

A THE HARYANA URBAN DEVELOPMENT AUTHORITY AND
ANR.

v.

ROOCHIRA CERAMICS AND ANR.

B OCTOBER 23, 1996

[B.P. JEEVAN REDDY AND K. VENKATASWAMI, JJ.]

Haryana Urban Development Authority Act :

C *Sections 17(3), 17(4)—Industrial plot—Allotment of—Non-payment of instalment amounts—Penalty notice and intimation regarding personal hearing—Party never appeared—Plot resumed and deposit amount forfeited—Appeal against the order dismissed—Writ Petition filed—High Court allowing it on the ground of party's financial stringency, readiness and willingness of the party to pay the remaining amount and reducing interest on the amounts due—On appeal, held : It was not open to the High Court to entertain the plea of financial stringency for the first time—High Court failed to notice that the party was guilty of not paying the instalments as undertaken by him—Interference on the basis of unverified and unsubstantiated plea of financial stringency, the Court would be encouraging contumacious conduct and breach of undertaking—No finding recorded by the High Court that the procedure adopted by the Estate Officer was either not in accordance with the statutory provisions or was in violation of principles of natural justice.*

Constitution of India, 1950.

F *Art. 226—Power of judicial review—High Court could only examine the procedural correctness—It could not go into the merits of the controversy like an appellate authority.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13187 of 1996.

G From the Judgment and Order dated 11.3.96 of the Punjab and Haryana High Court in C.W.P. No. 14676 of 1995.

Ravindra Bana for the Appellants.

H P.P. Rao and C.K. Sucharita for the Respondents.

The following Order of the Court was delivered :

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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 affixure. 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 writ 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.

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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

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- A** 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 too 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 personalised. 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.
- B** By interfering on the basis of unverified and unsubstantiated plea of financial stringency, the Court would be encouraging contumacious conduct and breach of undertakings.
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The appeal is accordingly allowed. The Judgment of the High Court is set aside. The writ petition filed by the respondent shall stand dismissed.

D No costs.

G.N.

Appeal allowed.