(2013) 10 P&H CK 0392

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7334 of 2012

Haryana Urban Development Authority	APPELLANT
Vs	
The Financial Commissioner, Town and Country Planning Department and Others	RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2014) 173 PLR 766

Hon'ble Judges : Satish Kumar Mittal, J;Amol Rattan Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Amol Rattan Singh, J.—This petition, filed by the Haryana Urban Development Authority, through its Estate Officer at Ambala, challenges the orders of its own Chief Administrator and the Revisional Authority, i.e. the Financial Commissioner & Principal Secretary to Government of Haryana, Department of Town and Country Planning, dated 19.11.2009 and 27.04.2011, respectively. The facts giving rise to the writ petition are that, the mother of respondents No. 3 and 4, i.e. the late Smt. Santosh Arora, was allotted plot No. 295 in Sector 8, Ambala City, measuring 300 square meters, on 12.04.1989, vide an allotment letter of the same date, in which the tentative price of the plot was given as Rs. 1,18,730/-.

After accepting the allotment on 11.05.1989, she deposited Rs. 17,809.50/- in addition to the 10% earnest money already tendered earlier, thus paying a total of 25% of the total tentative price.

The rest of the payment being payable in installments at her option, she deposited another installment of Rs. 14,841.25/- on 11.04.1990. After that, she failed to deposit subsequent installments, due to which she was issued a show cause notice dated 31.01.1992, u/s 17(1) & (2) of the Haryana Urban Development Authority Act, 1977, to the effect that she was required to pay an amount of Rs. 16,844/- plus interest, upto the date of payment, along with a penalty of Rs. 1,684/-. Not having paid the said amount and having again defaulted in the next installments also, she was issued another notice on 21.07.1992, to the effect that she was to pay an amount of Rs. 34,276/- plus interest upto the date of payment and that she should also show cause notice as to why penalty be not imposed on her.

2. Consequently, she deposited Rs. 19,481.45/-, by way of installment and interest for 1991, on 05.01.1993 and, on the same date, she also deposited an amount for Rs. 16,809.05/- as installment plus interest, for the period 11.04.1992 to 05.01.1993.

The installment falling due on 11.4.1993 was thereafter paid by her on 29.5.1993.

3. Thereafter, the allottee was offered possession of the plot on 18.04.1994 and was also asked to further deposit the installment, along with interest due thereupon; consequent upon which, an amount of Rs. 14,885.25/- was deposited on the same date, i.e. 18.04.1994.

4. Then, on 2.9.1994, she was asked to pay the additional price of the plot, on account of enhancement of compensation awarded to the landowners, from whom the land was originally acquired for carving out the plots. This additional price, of Rs. 1,17,291/-, was to be paid within 30 days. The said amount was to be recoverable in the same manner as the other installments were being recovered towards payment of the original price, along with interest etc., for non-timely payment.

5. Still further additional price, on account of further enhancement of compensation by this Court, was also to be paid by her, as informed to her vide letter dated 11.09.1995. All these additional amounts were to be paid in bi-annual installments.

6. Not having paid the sum, she was again issued a notice u/s 17(1) of the 1977 Act, on 18.09.1996, to make payments on account of default of the following:-

7. She was also asked to show cause, as to why a penalty of Rs. 32,462/- be not imposed upon her, on account of non-payment of the above amount.

8. Receipt of this show cause notice is admitted, though respondents No. 3 and 4, in their reply, deny having received the notices dated 31.01.1992 & 21.07.1992. They, however, admit to the payments made by their mother, as detailed hereinabove. Nonpayment of the enhanced amount is also not denied.

9. Thereafter, on 8.7.1997, the allottee, i.e. the mother of respondents No. 3 and 4, addressed an application to the Estate Officer (petitioner), stating therein that due to a financial crunch, being a retired Government employee surviving only on her pension amount, her surrender of the plot in question may be accepted and the amounts paid by her, be refunded.

This fact is also admitted.

10. As per the petitioner, the request for surrender and refund of the amount was got examined in its office and the petitioner (Estate Officer, HUDA, Ambala), allowed a refund of Rs. 76,400/- vide order dated 30.07.1997, for which a cheque was drawn, statedly on 30.07.1997, but sent to the allottee on 13.08.1997.

