory right conferring the right of the respondent should never be resorted to. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt whatsoever that if the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then Section 8-A can be taken recourse to."*

We have not been able to persuade ourselves to take a view different from what is stated in the cited judgments and to interfere with the order of resumption as affirmed in appeal and revision because interference with the order of resumption would amount to allowing a premium to the petitioners for their tactful avoidance of payment of due installments and interest etc. and for circumventing the provisions of the Act besides depriving the respondents of the revenue for more than sixteen long years.

In the result, the civil writ petition fails and is dismissed with costs which are quantified at Rs.10,000/-.

(SATISH KUMAR MITTAL)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

19.11.2013
adhikari

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94

W-10

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
JUDICIAL DEPARTMENT

MEMO OF COST

C.W.P. No. 2557 of 2013

Memo of costs to be incurred by the petitioner (as directed vide order dated 19.11.2013) as assessed by this Hon'ble Court.

	To be paid by Petitioners		To be paid by Respondents	
	Rs.	P.	Rs.	P.
Memo of costs to be paid by the petitioner and payable to the Respondents which is quantified at Rs. 10,000/-(Ten thousand only) as assessed by this Court vide order dated 19.11.2013 passed in CWP No. 2557 of 2013.	10,000/-			
Law Stamps				
Process Fee				
Counsel's Fee				
Miscellaneous				
(Rs. Ten thousand Only)				
Total	10,000/-			

For Deputy Registrar (Writs)
For Registrar Judicial

4-12-13

Seal of the High Court of Punjab and Haryana

301
4/12/13 -95-

Status Dismissed

W-10

DP No.-

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

To,

1. State of Haryana through Financial Commissioner-Principal Secretary, Department of Town and Country Planning, Mini Secretariat, Haryana, Sector 17, Chandigarh.
2. Haryana Urban Development Authority through its Chief Administrator, C-3, Sector 6, Panchkula, Haryana.
3. Estate Officer, Haryana Urban Development Authority, Sector 12, Faridabad, Haryana.

District Attorney Legal Cell HUDA ★ Dairy No. 1527 Dated 11/12/13 ★ PANCHKULA

Subject:- Civil Writ Petition No. 2557 of 2013
Shashi Taneja and another

Petitioner(s)

Versus

State of Haryana and others

Respondent(s)

Sir,

In continuation of this Court's order dated _____ I am directed to forward herewith a copy of Order dated 19.11.2013 passed by this Hon'ble High Court in the above noted Civil Writ Petitions, for immediate strict compliance along with ~~copy~~ of memo of Cost

Given under my hand and the seal of this Court on this 2nd day of December 2013.

BY ORDER OF HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2/12/13

Superintendent (Writ)
For Assistant Registrar (Writ)

2/12/13

Seal of the High Court of Punjab and Haryana

04

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 957 /2013

MEMO OF PARTIES

1. Shashi Taneja wife of R.K Taneja resident of House Number 12, Sector 19, Faridabad (Haryana).
2. R.K Taneja son of Sh. Bhawani Dass, resident of House Number 12, Sector 19, Faridabad (Haryana). ....Petitioners

Versus

1. State of Haryana through Financial Commissioner-Principal Secretary, Department of Town and Country Planning, Mini Secretariat, Haryana, Sector 17, Chandigarh.
2. Haryana Urban Development Authority through its Chief Administrator, C-3, Sector 6, Panchkula, Haryana.
3. Estate Officer, Haryana Urban Development Authority, Sector-12, Faridabad, Haryana. Respondents

PLACE: CHANDIGARH [SHEKHAR VERMA] [BHAVNA JOSHI]

DATED: 25.01.2013 P-1285/02 2190/2007

[VIKRAM VIR SHARDA] [AMARJIT S. GILL]

