(2014) 05 P&H CK 0281

In the Punjab And Haryana At Chandigarh

Case No : RSA No. 2135 of 2012 (O&M)

Haryana Urban Development Authority APPELLANT

Vs

M/s. Goodyear India Limited RESPONDENT

Date of Decision : 27-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Haryana Urban Development Authority Act, 1977 — Section 17, 50, 50(2)

Citation : (2014) 05 P&H CK 0281

Hon'ble Judges : Rakesh Garg, J

Bench : Single Bench

Advocate : Raman Gaur, Advocate for the Appellant; A.S. Chadha, Advocate for Mr. S.K. Biriwal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—Respondent filed the instant suit seeking declaration to the effect that the impugned demand notice dated 16.06.2003 issued by the defendant-appellant raising demand of External Development Charges (EDC) @ Rs. 200 per square yard is illegal and not binding on the rights of the plaintiff. Further relief of permanent injunction was sought restraining the defendant-appellant from recovering any such amount on the basis of the aforesaid notice or taking any other action against the plaintiff-respondent.

2. It is the case of the plaintiff-respondent that a piece of land measuring 567 Kanals 15 Marlas situated at 21/4 Milestone, Delhi-Mathura Road, Ballabhgarh was acquired by the Government of Punjab in the year 1960 for establishment of the respondent-Company. A conveyance deed dated 28.03.1962 was executed in this regard by the Government of Punjab in favour of the respondent-Company, which was duly registered on 24.04.1962 before the office of Sub-Registrar of Assurances, Ballabhgarh. Possession of the suit land was handed over to the plaintiff-Company which started manufacturing activities by raising construction of building and its manufacturing plant in the year 1962. It was averred that no

extra facility was provided by the defendant-appellant to the respondent-Company and thereafter, a piece of land was acquired by the Government for infrastructural purposes and after this the plaintiff-respondent was left with land measuring 534 Kanals 13 Marlas. According to the plaintiff-respondent, the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 came into force, whereas the Rules were framed thereunder on 25.05.1965. According to the respondent-Company, there was no need to seek permission for change of land use, as the land was acquired for a specific purpose of setting up an industry. Still the plaintiff-respondent entered into an agreement with the Director, Town and Country Planning for fulfilling the conditions contained therein in accordance with the Rules framed under the 1963 Act, and thus, an agreement was executed on behalf of the respondent-Company on 01.12.1971 agreeing to pay EDC. Thereafter, permission to change the land use was also granted to the plaintiff-respondent vide letter dated 22.12.1971. It is further case of the plaintiff-respondent that vide letter dated 03.04.1978, the appellant raised a demand of EDC @ Rs. 11,700 per acre in pursuance of the agreement dated 01.12.1971. The total demand raised in this regard was Rs. 8,11,980. In response to the aforesaid demand notice, the plaintiff-Company paid a sum of Rs. 1,95,464.05 towards 25% of the aforesaid EDC. The balance amount of development charges was never demanded by HUDA from the plaintiff-Company till a letter dated 22.01.1986 was received by the plaintiff-respondent. As per the respondent, vide their letter dated 24.01.1986, the balance amount towards those development charges was deposited. However, the plaintiff-respondent received a memo dated 26.04.2002 from the appellant whereby they raised a demand of Rs. 1,51,93,024 along with a penalty/interest @ 10% per annum on account of EDC. It was further stated that in case the plaintiff-respondent-Company fails to comply with the aforesaid demand notice, resumption proceedings will be started against them. Thereafter, letter dated 19.08.2002 was received by the plaintiff-respondent whereby the defendant-appellant demanded Rs. 200 per square yard on account of EDC from the plaintiff-respondent and as per the aforesaid calculations, a total sum of Rs. 6,89,81,270 as on 31.05.2003 was chargeable from them on account of EDC. Thereafter again, a letter dated 29.05.2003 was issued by the defendant-appellant asking the respondent-Company to pay a sum of Rs. 7,05,33,350 towards balance amount of EDC upto 15.07.2003. Thus, the aforesaid demand notices and the show cause notice dated 19.11.2001 were assailed by the plaintiff-respondent by filing the instant suit.