What is very important to note here is that, by way of a file noting, a typed copy of which has been annexed as Annexure P-5 with the petition, the Estate Officer accepted the surrender of the plot and the proposal to refund Rs. 76,400/- to the allottee, Smt. Santosh Arora.

We have summoned the original record and seen the original file noting, which shows that the decision was actually taken by the Estate Officer on 28.07.1997 (not on 30.07.1997), agreeing to the proposal of the Accountant to the above effect. Thereafter, the file seems to have been ''down marked'' back to the Accountant, who, thereafter, made a noting to the following effect:-

Amt. Refunded by vide ch. No. 57016 dated 30.07.1997.

This noting was cut, and above that, the following noting was made:-

Amt Refunded by ch. No. 597016 dated 30.07.1997 Rs. 76,400/-

Signed Accountant

11. The bone of contention arises from this point.

The contention of respondents No. 3 & 4, in their reply, and as argued, is that the surrender of the plot was examined by the Audit Officer and was, firstly, not accepted by the competent person and secondly, that before conveyance of the above decision, the allottee withdrew her application for surrender of the plot, on 05.08.1997, saying that her previous request be treated as having been cancelled, and for maintenance of status quo and return of her original allotment letter. This application by the allottee is admitted, in the petition, to have been received on 7.08.1997.

On the said application, the petitioner (i.e. Estate Officer, HUDA), endorsed the following noting:-

Dy. No. 3278 dated 7.8.1997 Plot No. 295 Sector 8A/City.

The request is for refund of amount deposited due to surrender of plot, which already stands refunded vide cheque No. 597016 dated 30.07.1997. As such may file the PUC p1.

It is however, admitted that the cheque for the amount of the refund, was thereafter sent to the allottee, on 13.08.1997.

12. The said cheque is admitted, by the respondents, to have been received by

the allottee on 14.08.1997, and was returned, along with an application made by her, on the same date, i.e. 14.08.1997.

13. Thereafter, the petitioner, vide memo dated 27.08.1997, asked the allottee to appear in his office on 1.9.1997, on which date, as per the endorsement on the said letter (Annexure P-7), the present respondent No. 4 is stated to have appeared on behalf of his mother and, as recorded in the noting on the letter, he gave an assurance that they would keep the plot with them, obviously, thereby meaning that it would not be alienated in any manner.

Other than the above noting, it is admitted on both sides that no further order was passed by the Estate Officer.

14. The petitioner contends that, thereafter, the allottee remained silent for 11 years and after that period, an application was moved on 24.11.2008, followed by letter dated 30.12.2008, asking as to what total amount is to be paid by her (allottee), along with enhancement and interest thereupon, with the penalty.

Sanction of the building plan was also asked for, which is stated to have been submitted in September 2008.

15. It is contended in the petition, that there was no question of sanctioning the building plan, as the plot had already been surrendered and, moreover, condition No. 18 of the allotment letter stipulated that the construction was to be completed within 2 years from the date of possession, and since it was handed over in April 1994, that period was long gone. Consequently, it is contended, that the Estate Officer passed an order on the file, on 14.01.2009, as follows:-

Since the plot is surrendered one, therefore, make correct entries in the computerized record. Also send the amount, whatever is due.

Sd/- EO 14.01.2009.

Thereafter, another cheque, dated 27.1.2009, was sent on 31.01.2009 to the allottee, in view of the fact that the earlier cheque for the refunded amount had been returned by her on 14.08.1997.

Upon the allottee again informing the petitioner that she was not interested in surrendering the plot, on 07.02.2009, it is contended that the said letter was meaningless, as the surrender of the plot had already been accepted on 30.07.1997.

16. Thereafter, in 2009 itself, the allottee filed a complaint before the District Consumer Disputes Redressal Forum, Ambala, which was dismissed vide order dated 19.01.2011 (Annexure P-10). A perusal of the said order shows that the matter was argued at length and it was dismissed primarily on the ground of limitation, on account of the fact that, though the cause of action, if any, arose in 1997, the complaint was filed in 2009.