P-2903/2007 P-1610/2009

ADVOCATES, COUNSEL FOR THE PETITIONERS

Civil Writ Petition under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction in the nature of *Certiorari* for quashing of communication/order dated 21.06.2001 bearing endorsement number disclosed vide communication dated 28.07.2008 (Annexure P-6), Order dated 31.03.2009 received on 15.11.2010 (Annexure P-8) and Order dated 31.07.2012 issued/conveyed on 21.11.2012 (Annexure P-10);

Further; writ, order or direction in the nature of *Prohibition* for staying the communication/order dated 21.06.2001 bearing endorsement number disclosed vide communication dated 28.07.2008 (Annexure P-6), Order dated 31.03.2009 received on

15.11.2010 (Annexure P-8) and Order dated 31.07.2012 issued/conveyed on 21.11.2012 (Annexure P-10) during the pendency of the present writ petition and directing the respondents to not take any coercive steps for taking over the possession of the Booth Site Number 9, Sector-19, Part-II, Faridabad;

Further; for issuance of writ, order or direction in the nature of *Mandamus* against the respondents directing them to accept the balance amount of sale consideration and other charges and restore the Booth Site Number 9, Sector-19, Part-II, Faridabad, in favour of the petitioners.

Any other writ, order or directions which this Hon'ble Court may deem appropriate in the facts and circumstances of the present case.

RESPECTFULLY SHOWETH:

1. The Petitioners are residents of Faridabad, Haryana and are citizens of India. Therefore, they are entitled to invoke the extraordinary writ jurisdiction of this Honorable Court under Article 226 of the Constitution of India.

2. That the Respondent Haryana Urban Development Authority has been constituted as a statutory authority under the 1977 Act, in place of the Department of Urban Estate for ensuring speedy and economic development of urban areas in the State of Haryana. It is a body corporate as well as a local authority with perpetual succession and a common seal. It has the power to acquire, hold and dispose property and by name sue and be sued. For all purposes it qualifies to the definition of "State" in terms of Article 12 of the Constitution of India. As such, it is amenable to Writ jurisdiction under Article 226 of the Constitution of India.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

*****

C.W.P. No. 2557 of 2013
Date of Decision: 19.11.2013

Shashi Taneja and another ....Petitioners

Versus

State of Haryana and others ....Respondents

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

Present: Mr. Sanjeev Sharma, Senior Advocate,
with Ms. Bhavna Joshi, Advocate,
for the petitioners.

Mr. Anjum Ahmed, Additional Advocate General, Haryana,
for respondent No.1.

Mr. Manish Bansal, Advocate,
for respondent Nos.2 and 3.

MAHAVIR S. CHAUHAN, J.

Instant Civil Writ Petition has been brought by petitioners, Shashi Taneja and R.K.Taneja, a wife-husband duo, under Articles 226 and 227 of the Constitution of India, praying for issuance of a writ of Certiorari quashing order dated 21.06.2001 (Annexure P-6), order dated 31.03.2009 (Annexure P-8) and order dated 31.07.2012 (Annexure P-10); a writ of Prohibition restraining the respondents from taking coercive steps to take over possession of Booth Site No.9, Sector 19-II, Faridabad (hereinafter referred to as 'the booth site'); and a writ of Mandamus directing the respondents to accept balance amount of sale consideration and other dues pertaining to the booth site

from the petitioners.

It emerges from the record that Amarnath and Hari Ram (hereinafter referred to as the original allottees), being the highest bidders at Rs.12,10,000/- in an open auction, were allotted, on free hold basis, the booth site vide letter of allotment dated 10.04.1996 (Annexure P-1). The original allottees deposited an amount of Rs.1,21,000/- (being 10% of the bid money) at the fall of the hammer and Rs.1,81,500/- within 30 days of the date of issue of letter of allotment to complete payment of 25% of the bid money. According to Clause (5) of letter of allotment the balance amount of Rs.9,07,500/- could be deposited without interest, within 60 days from the date of issue of letter of allotment or, with interest @ 15% per annum, in 10 half yearly installments. Clause (8) of the letter of allotment stipulated that non-payment of installments on due date(s) would invite action for imposition of penalty and resumption of the booth site in terms of Section 17 of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as 'the Act').

