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RAJIV VOHRA

v.

THE STATE OF HARYANA AND ORS.

(Civil Appeal No. 1932 of 2019)

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FEBRUARY 21, 2019

**[DR DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

- Auction – Commercial property – Willful default by buyer –*
- C *Appellant was allotted booth in open auction for Rs.7,55,000/- – Appellant paid Rs. 1,88,750/- (25% of the sale consideration) but failed to make payment of the remaining sale consideration – Third respondent (Estate Officer, Haryana Urban Development Authority) passed resumption order and resumed the booth on account of non-payment of dues – Appeal filed by the appellant – Resumption order set aside – Pursuant to the appellate order, the appellant paid Rs.7,00,000/- – Revision filed by the third respondent – Resumption order restored – Writ petition filed by the appellant before High Court, which was dismissed – On appeal, held: Booth was allotted in 1996 – After making payment of 25% of the sale consideration, the appellant defaulted on the terms and conditions of the allotment – Third respondent issued notices to the appellant – Despite service of the notices, the appellant failed to make any payment in accordance with the terms and conditions of the allotment letter – Despite being afforded multiple opportunities to effect payment of the balance sale consideration, the appellant continued to default on the terms and conditions of the allotment – Appellant continued in possession of the booth for over 23 years after paying a meagre sum – Jurisdiction of Supreme Court u/Art.142 cannot be invoked to protect an unscrupulous buyer who took possession of a commercial property by paying only 25% of the sale consideration and willfully defaulted on the amount of money payable – No reason to interfere with the judgment of the High Court – Resumption order confirmed – Constitution of India – Art.142.*

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The appellant was allotted booth in open auction for Rs.7, 55,000/- . He paid 25% of the sale consideration, but failed to make payment of the remaining sale consideration. The third respondent (Estate Officer, Haryana Urban Development Authority) passed resumption order, resuming the booth on account of non-payment of dues. The appellant filed appeal, wherein the resumption order was set aside. The third respondent filed revision. Resumption order was restored. The appellant filed writ petition before the High Court, which was dismissed. Hence, the present appeal.

Disposing of the appeal, the Court

HELD 1.1 The booth was allotted in 1996. The bid at the auction was accepted for Rs. 7,55,000, of which a total amount of Rs 1,88,750 (25% of the total sale consideration) was paid by the appellant. After making a payment of 25% of the sale consideration, the appellant defaulted on the terms and conditions of the allotment. The third respondent issued notices to the appellant on 3 December 1996, 20 February 1998, 20 October 1999, 3 June 1999 and 18 September 2000. Despite service of the notices, the appellant failed to make any payment in accordance with the terms and conditions of the allotment letter. Despite being afforded multiple opportunities to effect payment of the balance sale consideration, the appellant continued to default on the terms and conditions of the allotment. [Paras 9, 10] [826-E-H; 827-A]

1.2 The appeal filed by the appellant against the resumption order dated 2 February, 2001 was dismissed in default on 23 April 2002. The application for restoration of appeal filed on 17 June 2002 was dismissed in default on 23 October 2007. Belatedly after a period of three years, another restoration application was filed on 22 December 2010. The above factors have justifiably weighed with the High Court. The appellant executed a General Power of Attorney in favour of a person by the name of 'AP' on 7 June 2001 nearly four months after the order for resumption was passed. The High Court has with justification, held that the GPA executed by the appellant appeared to be an assignment of litigation by the appellant. [Paras 11, 12] [827-B-D]