The Consumer Forum also, however, observed that the allottee was unable to produce any documents, in support of the fact that her request for cancellation had been accepted, or that she had actually ever taken back physical possession of the plot. It was also noted that other than returning the cheque for the refund amount, not even a single paisa had been paid, through out the 11 year period, towards the cost of the plot. Obviously, the reference is to the notice dated 18.09.1996, by which payment of a total amount of Rs. 3,34,501/- plus penalty of Rs. 32,462/-, was demanded by the petitioner, as outstanding dues, from the allottee.

17. The fact that the allottee had also filed a petition before the Commissioner & Secretary, Department of Town and Country Planning, was also noted by the Forum while dismissing the complaint, on the ground of limitation, as well as on merits, on 19.01.2011.

18. Strangely, parallel proceedings had also been initiated before the Chief Administrator, HUDA, in an appeal/petition filed before him, against what was described as an order dated 14.01.2009, but is, factually, a letter conveying an order passed on file, on that date.

19. This appeal was decided on 19.11.2009, in favor of the allottee, holding that the final decision regarding surrender of the plot was never conveyed to her, as should have been done by the Estate Officer, in response to her letter dated 05.08.1997 and the cheque for the refund amount was returned by her, along with her letter dated 1.9.1997 (actually 14.08.1997), and was retained by the Estate Officer, without conveying anything to the appellant till 14.01.2009.

The present petitioner, i.e. the Estate Officer, filed a revision petition u/s 30(2) of the 1977 Act, which was also decided in favor of the allottee, by dismissing the revision-petition.

20. In this order, it was held that since she had also been given an opportunity of hearing, after the cheque had been sent to her on 13.08.1997, which she returned on 14.08.1997, and no further action had been taken by the Estate Officer, after giving her assurance to retain the plot and, still further, since the Estate Officer never conveyed, till 2008, as to what was due from her, the reasoning adopted by the Appellate Authority, i.e. the Chief Administrator, was sound. Thus, it was held that the Estate Officer had never accepted the surrender.

21. As regards non-payment of dues, it was held that the Estate Officer did not convey anything with regard to outstanding dues to the allottee and it is only after she approached him, to get the building plan sanctioned, that she was again informed that the plot stands cancelled.

22. Thus, as already stated, it is these two orders which have been challenged now by the Estate Officer, HUDA, Ambala.

23. After considering the rival contentions made by Mr. D.V. Sharma, learned Senior Advocate, on behalf of the petitioner and Sh. Devi Dayal, for respondents No. 3 and 4, we are of the opinion that both the orders, of the Appellate

Authority as also the Re-visional Authority, are wholly misconceived, inasmuch as, firstly, the allottees application for surrender of the plot, was actually accepted by the order of the Estate Officer, on the office file, on 28.07.1997 itself and a cheque for the amount of refund found due to her, was also prepared on 30.07.1997. It is not understood as to why, for 13 days thereafter, it was not sent to her.

24. In the meanwhile, of-course, she moved the application dated 05.08.1997 seeking withdrawal of her application for surrender of the plot. Though, undoubtedly the letter conveying the decision of 30.07.1997 was sent to her on 13.08.1997, in our opinion that would not change the decision already taken, on accepting the surrender of the plot and, as such, her offer stood accepted on 28.10.1997 itself.

25. On the issue of an offer and its revocation, Sections 3 to 8 of the Indian Contract, Act, 1872, are reproduced hereinunder:-

3. Communication, acceptance and revocation of proposals.- The communication of proposals, and the revocation of proposals and acceptance, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

4. Communication when complete.- The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. The communication of an acceptance is complete,-as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,-

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; as against the person to whom it is made, when it comes to his knowledge.

Illustrations

(a) A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

(b) B accepts A''s proposal by a letter sent by post.

The communication of the acceptance is complete, as against A, when the letter is posted; as against B, when the letter is received by A.

(c) A revokes his proposal by telegram. The revocation is complete as against A when the telegram is dispatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B''s revocation is complete as against B when the telegram is dispatched, and as against A when it reaches him.

5. Revocation of Proposals and acceptance.-A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a latter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

6. Revocation how made.-A proposal is revoked

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

7. Acceptance must be absolute.- In order to convert a proposal into a promise the acceptance must-

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

8. Acceptance by performing condition, or receiving consideration.-Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

26. Thus Section 4 stipulates that the communication of a revocation of a

proposal is complete in all respects when such revocation is received by the person who had accept the proposal.