3. Upon notice, the appellant contested the suit raising various preliminary objections stating that despite granting many opportunities of hearing and issuance of show-cause-notices, the plaintiff-Company failed to deposit the EDC due to the appellant. However, acquisition of land for the plaintiff-Company and execution of the conveyance deed in its favour was admitted. Execution of the agreement dated 01.12.1971 was also admitted, however, it was denied that there was no need to seek permission for change of user from the appellant. It

was also admitted that initially a demand of Rs. 11,700 per acre was raised on account of EDC, however, it was alleged that the plaintiff-respondent deposited lesser amount and the remaining 75% was deposited only on 24.01.1986, whereas the said amount was to be paid within a period of 30 days with effect from 03.04.1978. As such, it was alleged that the plaintiff-respondent was liable to pay interest on the aforesaid amount. It was further alleged that subsequent memos were issued by the defendant-appellant as per its Policy and Rules. It was further alleged that the show cause notice dated 26.04.2002 had been issued to the plaintiff-respondent under the provisions of the HUDA Act legally and thus, the suit was liable to be dismissed.

4. On the basis of the pleadings of the parties, the following issues were framed by the trial Court:

1. Whether the impugned demand notices dated 26.4.2002, 3.4.2003, 19.5.2003, 16.4.2002 and 19.11.2001 issued by the defendants are illegal, null and void? OPP

2. Whether defendants are entitled to charge interest @ 10% instead of 18% on the external development charges? OPP

3. If issues No. 1 and 2 are proved whether the plaintiff is entitled for a decree of declaration and permanent injunction on the grounds mentioned in the plaint? OPP

4. Whether the suit is not maintainable? OPD

5. Whether the plaintiff has no cause of action to file the present suit? OPD

6. Whether the jurisdiction of the civil Court is barred u/s 50(2) of Haryana Urban Development Authority Act, 1977? OPD

7. Whether the plaintiff has concealed the true and material facts from the Court? OPD

8. Whether the suit of the plaintiff is false and frivolous? OPD

9. Relief.

5. Both the parties were given opportunities to lead evidence in support of their rival contentions.

6. On appreciation of evidence led by the parties and the contentions raised by their counsel, the trial Court decided issues No. 1 to 3 in favour of the plaintiff-respondent whereas issues No. 4 to 8 were decided against the defendant-appellant and ultimately, suit of the plaintiff-respondent was decreed with costs.

7. Feeling aggrieved from the aforesaid judgment and decree of the trial Court, the defendant-appellant filed an appeal, which was also dismissed by the first appellate Court, after considering the evidence as well as the arguments raised, vide its judgment and decree dated 05.12.2011.

8. Still not satisfied, the defendant has filed the instant appeal submitting that the following substantial questions of law arise in this appeal:

1. Whether the suit filed by the respondent-plaintiff was maintainable in view of the provisions of Section 9 of the Civil Procedure Code, 1908 and the express statutory bar u/s 50 of the HUDA Act, 1977?

2. Whether the judgments and decrees passed by the learned courts below declaring the demand notice dated 16.6.2003 not binding on the rights of the respondent-plaintiff issued by the appellant claiming the External Development Charges @ Rs. 200/- per sq. yard as per the policy is justified?

9. Learned counsel for the appellant has vehemently argued that in view of the agreement dated 01.12.1971, the plaintiff-respondent was liable to pay EDC as per the policy dated 03.04.1978; however, it deposited only 25% of the initial demand raised and failed to pay the balance amount, which was paid only on 24.01.1986. According to the appellant, as per the aforesaid demand dated 03.04.1978, the respondent-Company was supposed to pay 25% of the total EDC within 30 days and balance 75% amount within 60 days, and in case of failure the respondent-Company was liable to pay interest @ 10% per annum on the balance amount. It is further case of the appellant that fresh Policy dated 08.07.2002 was issued by the appellant which was applicable to the respondent-Company and on the basis of the aforesaid Policy, the notice dated 16.06.2003 raising demand to pay the EDC @ Rs. 200 per square yard was rightly issued to the respondent-Company. The impugned notices were issued legally and validly, and therefore, the suit was liable to be dismissed and the judgments and decrees of the Courts below were liable to be set aside.

10. However, learned counsel for the respondent-Company has supported the judgments and decrees of the Courts below and has vehemently argued that in fact there was no dispute with regard to payment of balance amount on account of EDC as the same have been paid along with interest @ 10% per annum, and this fact has been duly noticed by the lower appellate Court in para No. 24 of its judgment. According to learned counsel for the respondent, the only issue raised before the lower appellate Court was with regard to payment of interest @ 18% per annum instead of 10% per annum on the balance amount of EDC for the delayed period.

