

(2016) 04 KAR CK 0134

In the Karnataka High Court

Case No : Regular First Appeal No. 4166 of 2013 (DEC/INJ)

Karnataka Industrial Areas Development Board, Bangalore	APPELLANT
Vs	
M/s. Navodaya Industrial and Housing Developers Dharwad	RESPONDENT

Date of Decision : 26-04-2016

Acts Referred:

Citation : (2016) 3 KCCR 2581

Hon'ble Judges : H. Billappa and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : Sri Veeresh H.M, Advocate, for the Respondent Nos. 1 and 2; Sri R.V. Itagi, Advocate, for the Respondent Nos. 2 to 4; Sri B.D. Hegde, Advocate, for the Respondent No. 2; Smt. Sharmila M. Patil and Sri Basavaraj V. Sabarad, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

P.S. Dinesh Kumar, J. - This appeal by the defendants, a State owned, Industrial Area Development Board, is directed against the Judgment and decree dated 12.12.2012, in O.S. No. 88/2010, on the file of Principal Senior Civil Judge and CJM, Dharwad decreeing the suit.

2. Heard Shri Basavaraj V. Sabarad with Smt. Sharmila M. Patil, learned Counsel for the appellants and Shri Udaya Holla, learned Senior Counsel for Shri B.D. Hegde, Advocate for respondent No. 2.

3. Plaintiffs-Respondents brought the instant suit against the Defendants-Appellants for a Judgment and decree:

i) to declare that the letter No. IADB/14573/15127/06-07 dated 5.3.2007, issued on 15.3.2007 by the second appellant as non-est and invalid in law;

ii) to hold that the allotment letter No. IADB/15962/5120/06-07 dated 1.8.2006 is subsisting and binding on the parties;

iii) to direct the appellants to work out the actual area to be developed out of the

suit property subsequent to allotment of area earmarked for passage of high tension wires of KPTCL and to fix actual price towards the cost of land and to receive the cost of land so fixed within a reasonable time;

iv) to restrain the appellants from alienating the suit schedule properties.

FACTS OF THE CASE:

4. Plaintiffs-Respondents' case in nutshell is that first respondent is a firm in the business of land development and respondents No. 2 to 4 are its partners. Appellants invited the Second Respondent and compelled him to accept the suit schedule property measuring 50 acres in Mummigatti and Narendra villages of Dharwad Taluka. Respondents made an initial payment of Rs. 10,000/- as EMD and the cost of land was fixed at Rs. 250 Lakhs which was required to be paid within a period of six months from the date of allotment of land. After allotment, respondents applied for sanction by the Town Planning Authority. In the meanwhile, they noticed that the Karnataka Power Transmission Corporation Limited ("KPTCL" for short) was laying high-tension cables and towers, which were passing through the schedule property. Respondents approached the appellants with a request to demarcate the land allotted to them and the KPTCL. Appellants did not consider the said request. However, respondents received a communication dated 5.3.2007, stating that the allotment of land made in their favour stood cancelled and the sum of Rs. 10,000/- paid by them also stood forfeited. Respondents challenged the cancellation order in a writ petition before this Court in W.P. No. 5019/2007, which was disposed of by Order dated 22.4.2010 with leave to approach the Civil Court. Hence they filed the instant suit with prayers noted supra.

5. Appellants contested the suit by filing written statement contending inter alia that the land measuring 50 acres was allotted pursuant to a resolution passed in the Board meeting. Respondents had failed to comply with the conditions of allotment and did not remit the land cost within the stipulated period. Hence, the allotment stood cancelled. Further, the suit was barred by Limitation and also hit by provisions of Karnataka Industrial Areas Development Board ("KIADB Act" for short).

6. Based on the pleadings, the trial Court initially framed following issues:-

"1. Whether the plaintiffs prove that the letter bearing No. IADB/14573/15127/06-07 dated: 15.3.2007 issued by 2nd defendant is arbitrary and invalid in law?

2. Whether the 3rd defendant proves that the plaintiffs have violated the conditions of letter of allotment dated: 15.7.2003?

3. Are the plaintiffs entitled for the reliefs claimed in the suit?

4. What order or Decree?"

Subsequently by order dated 8.2.2011, following three additional issues were

framed.