In this case, the first proposal was the offer of a plot by the Estate Officer which was accepted by deposit of earnest money and thereafter the plot allotted to the mother of respondents No. 3 and 4, i.e. allottee, upon her having paid installments upto 18.04.1994.

The second proposal was that of the allottee to surrender the plot on account of her not having paid the entire consideration, the communication of which was received by the Estate Officer and accepted by him on fife but, for reasons best known to him, such acceptance was not conveyed to the allottee, i.e. the person making the proposal of surrender.

Thus the communication of proposal of surrender was obviously complete the moment it came to the knowledge of the Estate Officer; but the acceptance of the proposal of surrender would have been completed, even qua the Estate Officer, when he put the acceptance in transmission to the proposer, i.e. the allottee.

Thus, obviously, though the proposal was accepted on file, by the Estate Officer, such acceptance was not put into communication to the proposer, i.e. the allottee and remained with the acceptor, i.e. the Estate Office. Correctly, it should have been put into communication to the proposer, i.e. the allottee, immediately after the decision to accept the offer was taken on the file.

As such as per the provisions of the Indian Contract Act, 1872, the acceptance of the proposal of surrender was obviously not complete, either qua the acceptor or qua the proposer.

27. Thereafter, the proposer, i.e. the allottee, revoked the proposal of surrender on 05.08.1997, thereby withdrawing the offer of surrender made by her on 8.07.1997.

As per Section 5 of the Act of 1872, a proposal may be revoked at any time before the communication its acceptance is complete as against the proposer, but not afterwards.

In this case, the revocation of the proposal of surrender was made before the communication of its acceptance was made by the acceptor, i.e. the Estate Officer-petitioner herein.

28. As per the provisions of the Indian Contract Act, therefore, the allottee was very much within her right to revoke the proposal of surrender before its acceptance was conveyed to her.

29. However, in the circumstances of this case can the plot be allowed to be given/retained by her and her successor-in-interest, despite the provisions of the Contract Act working in her favor?

We think not.

30. Let us now see the relevant statutory regulations governing the allotment of a plot, the conditions attached thereto and the provisions of its surrender.

Surrender of a plot is governed by regulation 14 of the 1978 Regulations and reads as under:-

14. Surrender of land by the transferee or lessee.-"If a transferee/lessee is unable to raise construction on the land disposed of to him due to certain compelling circumstances the Estate Officer may allow to surrender the land at his discretion, subject to the policy guidelines laid down by the Chief Administrator from time to time. In the case of acceptance of surrender, the interest amount recovered from the transferee/lessee shall not be in any case be refunded.

Thus, the surrender is to be accepted by the Estate Officer at his discretion, subject to policy guidelines laid down by the Chief Administrator from time to time.

Regulation 5 of the Haryana Urban Development Laws (Disposal of land and buildings) Regulations, 1978, governs the procedure in case of sale or lease of land or building, by allotment. Clause 3 therefore states that the allotment letter shall be sent in form ''C'' or ''C-1''.

The allotment letter (Annexure P-1) thus, is actually form ''C'' appended to the above-mentioned regulations. Conditions Nos. 12 and 13 thereof, are reproduced hereinunder:-

12. The land shall continue to belong to the authority until the entire consideration money together with interest and other amount, if any due to the authority on account of sale of such land or building or both is paid. You shall have no right to transfer by way of sale, gift, mortgage or otherwise the plot/ building or any right title or interest therein till the full price is paid to the authority, except with the prior permission of the competent authority.

13. On payment of 100 percent of the tentative price of the plot, you shall execute the Deed of conveyance in the prescribed form and in such manner as may be directed by the Estate Officer. The charges for registration and stamp duty will be paid by you. Thus the land/building continues belongs to the authority (the petitioner-HUDA), till such time as the entire consideration money, along with interest and other amounts as are due, are fully paid up by the allottee.

31. In this case, even though, admittedly, the revocation of the offer of surrender, was made before acceptance thereof was conveyed, or even put into communication by the Estate Officer, we are unable to reconcile ourselves to two things:-(a) As to why the Estate Officer, for 7 days, from the 28.7.1997 to 5.8.1997, did not communicate his decision to the allottee.

It was obviously either due to collusion, or due to share callousness.