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- A 1.3 The jurisdiction of Supreme Court under Article 142 cannot be invoked to protect an unscrupulous buyer who took possession of a commercial property by paying only 25% of the sale consideration and willfully defaulted on the amount of money payable. The appellant has continued in possession of the booth for over 23 years. Despite being afforded multiple opportunities by the third respondent to effect payment, the appellant continued to default on payments due. Coupled with the above circumstances, there has been an assignment under a General Power of Attorney. During the hearing of this appeal, the appellant was offered an opportunity to regularize the allotment if a substantial amount of money was paid to the third respondent. Even at this stage, the appellant did not show any inclination to pay a fair amount to the third respondent. No reason to interfere with the judgment of the High Court. The order of resumption shall stand confirmed. During the pendency of the proceedings in Supreme Court, the appellant deposited an amount of Rs 20 lakhs before the Registry pursuant to the interim order. The third respondent is at liberty to withdraw the amount deposited by the appellant with accrued interest towards charges for unauthorized occupation. The third respondent shall compute occupation charges of the booth from 6 May 1996 and adjust the dues for occupation from the amount deposited by the appellant within two months of this order. Any surplus that remains shall be returned to the appellant with interest at the rate of 6% per annum. If the amount determined by the third respondent is in excess of the above amount deposited by the appellant, the third respondent will be at liberty to file appropriate proceedings for recovery. [Paras 14, 15] [827-F-H; 828-A-D]
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Smrita Jain v. HUDA Decision of Supreme Court in SLP (C) No.14864 of 2013; Ved Prakash Kathuria v. HUDA Decision of Supreme Court in SLP(C) No. 31841 of 2011 – relied on.

- G CIVIL APPELLATE JURISDICTION: Civil Appeal No.1932 of 2019.

From the Judgment and Order dated 08.07.2016 of the High Court of Punjab and Haryana at Chandigarh in C.WP. No. 25455 of 2014.

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Somvir Singh Deswal, Ms. Amit Kumari Saroha, Satbir Pillania, A
Nischal Kumar Neeraj, Advs. for the Appellant.

Arun Bhardwaj, AAG, Ashish Pandey, Prateek Rai, Dr. Monika
Gusain, Vishwa Pal Singh, Advs. for the Respondents.

The Order of the Court was passed by

DR DHANANJAYA Y CHANDRACHUD, J.

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1. Leave granted.

2. The present appeal arises from the judgment and final order dated 8 July 2014 of the High Court of Punjab and Haryana dismissing the writ petition filed by the appellant and restoring the resumption order passed by the Estate Officer, Haryana Urban Development Authority (the third respondent).

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3..The appellant, being successful in an open auction held on 7 March 1996, was allotted a booth¹ of 22.68 square metres for a sale consideration of Rs. 7,55,000. An initial amount of Rs 75,500 (10% of the total sale consideration) was paid by the appellant as bid money. The terms and conditions of the auction stipulated that the appellant was required to remit a further sum of Rs. 1,13,250 (15% of the sale consideration) within 30 days from the date of issuance of the letter of allotment. The balance consideration was to be paid either within 60 days or in ten half yearly installments with interest of 15% per annum.

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4. Possession of the booth was delivered to the appellant on 6 May 1996. An allotment letter was issued in favour of the appellant by the third respondent on 10 May 1996. The appellant made a timely payment of Rs. 1,13,250 but failed to make payment of the remaining sale consideration. Consequently, on 2 February 2001, the third respondent passed a resumption order and resumed the booth on account of the non-payment of dues.

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5. The appellant's appeal before the Administrator, HUDA (the second respondent) was allowed on 4 January 2011 and the resumption order was set aside subject to the appellant clearing all pending dues and paying a penalty of Rs 2 lakhs within 30 days from the date of issuance of a demand notice by the third respondent. Pursuant to the appellate order, the appellant made a payment of Rs. 7,00,000 by a demand draft

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¹Booth No. 51, Sector 21-C, Faridabad.

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- A dated 9 February 2011 in favour of the third respondent. The demand draft was encashed. The revision filed by the third respondent before the first respondent was allowed and the resumption order was restored. The appellant filed a writ petition before the High Court.

6. By the impugned judgment dated 8 December 2014, the High Court dismissed the writ petition filed by the appellant principally on the ground that twenty years had elapsed since the initial allotment and the appellant had failed to comply with the terms of the allotment. Aggrieved, the appellant has filed the present appeal.

7. On 2 December 2016, this Court issued notice subject to the appellant depositing a sum of Rs. 20 lakhs before the Registry of this Court to be kept in a short-term fixed deposit. The appellant has deposited the sum before the Registry.