On the application of original allottees the booth site was transferred and a letter of re-allotment dated 09.04.1997 (Annexure P-2) was issued in favour of the petitioners. It was specifically stated in the letter of re-allotment that the petitioners would be bound by the terms and conditions of the letter of allotment as also provisions of the Act and rules/regulations/instructions/guidelines issued thereunder and that as on the date of re-allotment nine installments were due, or say remained unpaid. Petitioners took possession of the booth site on 22.04.1997 but did not pay the

installments towards payment of 75% balance amount of sale consideration. Notices dated 11.12.1997, 16.01.1998, 27.04.1998, 13.03.2001 and 11.05.2011 issued under Section 17 (1), (2), (3) and (4) of the Act failed to evoke any response from the petitioners. In view of failure of the petitioners to pay the outstanding installments and above-stated notices having remained unresponded to, the booth site was resumed vide order dated 21.06.2001, which was sent to the petitioners under registered cover at the address available in the records of the respondents, i.e. House No.12, Sector-19, Faridabad.

Claiming that the order dated 21.06.2001 was not received by them, the petitioners claim to have applied for issuance of a "No Dues Certificate" vide their communication dated 23.06.2008 (Annexure P-5) and to have acquired knowledge of order of resumption on receipt of communication dated 28.07.2008 (Annexure P-6) which they challenged by way of an appeal. The appellate authority, however, dismissed the appeal vide order dated 31.03.2009 (Annexure P-8) in the following manner:-

> *"After hearing both the parties, I am inclined to agree with the DDA regarding the default in making the payments. The office record shows that the present appellant has purchased this plot and at the time of transfer also he was aware of the amount due. The notices were being issued on the address intimated by the appellant in the record and the same was sent through Registered Post. The plea of the appellant that the plan was passed subsequent to the resumption orders cannot extend any benefit to him because two wrongs cannot make a thing right.*

Otherwise also if any officer/official of the Estate Office passes some wrong order, it does not amount to the change of law and the rules. Therefore, this plea of the appellant cannot be accepted as such. The entire facts of the case reflect that there was a deliberate attempt on the part of the appellant not making the payment for the reasons best known to him and hence for this willful default he cannot claim any relief under the present appeal and accordingly it is dismissed."

Petitioners then filed a revision petition which too came to be dismissed vide order dated 31.07.2012 (Annexure P-10) with the following observations:-

"I have heard both the parties and gone through the record of the case. From the perusal of record, it is crystal clear that all the notices u,s 17 of HUDA Act were issued and sent through registered post of the given address of the petitioners and the same were not received back in the Estate Office undelivered. Therefore, it has to be presumed that notices u/s 17 issued by the Estate Officer before passing the resumption order were duly received by the petitioner. There is no force in the arguments advances by Ld. Counsel of the petitioner that no notices u/s 17 were issued by the Estate Officer before passing the resumption order. It is established beyond doubt that resumption order was passed by the Estate Officer after following procedure laid down in Section 17 of HUDA Act. Further both the appeal as well as Revision Petition were filed by the

petitioners with inordinate delay. Even then, these were taken up for consideration on merits. Further it is an admitted fact that the allottees badly failed to deposit the due installments at appropriate time as mentioned in the allotment letter. The site was rightly resumed by the Estate Officer after giving ample opportunity to the petitioners by serving proper notices. The allottees came forward for setting aside the resumption order passed by the Estate Officer at a stage when the prices of the commercial property have shot up and showed their willingness to deposit the outstanding dues along with interest. Commercial/public property cannot be restored this way as the prices rise by the day. In the given circumstances I find no justification to interfere in to the well reasoned order passed by the Estate Officer and confirmed by the Administrator. Accordingly, I order dismissal of the Revision Petition. The order was reserved in this case on 17.07.2012 and was announced in the presence of the parties on 31.07.2012. Be communicated to them."