"1. Whether the 3rd defendant proves that the suit is not properly valued and proper Court fee is not paid?

2. Whether the 3rd defendant proves that the suit is barred by limitation?

3. Whether the 3rd defendant proves that the suit of the plaintiff is barred by Provisions of KIADB Act?"

7. With the above pleadings and issues, parties went to trial. On behalf of the plaintiffs-respondents, second plaintiff was examined as PW. 1 and 35 exhibits marked. On behalf of the appellants-defendants, one witness was examined and three exhibits were marked.

8. On consideration of material on record, trial Court answered issues No. 1 and 3 in the affirmative; issue No. 2, additional issues No. 2 and 3 in the negative; and held that additional issue No. 1 did not survive for consideration. In the result, by the impugned Judgment and Decree, trial Court decreed the suit declaring the letter No. IADB/14573/15127/06-07 dated 05/15.3.2007 issued by the second defendant as invalid in law. A mandatory injunction was also issued against the appellants to work out the actual area to be developed by the plaintiffs out of the suit properties excluding the lands allotted to KPTCL. In addition, appellants were restrained from alienating the suit schedule properties in favour of third parties. Hence, this appeal.

9. Assailing the correctness of the impugned Judgment, Shri. Basavaraj Sabarad, learned Counsel for the appellants made following submissions:

i) Though the prayers are couched in the manner described in the plaint, there exists a hidden prayer for a decree for specific performance. Amplifying this contention, he submitted that the combined effect of the prayers sought is a direction to allot the land by receiving the cost of land. This is nothing but a camouflaged relief permissible only in a suit for specific performance.

ii) In order to achieve their ultimate object of allotment of land, the only option open to the respondents was to seek a decree for specific performance and such a prayer would necessarily entail payment of ad-valorem Court Fees based on the value of the land in question which is not paid.

iii) The allotment of land is governed by the provisions contained in the KIADB Act and the Regulation 10 of the KIADB Regulations, 1969. The instant land was allotted as per Ex.P2 dated 15.7.2003 and the same was subject to terms and conditions contained in the said letter and an annexure appended thereto. The allotment was on a lease-cum-sale basis for a period of six years and even at the end of sixth year, sale was subject to fulfilment of all other terms and conditions and payment of land cost in full.

iv) As per clause 2 of allotment letter, land price was fixed at Rs. 5,00,000/- per acre and the respondents were called upon to remit the sum of Rs. 250 Lakhs

within 180 days from the date of allotment. The remittance of land cost was mandatory within an outer limit of 180 days from the date of allotment. In extraordinary cases, an allottee could request for extension of time for bona fide reasons. Such extension was permissible for a maximum period of 180 days subject to payment of interest at 15.5 % p.a.

v) After allotment, respondents, did not remit the land cost and abandoned the allotment. They wrote a letter dated 2.8.2003" requesting for a map containing survey numbers of the land, Thereafter, there was an absolute silence on the part of respondents.

vi) All of a sudden, after nearly two years, respondents wrote a letter dated 30.6.2005, stating that high-tension cables ("HT Cables" for short) were being laid in the land. It was also stated: that respondents had no objection for laying HT Cables as it fell under a Central Government Scheme. However, their grievance was that about 25-30 acres of land was covered by the HT Cables and it was not permissible to prepare a layout plan proposing any construction beneath HT Cables.

vii) Respondents wrote another letter dated 12.1.2007 (Ex.P26) reiterating their earlier request for a revised plan showing land measuring 50 acres abutting Pune - Bengaluru Road to enable them to raise loan from the Bank and to remit the sum of Rs. 250 Lakhs.