8. The counsel for the appellant contended that the default in payment was due to financial constraints and extenuating family circumstances. It was contended that the appellant has already paid the total sale consideration along with the penalty imposed by the second respondent. On the other hand, the counsel for the respondent contended that the market value of the booth in question has appreciated significantly and that the present appeal deserves to be dismissed. It was further contended that the appellant has never been ready and willing to effect the payment of dues.

9. We have heard the learned counsel for the parties. The booth was allotted in 1996. The bid at the auction was accepted for Rs. 7,55,000, of which a total amount of Rs 1,88,750 (25% of the total sale consideration) was paid by the appellant.

- F 10. After making a payment of 25% of the sale consideration, the appellant defaulted on the terms and conditions of the allotment. The third respondent issued notices to the appellant on 3 December 1996, 20 February 1998, 20 October 1999, 3 June 1999 and 18 September 2000. Despite service of the notices, the appellant failed to make any payment in accordance with the terms and conditions of the allotment letter. In **Smrita Jain v HUDA**², a three judge Bench of this Court held that a rank defaulter is not entitled to any relief. Despite being afforded multiple

²SLP (C) No. 14864 of 2013

opportunities to effect payment of the balance sale consideration, the appellant continued to default on the terms and conditions of the allotment. A

11. The appeal filed by the appellant against the resumption order dated 2 February, 2001 was dismissed in default on 23 April 2002. The application for restoration of appeal filed on 17 June 2002 was dismissed in default on 23 October 2007. Belatedly after a period of three years, another restoration application was filed on 22 December 2010. The above factors have, in our view, justifiably weighed with the High Court. B

12. The appellant executed a General Power of Attorney in favour of a person by the name of Ajay Pal on 7 June 2001 nearly four months after the order for resumption was passed. In **Ved Prakash Kathuria v HUDA³**, a two judge Bench of this Court noted the frequency of such transactions as an attempt by unscrupulous buyers to succeed with the higher authorities. The High Court has, and in our view with justification, held that the GPA executed by the appellant appeared to be an assignment of litigation by the appellant. C

13. Pursuant to the order of this Court dated 14 December 2018, the first respondent has filed an additional affidavit before this Court. It is stated in the affidavit that the neighbouring booths of a comparable area have been sold in 2011 for around Rs 1 crore. It is submitted that the current estimated price of the booth in question is around Rs 2.14 crores. The appellant has been in possession of the booth since 1996 after paying a meagre sum of Rs 8,88,750. D

14. The counsel for the appellant contended that this Court may exercise its powers under Article 142 of the Constitution to grant relief to the appellant. The jurisdiction of this Court under Article 142 cannot be invoked to protect an unscrupulous buyer who took possession of a commercial property by paying only 25% of the sale consideration and willfully defaulted on the amount of money payable. The appellant has continued in possession of the booth for over 23 years. Despite being afforded multiple opportunities by the third respondent to effect payment, the appellant continued to default on payments due. Coupled with the above circumstances, there has been an assignment under a General Power of Attorney. During the hearing of this appeal, the appellant was offered an opportunity to regularize the allotment if a substantial amount E

²SLP (C) No. 14864 of 2013 F

A of money was paid to the third respondent. Even at this stage, the appellant did not show any inclination to pay a fair amount to the third respondent. We, hence, find no reason to interfere with the judgment of the High Court. The order of resumption shall stand confirmed.

- B 15. During the pendency of the proceedings in this Court, the appellant deposited an amount of Rs 20 lakhs before the Registry of this Court pursuant to the interim order. The third respondent is at liberty to withdraw the amount deposited by the appellant with accrued interest towards charges for unauthorized occupation. The third respondent shall compute occupation charges of the booth from 6 May 1996 and adjust the dues for occupation from the amount deposited by the appellant within two months of this order. Any surplus that remains shall be returned to the appellant with interest at the rate of 6% per annum. If the amount determined by the third respondent is in excess of the above amount deposited by the appellant, the third respondent will be at liberty to file appropriate proceedings for recovery.
- C D 16. The appeal is disposed of in the aforesaid terms. There shall be no order as to costs.

Divya Pandey

Appeal disposed of.