The revisional authority also noted that:-

"The Revision Petition was heard on various dates from 06.04.2011 onwards. On the request of the petitioner/petitioner counsel the case adjourned several time. Effective hearing of the case was taken on 13.09.2011. The Ld. Counsel of the petitioner stated that notices u/s 17 of HUDA Act were not served by the Estate Officer upon the petitioners before passing the petition order. The record of

sending the notices through registered post i.e. through registered post alongwith the dispatch register were called. The perusal of resumption order passed by the Estate Officer on 21.06.2001, revealed that the notices u/s 17(1), (2), (3) and (4) of HUDA Act were issued vide Memo No.2586 dated 11.12.1997, 214 dated 16.01.1998, 743 dated 13.02.2001 and 1603 dated 11.05.2011 respectively. The order of resumption was sent through registered post to Mrs. Shashi Taneja and R.K.Taneja at the same address which was mentioned in the re-allotment letter i.e. House No.12, Sector 19, Faridabad. Hence the assertion of the petitioner that the gained the knowledge of order dated 21.06.2001 in the year 2008 does not appear to be believable. Further the order of appeal was passed in the presence of the parties therefore the plea of the petitioner that they gained knowledge of the order dated 31.03.2009 on 15.11.2010 is also not tenable. However, Ld. counsel for the petitioners stated that he is ready to make the payment as per terms and conditions of the allotment letter if the plot is restored to them. The case was adjourned for further hearing on 29.11.2011.

On 29.11.2011 Sh. Raghubir Singh Assistant, O/o Estate Officer, HUDA, Faridabad brought the file which shows that the notices were sent on the given address which were available on CP-44, 59 and 60. The calculation of the due amount were also brought by the dealing hand which were also taken on record. The Estate Officer was directed to

produce the dispatch register so as to ascertain that the notices as mentioned above were duly sent by the Estate Officer.

Thereafter on 13.03.2012 Sh. Ram Krishan Assistant O/o Faridabad produced the record of notices issued and dispatch register. The photocopy of the notices as well as proof of dispatch was taken on record. As the counsel of the petitioner was not available for arguments the case was adjourned for hearing on 08.05.2012. On the adjourned date Ld. Counsel of the petitioner pleaded for restoration of site on the ground that ina similar case of Booth no.15, Sector 19-II, Faridabad, revisional Authority has restored the site. The case was listed for arguments on 17.07.2012 and the file pertaining to booth No.15, Sector 19-II, was also called."

Having thus lost before the appellate and revisional authorities, petitioners have approached this Court with a prayer that the order of resumption as affirmed by the appellate and revisional authorities be quashed, the plot be restored to them and respondents be directed to receive from them outstanding amount, if any.

Responding to the notice of motion, respondents have filed a written statement wherein it has been stated that the petitioners did not pay the due installments despite service of various notices upon them and grant of opportunity of personal hearing and, therefore, the booth site has been rightly resumed. It is also added in the written statement that after issuance of a notice dated 19.07.2001 under Section 18(1) of the Act, order of eviction dated

06.09.2001 has been passed against the petitioners and appeal and revision preferred by the petitioners against that order have also been dismissed; and that on account of acts and conduct of the petitioners the respondents are suffering huge financial loss.

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

Learned senior counsel for the petitioners argued that the petitioners could not pay the installments as development work of the market was not complete insofar as even basic amenities, such as parking area etc., were not provided and they were prevented from making payment by circumstances beyond their control while the respondent did not raise demand of outstanding installments even while sanctioning the building plan on 13.08.2001 and during the period when the petitioners were raising construction on the booth site.

The learned senior counsel further argued that neither any notice as required by Section 17 of the Act nor the order dated 21.06.2001 was served upon the petitioners and, as such, the order of resumption is bad in law. Further, according to the learned senior counsel, the petitioners came to know of the order of resumption only on receipt of letter dated 28.07.2008 (Annexure P-6) vide which request of the petitioners for grant of "No Dues Certificate" was declined by saying that the booth site had already been resumed vide order dated 21.06.2001 but the appellate and revisional authorities have failed to take into account these circumstances and have dismissed petitioners' claim with

closed mind.