10. Referring to letters dated 30.6.2005 and 12.1.2007, Shri Sabarad, submitted that though the land was allotted on 15.7.2003, respondents chose to remain absolutely silent. They initiated contact for the first time after a lapse of two years. Time to remit the land cost had elapsed at the end of 180 days from allotment. Therefore, respondents" request dated 30.6.2005 to provide an alternative land was redundant. With an ulterior motive, respondents had designedly written the said letter asking for alternative layout plan abutting Pune - Bengaluru road. The said letters are in no way relatable to the allotment letter inasmuch as none of the conditions of allotment were fulfilled by the respondents. Consequently, the allotment had extinguished for non-remittance of land cost of Rs. 250 Lakhs within the stipulated period.

i) He further submitted that respondents made their first mischievous attempt to seek alternative land by their letter dated 30.6.2005. After a lapse of 18 months, they renewed their unreasonable request for alternative land by their next letter dated 12.1.2007. Therefore, in order to put an end to such unwanted correspondence, appellants conveyed by a communication dated 5.3.2007 that since the respondents had failed to remit the land cost of Rs. 250 Lakhs, the allotment stood cancelled on expiry of six months.

ii) He further submitted that the respondents" challenge to the communication dated 5.3.2007 before this Court in W.P. No. 5019/2007 had stood dismissed vide order dated 22.4.2010. The appeal filed thereon in W.A. No. 6219/2010 was also dismissed as withdrawn. Having lost in their attempt to assail the correctness of

the said communication, the respondents instituted the instant frivolous suit. The trial Court having misread the evidence and pleadings on record, committed an error in decreeing the suit. He urged that in the absence of a properly framed suit for specific performance and payment of ad-valorem Court Fees, the decree is wholly unsustainable in law.

iii) In addition to the above submissions, he contended that the respondents were not equipped with necessary finances to purchase the land. Their two communications dated 30.6.2005 and 12.1.2007 clearly indicate that they were proposing to seek financial assistance from the Bank to pay the land cost of Rs. 250 Lakhs. These two communications indicate that the respondents were wholly dependent on financial institutions.

iv) He further submitted that the respondents adverted to the land allotted to the KPTCL and sought for modification of the site-plan. However, no document was produced before the Court nor KPTCL arrayed as a party - defendant. Therefore, the suit was liable to be dismissed for non-joinder of necessary parties. Further, in the absence of any document to demonstrate as to which portion of land was allotted to the KPTCL, there was absolutely no evidence before the trial Court to decree the suit.

v) He further submitted that respondents have not come with clean hands before the Court. On one hand, they have averred in the plaint that the appellant forced them to buy the land and other hand filed the instant suit.

vi) In addition, he reiterated the grounds urged in the memorandum of appeal and prayed for allowing this appeal.

11. Per contra, Sri Udaya Holla, learned Senior Counsel appearing r Sri B.D. Hegde, Advocate for respondent No. 2 strongly supporting the rdgment of the trial Court submitted as follows:

i) Respondents are entrepreneurs and land developers. An advertisement was given by appellants - KIADB in the newspaper "Vijaya Karnataka" dated 4.3.2002 offering 50 acres of land to the general public. However, none applied. In fact, appellants compelled the respondents to take 50 acres of land. Respecting the offer, the respondents submitted an application and pursuant to a Board Resolution dated 17.6.2003, 50 acres land was allotted to them.

ii) The letter of allotment dated 15.7.2003 specifically refers to respondents' application dated 4.10.2002 for allotment of land and the Board resolution dated 17.6.2003. This clearly indicates that the appellants have accepted the offer and there is a concluded contract.

iii) The respondents were required to pay the sum of Rs. 250 Lakhs within 180 days. If there was any delay, appellants were entitled for interest at the rate of 15.5% as per (iii) of allotment letter. The respondents have deposited the entire sale consideration before the Trial Court.

iv) It was observed by the respondents that 28.38 acres of land was allotted to the KPTCL as on 1.8.2006 and KPTCL was put in possession of the land on 25.9.2006 (Ex.P28) and a portion of land allotted to the KPTCL was overlapping the land allotted to the respondents. Hence, the respondents wrote a letter as per Ex. P26 dated 12.1.2007 requesting appellants to identify the land allotted to KPTCL and to furnish a fresh site map to enable them to pay the land cost. However, the appellants instead of complying with the legitimate request, cancelled the allotment vide their letter Ex. P27 dated 5.3.2007 issued by the Chief Executive Officer. As the allotment of land was pursuant to a Board Resolution, cancellation could not have been ordered without a Board Resolution.

v) That in the cross-examination, DW.I has admitted that, the Board had resolved to allot 50 acres of land to the respondents and the said land was the part of package deal along with the allotment of land in Belavadi village.

