

(2012) 05 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1816 of 2009

Arjun Dass

APPELLANT

Vs

Haryana Urban Development Authority and others

RESPONDENT

Date of Decision : 16-05-2012

Acts Referred:

Citation : (2012) 168 PLR 484 : (2013) 3 RCR(Civil) 740

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Ashok Singla, for the Appellant; A.K. Kansal for Respondent Nos. 1 to 3 and Mr. Rose Gupta for Proforma Respondent Nos. 4 to 11, for the Respondent

Final Decision : Allowed

Judgement

L.N. Mittal, J.—Plaintiff Arjun Dass Dorewala (since deceased and represented by legal representatives) has filed this second appeal having been non-suited by both the courts below. Facts in this case are not very much in dispute. Land of plaintiff and proforma defendants no. 4 to 10 (hereinafter to be referred as landowners) was acquired by State of Haryana for Haryana Urban Development Authority (HUDA-defendant no. 1). However, on objections/application of the land owners, the said acquired land was released vide letter dated 7.11.1994 subject to usual terms and conditions including the condition of paying proportionate development charges. Defendants no. 1 to 3 issued letter dated 13.8.2003 demanding Rs 43,20,782/- as development charges from the land owners. In the suit, the plaintiff has challenged the said demand being wrong and illegal.

2. Defendants no. 1 to 3 justified the demand made by them alleging that the demand is in accordance with instructions issued by HUDA vide letter dated 8.7.2002, according to which external development charges are to be recovered from the land owners, whose land is released from acquisition, at the rate of Rs. 150/- per sq. yard as applicable to the category of disputed land of the land

owners.

3. Learned Civil Judge (Senior Division), Hisar vide judgment and decree dated 17.11.2008 dismissed the plaintiff's suit. First, appeal preferred by plaintiff has been dismissed by learned Additional District Judge, Hisar vide judgment and decree dated 21.1.2009. Feeling aggrieved, plaintiff has filed this second appeal.

4. I have heard learned counsel for the parties and perused the case file.

5. Counsel for the appellant contended that defendants no. 1 to 3 can charge development charges according to rules and policy as existing on 7.11.1994, the date of release of the disputed acquired land of the land owners and therefore, the demand of development charges in accordance with subsequent policy dated 8.7.2002 is illegal and unsustainable. It was contended that policy dated 8.7.2002 cannot be made applicable retrospectively to the disputed land of plaintiff and proforma respondents no. 4 to 11 which was released on 07.11.1994. Reliance in support of this contention has been placed on Division Bench judgment of this Court in *ABB Limited v. Haryana Urban Development Authority*, (2010-1)157 PLR 606.

6. On the other hand, counsel for respondents no. 1 to 3 contended that as per condition of release of the disputed acquired land, land owners are liable to pay the development charges as demanded by respondents no. 1 to 3.

7. I have carefully considered the rival contentions. There is no quarrel with the position that the land owners are liable to pay development charges being condition precedent for release of their disputed land. However, question to be determined is as to how much amount the land owners are required to pay towards development charges. Demand made by respondents no. 1 to 3 on the basis of instructions/policy dated 8.7.2002 is not justified because land of the land owners was released vide letter dated 7.11.1994 and therefore, subsequent policy dated 8.7.2002 cannot be made applicable to the said land retrospectively. Respondents no. 1 to 3 are entitled to charge development charges from the land owners at the rate applicable at the time of release of the disputed acquired land i.e. at the rate as applicable on 7.11.1994. This view finds support from Division Bench judgment of this Court in the case of *ABB Limited* (supra). It was inter alia held in that case that the aforesaid policy of the year 2002 would not cover the case of the petitioners retrospectively. In the instant case also, policy dated 8.7.2002 would not be applicable to the case of the land owners whose land was released vide letter dated 7.11.1994.

8. In the aforesaid circumstances, substantial question of law arises for adjudication in this second appeal as to how much amount respondents no. 1 to 3 are entitled to recover from the land owners as development charges. The said question is answered to the effect that respondents no. 1 to 3 are entitled to recover development charges from the land owners at the rate as applicable on 7.11.1994, the date of release of the disputed acquired land of the land owners. In view of the aforesaid, the instant second appeal is allowed partly. Judgments

and decrees of the courts below are set aside. Suit filed by the plaintiff is decreed partly holding that defendants no. 1 to 3 are entitled to recover development charges from the land owners (plaintiff and proforma defendants no. 4 to 10) for the disputed acquired land which was released from acquisition, at the rate as applicable on 7.11.1994, the date of release of the said land from acquisition. Consequently, injunction to this effect is granted restraining defendants no. 1 to 3 from recovering development charges in excess of the amount indicated hereinbefore.