Learned senior counsel also argued that in similar circumstances resumption of Booth No.15, Sector 19-II, Faridabad has been set aside by accepting the outstanding dues from the allottee thereof but petitioners' claim has been rejected without a valid reason and, as such, the petitioners have been gravely discriminated against.

On the contrary, on behalf of the respondents the learned counsel argued that the petitioners were obliged to deposit the due installments without waiting for a demand being raised in this regard, but have failed to do so inspite repeated notices, which were sent to them on the address available in the records of the respondents, and then filed the statutory appeal after a delay of more than seven years even though the order of resumption was also sent to the petitioners' above-stated address by registered post.

With regard to restoration of booth site No.15, Sector 19-II, Faridabad, learned counsel for the respondents argued that each case has to be decided on its peculiar facts and the petitioners cannot claim parity therewith.

No other or further point has been urged on either side.

We have given thoughtful consideration to the submissions made at the bar.

It needs to be pointed out at the very outset that the revisional authority, in order dated 31.07.2012 (Annexure P-10), and the appellate authority, in order dated 31.03.2009 (Annexure P-8), have observed in quite unambiguous manner that the notices and order of resumption were sent to the

petitioners under registered covers to the address available in the records of the respondents. It is not the case of the petitioners that their address as given in the notices and order of resumption, is not correct or that they ever intimated the respondents change of their address. The petitioners have also avoided to say in the petition that observations of the appellate and revisional authorities in this regard are wrong or incorrect. While going through the record of the office of the respondents we have also found that the notices and order of resumption were sent to the petitioners at their address, i.e. House No.12, Sector 19, Faridabad. Rather, this is the address of the petitioners in various communications appended by them with the petition and in the petition as well. The situation makes a reference to Section 27 of the General Clauses Act, 1897 necessary. It reads as under:-

> *"27. **Meaning of service by post** -*
> *Where any (Central Act) or Regulation made after the commencement of this Act authorizes of requires any document to be served by post, where the expression "serve" or either of the expressions "give" or "send" or any other expression in used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."*

Therefore, the notices and order of resumption are deemed to have

been duly served upon the petitioners and averment of the petitiones that these notices and order of resumption were not served upon them is found to be false. Falsity of this statement of the petitioners is further confirmed by the fact that they got the building plan sanctioned, could know what was happening to booth site No.15 in their neighbourhood, could raise construction over the booth site and were anxious to obtain a "No Dues Certificate" but did not make any effort to deposit the due installments in spite of a very specific mention in the letter of re-allotment that nine installments remained unpaid and terms and conditions of the letter of allotment, as also provisions of the Act and rules/regulations framed thereunder were to bind them, according to which the installments were payable half yearly and failure to pay the installments on due date, imposition of penalty and resumption of the booth site were bound to follow. The petitioners also did not try to find out from the office of the respondents what was due against the booth site.

It seems that the petitioners have developed a habit of not speaking the truth or say to twist the facts to their convenience. They claim that the notices and order of resumption were never received by them even though these were sent to the address to which letter dated 28.07.2008 (Annexure P-6) was sent and which is the address given by the petitioners in memorandum of appeal (Annexure P-7) the revision petition (Annexure P-9) and the instant Civil Writ Petition. The appellate order dated 31.03.2009 (Annexure P-8) was passed in the presence of counsel for the petitioners, which amounts to presence of the petitioners themselves, but in spite of that it was projected by

the petitioners before the revisional authority that they gained knowledge of the order dated 31.03.2009 only on 15.11.2010.