vi) With regard to payment of Court Fees, he submitted that since the suit is one for declaration that the letter/order of cancellation is illegal, the consequential reliefs have been valued under Section 24-B read with Section 7 of the Karnataka Court Fees & Suit Valuation Act, 1958 and hence, the Court Fee paid is in accordance with law.

vii) That the deposition of PW. 1 (respondent No. 2) that the schedule property was acquired by the appellants at Rs. 1.25 lakhs per acre and allotment has been made at Rs. 5 lakhs per acre without any improvement in the land has remained uncontroverted. Similarly, the deposition that PW. 1 was invited for negotiation and he was persuaded to accept the offer as there were no bidders has also remained uncontroverted. In the light of the law laid down in the Judgment in the case of A.E.G. Carapiet v. A.Y. Derderian reported in AIR 1961 Calcutta 359 (Para - 10), statements in examination-in-chief if not challenged in the cross-examination must be accepted as true.

viii) With regard to cancellation of land under the signature of the Chief Executive Officer, he placed reliance on the ruling of this Court in the case of Abhaya Technologies Pvt. Ltd. v. The State of Karnataka reported in (2012 (5) KCCR 3873) : 2012 (3) Kar.L.J. 169 and submitted that such cancellation by the CEO is illegal.

ix) With regard to the limitation, he submitted that the cancellation of allotment was made vide letter dated 5.3.2007; respondents have challenged the same in W.P. No. 5019/2007 on 24.3.2007 and the same was dismissed on 22.4.2010 with liberty to file a Civil Suit. Thereafter, the respondents filed the instant suit on 15.6.2010. As per Article 59 of the Limitation Act, a suit for declaration has to be filed within three years from the date on which "right to sue" first accrues. In the instant case, right to sue first accrued on the date of cancellation i.e., 5.3.2007. Excluding the time spent in prosecuting the writ petition, the suit is filed within 2 months and 4 days and the same is in time. To support this contention, reliance was placed on the Judgment of the Supreme Court in the

case of Shakti Tubes Limited through Director v. State of Bihar and others reported in 2009 (1) SCC 786 [paras 15 - 24],

x) That Regulation 10(c) of KIADB Regulations, 1969 requires that the Executive Member should notify the applicant to execute the agreement on such date and time as may be fixed by the Executive Member. However, no such communication was sent to the respondents. He placed reliance on Judgment in the case of Chandra Kishore Jha v. Mahavir Prasad and others reported in 1999 (8) SCC 266. Adverting to paragraph No. 17, he submitted that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner".

12. Reliance was also placed on the following Judgments:-

(1) 1888 (38) Chancery Division 334 (Head Note) Hatten v. Russell:

Adverting to the above ruling, it was urged that if the contract fixes a day for completion and provides that if purchase is not completed on that day, purchaser shall be entitled for interest and time is not the essence of Contract.

(2) AIR 2013 SC 1078 (M/s. Gian Chand and Brothers and Another v. Rattan Lal @ Rattan Singh:

Adverting to the Head note, it was argued that it shall not be sufficient for a defendant to deny generally the grounds alleged by plaintiffs but he must be specific with each allegation of fact and it was contended that the appellant has not denied all averments specifically and therefore, the challenge to the Judgment and decree is untenable.

(3) AIR 1968 SC 1028 (Kollipara Sriramulu (dead) by his legal representative v. T. Aswatha Narayana (dead) by his legal representative and others:

Referring to paragraph No. 3, it was contended that if the parties referred to preparation for an agreement by which the terms agreed upon are to be put in a more formal shape, it does not prevent the existence of a binding contract.

(4) AIR 1996 Delhi 92 (M/s. Progressive Construction Limited v. Bharat Hydro Power Corporation Limited)

Referring to this Judgment, it was contended that despite non-signing of the formal contract, a concluded contract comes into existence.

13. With the above submissions, the learned Senior Counsel contended that the trial Court on appreciation of entire materials on record has rightly decreed the suit. The appeal is devoid of merit and liable to be dismissed. Accordingly, he prayed for dismissing the appeal.

