

SUPREME COURT OF INDIA

The Haryana Urban Development authority

Vs.

Roochira Ceramics

(K Ramaswamy and G Pattanaik JJ.)

23.10.1996

ORDER

Heard counsel for the parties.

Leave granted.

The respondent was allotted an industrial plot. He had to pay 25% of the price in the beginning and the balance in 6 equal instalments. He only paid the first instalment but not the rest. A Show cause notice was given to him on 5.9.94 under section 17 (3) of the Huda Act. A notice proposing imposition of penalty was also issued. These notices could not be served upon him and therefore notices were served by affixture. A notice dated 10.1.95 was also given providing personal hearing. The respondent never appeared. Accordingly the plot was resumed under section 17 (4) of the Act and the amount deposited was forfeited. The appeal preferred by the respondent was dismissed by the Appellate Authority who held that though several notices were issued to the respondent, he has been evading service. It dismissed the appeal holding that in view of the persistent defaults made by the respondent, there was no ground for interference in appeal. The respondent therefore approached Punjab & Haryana High Court by way of a writ petition. He pleaded certain financial difficulties. Without recording a finding as to the correctness of the said plea assuming for the sake of argument that such a course was permissible in a writ petition the High Court allowed the petition "keeping in view the financial stringency of the petitioner, interest of the parties, readiness and willingness of the petitioner to pay the remaining unpaid amount and to set the controversy at rest. The High Court further directed that interest shall be charged only at 10% per annum on the amount due and not at the rate of 18% as calculated by the authority for a part of the period.

We are of the opinion that in a writ petition it was not open to the High Court to entertain the plea of financial stringency for the first time. The respondent who had not responded to repeated notices and had not availed of the personal hearing offered to him, could not be allowed to plead such financial stringency for the first time before the High Court. Indeed the High Court could not have entertained such a plea. It has been held repeatedly by this Court that the power under Article 226 is the power of judicial review. The High Court can only examine the procedural correctness. It cannot go into the merits of the controversy like an appellate authority. No finding is recorded by the High Court in this case that the procedure adopted by the Estate Officer was either not in accordance with

the statutory provisions or was in violation of the principles of natural justice. The High Court obviously acted as an appellate authority and that to as a benevolent appellate authority. There is no room for any benevolence under Article 226 of the Constitution. If the court departs from law and enters the arena of benevolence the perils and pitfalls are too many to recount. There will be no objective standards of judging. Justice becomes personlised It would vary from Judge to Judge. In the absence of any procedural irregularity, the High Court had no jurisdiction to interfere in the matter. The High Court also failed to notice that the respondent is guilty of not paying the instalments as undertaken by him. By interfering on the basis of unverified and unsubstantiated plea of financial stringency, the Court would be encouraging contumacious conduct and breach of undertakings.

The appeal is accordingly allowed. The Judgment of the High Court is set aside. The writ petition filed by the respondent shall stand dismissed. No costs.