Similarly, order dated 31.07.2012 (Annexure P-10) of the revisional authority was announced in the presence of the parties but the petitioners, in paragraph 15 of the petition, have attempted to project that even this order was conveyed to them on 21.11.2012. We cannot help expressing our strong disapproval of the manner in which the petitioners have been projecting the things.

Be that as it may, the petitioners have tried to justify non-payment of installments on the plea that the respondents had not provided basic amenities viz. Parking area etc. This, in our opinion, is hardly an excuse for not paying the due installments. We may refer to a judgment of the Hon'ble Supreme Court of India rendered in ***Punjab Urban Planning & Development Authority*** **v.** ***Raghu Nath Gupta,*** **(2012) 8 SCC 197 :(2012) 4 SCC (Civ) 397** wherein it has been held as under:

> *"14. We notice that the respondents had accepted the commercial plots with open eyes, subject to the abovementioned conditions. Evidently, the commercial plots were allotted on 'as-is-where-is' basis. The allottees would have ascertained the facilities available at the time of auction and after having accepted the commercial plots on 'as-is-where-is' basis, they cannot be heard to contend that PUDA had not provided the basic amenities like parking, lights, roads, water, sewerage, etc. If the*

allottees were not interested in taking the commercial plots on 'as-is-where-is' basis, they should not have accepted the allotment and after having accepted the allotment on 'as-is-where-is' basis, they are estopped from contending that the basic amenities like parking, lights, roads, water, sewerage, etc. were not provided by PUDA when the plots were allotted."

Learned senior counsel representing the petitioners has not been able to point out any clause in the letter of allotment or any provision of law whereby making payment of installments, interest and penalty etc., is dependent upon provision of infrastructural facilities/amenities. A similar contention raised in ***Municipal Corporation Chandigarh & others Vs. M/s Shantikunj Investment Pvt. Ltd., 2006(2) RCR (Civil) 26***, was answered by the Hon'ble Apex Court, as under:

"On a plain reading of the definition "amenities" read with Rule 11 (2) and Rule 12, it cannot be construed to mean that the allottees could take upon themselves not to pay the lease amount and take recourse to say that since all the facilities were not provided, therefore, they are not under any obligation to pay the installment, interest and penalty, if any, as provided under the Act and the Rules.....It has never been the condition precedent. It is true that in order to fully enjoy the allotment, proper linkage is necessary. But to say that this is a condition precedent, that is not the correct approach in the matter..... It is true the word, "enjoy" appearing in the definition of the word "premium" in

Rule 3(2) of the Rules, means the price paid or promised for the transfer of a right to enjoy immovable property under the Rules. It was very seriously contended before us that the word, enjoy immovable property necessarily means that the Administration should provide all the basic amenities as appearing under Section 2(b) of the Act for enjoying that allotment. The expression "premium" appearing in the present context does not mean that the allottees/lessees cannot enjoy the immovable property without those amenities being provided. The word "enjoy" here in the present context means that the allottees have a right to use the immovable property which has been leased out to them on payment of premium i.e. the price..... It is the common experience that for full development of an area it takes years. It is not possible in every case that the whole area is developed first and allotment is served on a platter. Allotment of the plot was made on an as –is-where-is basis and the Administration promised that the basic amenities will be provided in due course of time. It cannot be made a condition precedent. This has never been a condition of the auction or of the lease. As per the terms of allotment upon payment of the 25 per cent, possession will be handed over and rest of the 75 per cent of the leased amount to be paid in a staggered manner i.e. in three annual equated installments along with interest at the rate of 10 per cent. If someone wants to deposit the whole of the 75 per cent of the amount he can do so. In that case, he will not be required to pay any

interest. But if a party wants to make payment within a period of three years then he is under the obligation to pay 10 per cent interest on the amount of installment. This is the obligation on the part of the allottee as per the condition of lease and he cannot get out of it by saying that the basic amenities have not been provided for enjoying the allotted land, therefore he is not liable to pay the interest".