Even presuming that it was neither of the above and it was only due to a procedural delay in movement of the file, the second reason as follows, vitiates, in our opinion, the right of the allottee to retain the plot:-

(b) For 11 long years, the allottee, who was alive till December 2009, nor her sons, who are present respondents No. 3 & 4, chose to even attempt at making the payments due from them to the petitioner, obviously because they were not at that time able to do so.

It is equally obvious that it is only when they were in a position to make such payment and when prices of properties had sky-rocketed, that they chose to apply for sanction of building plans and to enquire as to the amount that was due from them since 1996 till September, 2008.

The reasoning given in the impugned orders, to the effect that the dues that were to be paid were never conveyed to her, is unsound, inasmuch as, the dues as they stood on 18.09.1996, were specifically demanded from the allottee, vide a notice issued u/s 17(1) of the 1977 Act, amounting to Rs. 3,35,501/-.

It was in response to that very notice that she decided to surrender the plot in July 1997.

Thereafter, though she withdrew the offer of surrender in August 1997 and returned the cheque containing the refund amount, she never once, till 2008, even offered to pay the outstanding amount.

32. In our opinion, the dishonest intent of the allottee and/or her sons (respondents No. 3 & 4) is obvious from their conduct and as such it would amount to a fraud upon the exchequer of a public authority, to allow them to reap the benefits of such fraud/dishonest intention, even though the statutory provisions may otherwise have worked in their favor in 1997. However, then too, it would only be upon payment of outstanding dues being made.

33. Of course, had they acted upon the withdrawal of the offer of surrender before communication of its acceptance in 1997 itself, by making the payment due from them at that time itself or within any reasonable time thereafter, the situation may have been different. However, in the absence of any such bona fide action on their part, we are unable to agree with the submissions made on behalf of respondents No. 3 & 4, or even the reasons given by the official respondents No. 1 & 2 in the orders under challenge.

34. Statutory provisions, as contained in the Contract Act, no doubt are the law of the land, to be adhered to in letter and spirit; however, fraud or even dishonest intent, vitiates any statutory benefit as is sought to be taken shelter of, to try and cover up for such dishonest intent, which we, obviously, cannot allow.

35. Further, just because the allottee was called to the petitioners'' office on 1.9.1997 and her son answered that summon, and an assurance was given by

him (respondent No. 4), that the plot would not be further transferred, in our opinion the summon itself does not amount to a rescission of the decision, inasmuch as, for 11 years thereafter, the allottee or her sons, made no effort whatsoever, to either construct on the plot, as was required as per condition No. 18 of the allotment letter, nor more importantly, did they ever make any attempt to pay the balance amount of Rs. 3,34,501/- due by them since 1996, as per demand raised with regard to the unpaid installment and in respect of the enhanced compensation of the land acquired for the plot.

36. It also seems quite obvious from the conduct of the said respondents and their mother that they did not even attempt to follow up on the issue till they, probably, were in a financial condition to make the outstanding payment, and till property prices had gone up manifold. The allottee and respondents No. 3 and 4, thus bided their time till they were in a position to actually make the payment of the above mentioned amount of Rs. 3,34,501/-, and, thereafter submitted the building plans for sanctioning.

In the meanwhile, of-course, property prices had gone up a 100 fold, if not more. Thus at that stage, after more than a decade, they decided to revive the issue, obviously in order to make a quick profit.

37. In the light of the above, we allow this writ petition and quash the order dated 19.11.2009, passed by Administrator HUDA, (exercising powers of Chief Administrator), as also the order dated 27.04.2011 passed by the Revisional Authority, i.e. Financial Commissioner-cum-Principal Secretary to Government of Haryana Department of Town and Country Planning (Annexures No. P-11 and P-12, respectively).

38. However, since the cheque amount of Rs. 76,400/-, which was given as a refund of the amount found due to the allottee, on account of her surrender of the plot, was never encashed by the allottee, it would now be paid to respondents No. 3 & 4, the allottee having since died, along with simple interest of 8% per annum, from 28.07.1997, till date.

It is, however, left open to respondents No. 3 and 4 to challenge the amount of refund, if as per statutory rules, they are entitled to a higher amount of refund, on account of surrender of the plot.

The writ petition is, accordingly allowed.

No order as to costs.

Satish Kumar Mittal, J.