14. Incontrovertible facts of this case, based on the pleadings, trial Court records and oral & written submissions of the learned Counsel are as follows:-

i) Appellant is a State owned statutory Board established for the purpose of

acquiring land for industries and purposes connected thereto. An advertisement was issued in a newspaper on 4.3.2002 for allotment of land by the appellants. Respondents submitted an application for allotment of 50 acres of land on the Pune - Bengaluru Road. Allotment was made as per allotment letter Ex.P21, dated 15.7.2003.

ii) The salient features of the allotment were:

(a) as per clause 1 thereof, the allotment was on "lease-cum-sale" basis for a period of six years or till formation of housing layout, whichever was earlier;

(b) as per clause 2 thereof, allottee was required to remit Rs. 250 Lakhs within 180 days from the date of allotment letter, which expired on 11.1.2004; and

(c) as per clause 7 thereof, extension of time for payment of land cost could be considered by the appellant for a maximum period up to 6 months beyond the stipulated time of 180 days subject to payment of interest at 15.5% p.a.

iii) For nearly two years and to be precise till 30.6.2005, there was a stoic silence on the part of the respondents. For the first time on 30.6.2005, the letter - Ex.P25 was addressed by the respondents stating that adjacent to the land allotted to them, it was proposed to lay HT Cables and it was not permissible to put up any construction beneath HT Cables. It was further stated that respondents had no objection for laying the HT Cables as it was in furtherance of a Central Government Project. But, due to laying HT Cables, land allotted to them had been reduced to 20 acres. To purchase and develop the land, they had approached Banks who had asked for a layout plan.

iv) After writing the first letter on 30.6.2005, respondents again remained silent till 12.1.2007 and addressed another letter reiterating their request for a re-surveyed map and allotment of alternative land on the Pune-Bengaluru road equivalent to the area of land used for laying HT cable.

v) The Writ Petition No. 5019/2007 was dismissed by Order dated 22.4.2010. The respondents had withdrawn the writ appeal filed thereon.

15. Issues in a suit are the guideposts to a judge to focus on the real controversy. At the outset, the Trial Court hovered around the arbitrariness of the letter than the reason for its emanation. Later, it looked forward towards appellants to prove violation of conditions. In our view, the core issue is the circumstances, which lead to the origin of the communication dated 15.03.2007. Therefore, following points arise for our consideration:-

1. Whether the allotment of land was in force as on 05.03.2007 requiring cancellation. ?

2. Whether communication Ex.P27 dated 05.03.2007 can be construed as a letter of cancellation and if so, whether a Board resolution was warranted?

3. Whether any enforceable contract was in force as on the date of issue of

Ex.P27 dated 05.03.2007?

4. Whether the instant suit to declare Ex.P27 as "non-est in law" is maintainable?

5. Whether in the absence of a suit for specific performance of a concluded contract, a consequential relief in a suit for injunction in the form of a direction to work out the actual area and to receive the cost of land is maintainable?

16. Re point No. 1: Whether the allotment of land was in force as on 05.03.2007 requiring cancellation?

i) Admittedly, land in question was allotted as per Ex.P21, on 15.7.2003. In terms of clause 2 thereof, the allottee was required to remit Rs. 250 Lakhs within 180 days from the date of allotment letter, i.e., on or before 11.1.2004. Respondents did not remit the land cost within the stipulated time.

ii) Extension of time for payment of land cost was permissible for a maximum period up to 6 months beyond the stipulated time of 180 days subject to payment of interest at 15.5% p.a. Allottees-respondents did not contact the appellants nor seek any extension of time for nearly two years. There was a stoic silence on the part of the respondents. For the first time on 30.6.2005, as per Ex.P25 respondents made a grievance with regard to HT Cable and sought adjacent land in addition to land originally offered. Thereafter, Respondents again remained silent for over 18 months and wrote another letter on 12.1.2007 reiterating their request for a re-surveyed map and allotment of alternative land on Pune - Bengaluru road. Thus, the first attempt to contact was after a lapse of nearly 2 years after allotment and the second one after a lapse of 3% years. Consequently, the allotment made pursuant to Ex.P21 dated 15.7.2003 had automatically stood cancelled with the expiry of 180 days i.e., on 11.01.2004. Therefore, we hold that the allotment of land was not in force as on 05.03.2007.