We asked the learned counsel for the parties to tell us which is the obligation of the lessor in the lease deed which says that they will not charge interest on the installments before providing the amenities. There is neither any condition in the lease nor any obligation under the auction. If the parties have given their bids and with their eyes wide open, they have to blame themselves. It cannot be enforced by any mandamus as there is no obligation contained in the lease deed or in the auction-notice."

The proposition of law adumbrated in the case of *Municipal Corporation Chandigarh & others Vs. M/s Shantikunj Investment Pvt. Ltd.* (supra) has been reasserted in ***U.T. Chandigarh Administration Vs. Amarjeet Singh, & others, 2009 (2) RCR (Civil) 401***.

This Court was also confronted with a similar question in CWP No. 15768 of 2001, Satwant Singh versus Chandigarh Administration, U.T., Chandigarh and Others (and a bunch of other petitions). A Division Bench of this Court (of which one of us, Satish Kumar Mittal, J.) was a member disposed of the controversy by holding thus:

"Therefore, on the touchstone of the law laid down by

the Supreme Court, in the case law cited above, read with the terms and conditions of the letter of allotment and as per the provisions of the Chandigarh (Lease Hold of Sites and Buildings), Rules 1973, it is held that timely payment of instalments, as per the letters of allotment, and payment of interest on such instalments as per the 1973 Rules, as also payment of ground rent, and penal rent for non-payment of instalments and ground rent, is not dependent upon provision of basic amenities. The petitioners, who are allottees of sites leased out to them by auction, would be bound by the terms and conditions of the allotment letter, and payment of installments and ground rent, as also interest and penal interest, would have to be in accordance with the relevant rules, read with the letter of allotment. The interest and penal interest, wherever charged, would be as was stipulated in the 1973 Rules, on the date of auction, in each case".

The contention that the respondents sanctioned the building plan without insisting upon payment of due installments is not even worth noticing because sanctioning of building plan cannot mean to have absolved the petitioners of their liability to pay the due installments.

Even stress laid by the learned senior counsel for the petitioners on the factum of restoration of plot No.15, Sector 19-II, Faridabad to the allottee thereof by the revisional authority is unnecessary and inconsequential firstly because each case has to abide its peculiar facts and circumstances and secondly because the allottee of that booth is not shown to have exhibited a

conduct similar to the one exhibited by the petitioners as has been reflected hereinbefore, say delaying filing of appeal for more than seven years on a manufactured plea that the order of resumption was not served upon them and then delaying filing of revision petition on the pretext that appellate order came to their knowledge late etc.

From the circumstances appearing on record it comes out that, as per their own saying, the petitioners constructed the booth and starting earning profits from the business run from that booth in the year 1999 but have been employing every tactic, fair or foul, to delay payment of due installments in respect thereof and when it became difficult to delay it any further they invented a methodology to circumvent the provisions of the Act, wrote letter dated 23.06.2008 (Annexure P-5) asking for a "No Dues Certificate" knowing it fully well that such a certificate could not be issued as they had not paid even a single penny since re-allotment of the booth site in their favour in spite of the fact that it was clearly stated in the letter of re-allotment that on the day of its issue, out of total ten installments nine were unpaid. And then, on the basis of reply dated 28.07.2008 (Annexure P-6) they carved out an excuse, though unsuccessfully, for filing the appeal after a long delay. It also transpires that even during the period that intervened receipt of memorandum dated 28.07.2008 (Annexure P-6) and disposal of the revision petition on 31.07.2012 the petitioners did not make any effort to pay the amount outstanding against them. This also indicates that the petitioners did not intend to pay the outstanding installments.