11. At this stage, para Nos. 24 and 26 of the judgment of lower appellate Court be noticed, which read thus:

24. Initiating the argument Shri N.K. Tanwar, Advocate Learned counsel for the appellant contended that the land underneath the respondent factory was released from acquisition as per the agreement dated 08.09.1971 registered on 02.12.1971, copy of Ex. P6. The respondent Company was required to pay the external development charges as per the letter dated 03.04.1978, copy Ex. P7. He contended that the amount of external development charges was not paid within the stipulated period and payment was delayed. The payment of external

development charges have been made by the respondent Company during the pendency of the suit. So, the appellant is entitled to charge interest on the delayed payment @ 18% per annum.

XXXX XXXX XXXX

XXXX XXXX XXXX

26. I have duly considered the aforesaid contentions. Only a limited question has been raised by the learned counsel for the appellant before this Court about the rate of interest. Learned counsel for the appellant pleaded that as the payment of the external development charges were delayed by the respondent company so the appellant is entitled to interest @ 18% per annum. But I do not find any substance in the aforesaid contentions raised by the learned counsel for the appellant.

12. A perusal of the aforesaid paragraphs would show that the only question raised by the appellant before the lower appellate Court was with regard to rate of interest payable by the respondent-Company on the balance amount of EDC, which admittedly stood paid along with interest @ 10% per annum.

13. Faced with this situation, learned counsel for the appellant has vehemently argued that the appellant was entitled to interest @ 18% per annum on the balance amount of EDC, and has relied upon a Division Bench judgment of this Court rendered in ''Haryana Urban Development Authority and another v. Vinod Mittal and others'' (LPA No. 933 of 2009 decided on 16.10.2012).

14. Admittedly, as per the Policy dated 03.04.1978 as well as dated 08.07.2002 issued by the defendant-appellant, whereby demand on account of EDC has been raised against the plaintiff-respondent, the plaintiff-Company was liable to pay interest @ 10% per annum on the balance amount of EDC for the delayed period, and in view of the aforesaid condition itself, it does not lie in the mouth of the defendant-appellant to claim interest at a much higher rate. The judgment relied upon by the appellant is not applicable in the facts and circumstances of the case as in the aforesaid case the Court was discussing liability to pay interest @ 18% per annum on the balance amount of equated instalments towards price of the plot etc. as per the terms and conditions; whereas in the instant case as per the Policy applicable, interest on EDC is liable @ 10% per annum on the delayed payment.

15. At this stage, it is useful to refer to the following paragraphs of the judgment of first appellate Court:

28. In case M/s. ABB Limited versus Haryana Urban Development Authority, Haryana (Supra) there was also dispute regarding payment of the external development charges with respect to the land of petitioner company M/s. ABB Limited. The Division Bench of our Hon''ble High Court has dealt in detail about the policy of charging the external development charges. In that case also the substantial part of the development charges was to be paid in nine annual

instalments along with interest @ 7% per annum. The respondent HUDA was demanding the payment of balance amount along with interest @ 18% per annum and the notices u/s 17 of the Act were issued. The Division Bench of our Hon''ble High Court held that the respondent authority (HUDA) was at liberty to enhance the rate of simple interest from 7% to 10% per annum if so advised and raise a demand accordingly within a period of two weeks from the date of receiving the copy of order. The Haryana Urban Development Authority approached the Hon''ble Supreme Court against this judgment of the Hon''ble High Court and the SLP filed by the Haryana Urban Development Authority was dismissed by the Hon''ble Apex Court. The aforesaid authority is squarely applicable to the facts of the case and is a complete answer to the contentions raised by the learned counsel for the appellant.

29. In the instant case this fact is not disputed that the respondent company has already deposited the external development charges along with interest @ 10% per annum and in the absence of any specific agreement between the parties for payment of any penal/enhanced rate of interest, the appellant cannot claim the interest @ 18% per annum on the delayed payment. Consequently, this plea raised by the learned counsel for the appellant is without any merit. So, the findings of the learned trial Court on issue No. 2 stands affirmed.

30. No other point was raised before me by either of the parties. Consequently, the findings of the learned trial Court on the remaining issues also does not call for any interference.

16. No other argument has been raised.

17. Thus, this Court finds no merit in the instant appeal as the substantial questions of law, as raised, do not arise therein.

18. Dismissed.