The case under adjudication, undeniably, relates to commercial property sold by way of open auction. Auction is basically an exercise in raising revenues for the Government and it goes without saying that non-payment of price by the purchaser visits the public exchequer with loss of revenue and very purpose of holding an auction to fetch maximum price, is forfeited. We may also remind ourselves that while dealing with resumption of a residential site consideration may be that it is needed by the allottee to provide a shelter to the family but it is not so as regards a commercial property, for, it is used by the allottee to earn profits. The present petitioners, as hereinbefore noticed, are earning profits from the booth site since the year 1999 but have paid nothing towards the outstanding nine installments. The situation reminds of judgment dated 20.09.2007 of the Hon'ble Supreme Court of India in **Municiapl Corporation, Chandigarh Versus Vipin Kumar Jain, Special Leave to Appeal (Civil) No.12968 of 2006**. In that case the auction purchaser of a commercial site had defaulted in payment of second and third installments which led to resumption of the site. After dismissal of his appeal the allottee approached this Court and deposited Rs.10 lacs. Still an amount of Rs.15 lacs was outstanding against him. He then withdrew the writ petition to avail remedy of revision. The revisional authority allowed one month's time to him to clear the outstanding dues. Instead of doing so he again approached this Court and was allowed two months' time to pay the entire outstanding amount. The matter reached the Hon'ble Apex Court and was disposed of by observing :-

"Auction is a price-discovery mechanism which falls in the contractual realm. In the present case we are concerned with commercial sites. Auction is basically an exercise in raising revenues for the Government. When the price is not paid within time it results in loss of revenue to the State. Time is the essence of the contract in matters concerning auction. Property prices rise by the day.

In the present case there was no illegality in the holding of auction. Despite repeated notices issued to the respondent calling upon him to make payment, respondent failed to pay within the stipulated period. Despite repeated indulgence being shown to the respondent by the competent authorities payments were not made. Property prices increase by the day and if within stipulated period contractual obligations are not fulfilled then in that event the State suffers losses which cannot be compensated in terms of interest or penalty after four years. Ultimately auction is an exercise for detecting or discovering the price prevalent in the particular area in a particular year and if time overruns are to be allowed on flimsy excuses for not paying the money in time then the entire exercise would fail. We are therefore of the view that the High Court should not have interfered in the process in which the Corporation was fully justified and entitled to forfeit 10% of the amount and to invite fresh offers on new terms and conditions."

The Hon'ble Supreme Court also referred to an earlier decision in

the case of **Teri Oat Estates (P) Ltd. vs. U.T.Chandigarh & Ors. reported in 2004 (2) SCC 130** in which Sinha J, speaking on behalf of the Division Bench had observed vide para 57 as follows:

> *"We may, however, hasten to add that we do not intend to lay down a law that the statutory right conferring the right of the respondent should never be resorted to. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt whatsoever that if the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then Section 8-A can be taken recourse to."*

We have not been able to persuade ourselves to take a view different from what is stated in the cited judgments and to interfere with the order of resumption as affirmed in appeal and revision because interference with the order of resumption would amount to allowing a premium to the petitioners for their tactful avoidance of payment of due installments and interest etc. and for circumventing the provisions of the Act besides depriving the respondents of the revenue for more than sixteen long years.

In the result, the civil writ petition fails and is dismissed with costs which are quantified at Rs.10,000/-.

(SATISH KUMAR MITTAL)
JUDGE

19.11.2013
adhikari

(MAHAVIR S. CHAUHAN)
JUDGE

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W-10

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
JUDICIAL DEPARTMENT

MEMO OF COST

C.W.P. No. 2557 of 2013

Memo of costs to be incurred by the petitioner (as directed vide order dated 19.11.2013) as assessed by this Hon'ble Court.

	To be paid by Petitioners		To be paid by Respondents	
	Rs.	P.	Rs.	P.
Memo of costs to be paid by the petitioner and payable to the Respondents which is quantified at Rs. 10,000/-(Ten thousand only) as assessed by this Court vide order dated 19.11.2013 passed in CWP No. 2557 of 2013.	10,000/-			
Law Stamps				
Process Fee				
Counsel's Fee				
Miscellaneous				
(Rs. Ten thousand Only)				
Total	10,000/-			

Deputy Registrar (Writes)
For Registrar Judicial

Seal of the High Court of Punjab and Haryana

4.12.13