17. Re: Point No: 2: Whether communication dated 05.03.2007 can be construed as a letter of cancellation and if so, whether a Board resolution was warranted?

i) While answering the first point for consideration, we have held that the allotment of land was not in force as on 05.03.2007. The respondents attempted to give life to an extinguished offer after a lapse of two years in the guise of making a request for a revised map. They followed it up with another communication with a silence of another 18 months. Therefore, as rightly submitted by their learned Counsel, appellants felt it appropriate to convey to the respondents that the allotment had extinguished due to their failure to remit the land cost within the stipulated time.

ii) Hence, the communication Ex.P27 dated 05.03.2007 cannot be termed as a cancellation letter at all because nothing had remained to be cancelled as on that date. Allotment had already stood extinguished simultaneously with the expiry of 180 days due to respondents' failure to remit the land cost. Even if it is construed that the respondents were eligible for an extension of time, in terms of clause 7 of allotment letter, the maximum period of such extension could not

have exceeded 6 months. Two block periods of 180 days, the first without interest and the second with interest of 15.5% would also lapse on 9.7.2004. Thus, the last date to pay the land cost of Rs. 250 Lakhs with interest also could not have been stretched beyond 9.7.2004. The respondents had visibly withdrawn from the scene for about two years till they initiated a communication with a request for revised map. Careful perusal of evidence on record, particularly Exs.P-22, P 25 and P-26 in a sequential order, leads to an irresistible inference that the allotment of land had stood automatically extinguished on 11.01.2004 due to non remittance of land cost by the respondents.

iii) Consequently, the vigour of test of validity of communication Ex.P27 dated 5.3.2007 for want of Board Resolution fades away. We say so because with the expiry of time limit for payment of land cost, the allotment had ceased to be in existence. Automatic cancellation had attained finality and file remained in cold storage till the respondents provoked appellants with Ex.P25 on 30.6.2005 followed by the reminder, Ex.P26. The said communications apparently prompted the appellants to write the letter Ex.P27 on 5.3.2007. Contents of Ex.P27 convey a clear and unambiguous message that failure to remit land cost before with the stipulated time had resulted in cancellation of allotment. The said letter precisely reads thus:

"Karnataka Industrial Areas Development Board

(A Government of Karnataka Undertaking)

14/3, 2nd Floor, R.P. Building, Nrupathunga Road, Bangalore-560001

Ph:2215383, 2215679, 2242006, 2215069, Fax: 080-22177702

Website: <http://kiadb.kar.nic.in>

DT: 5.3.2007

No. IADB/14573/5127/06-07

M/s. Navodaya Industrial and Housing Development,

14th Cross Road,

Navodaya Nagar,

Dharwad

Sir,

Sub: Allotment of 50 acres of land in Mummigatti and Narendra village of Dharwad Taluk in favour of M/s. Navodaya Industrial and Housing development.

Ref: 1) This office letter No.

? IADB/14573/4383/03-04 dt 15.7.2003

? IADB/14573/6741/03-04 dt 18.9.2003

2) your letter dated: 2.8.2003

This has reference to the letters cited above, You were allotted 50.00 acres of land in Mummigatti and Narendra village of Dharwad Taluk next to the lands earmarked for Kayakanagar vide this office letter dated 15.7.2003. As per Clause - 3 (iii) of the allotment letter, you were required to pay Rs. 25.00 Lakhs towards the balance land cost on or before 14.1.2004. You have failed to remit the amount. Therefore, the offer of allotment made to you stood cancelled, on expiry of six months from 15.7.2003, i.e. 15.1.2004, EMI of Rs. 10,000/- paid by you vide receipt No. 82081 dated 22.11.2002 stands forfeited.

Yours faithfully

Sd/-(I). N. Nayak)

Chief Executive Officer and Executive Member"

iv) There is a classic difference between a statutory authority keeping a track of events and conveying suo-motu to a defaulting allottee that the offer had expired and a benign reply to an untenable demand put forth by an allottee stating that the offer had stood automatically cancelled due to the default on the part of allottee himself. The instant case falls within the latter category wherein the mischievous communications from the respondents-allottee had compelled the appellants to write the letter Ex.P27 which is nothing but a "reply simpliciter" to an unreasonable and untenable demand put forth by respondents. It only conveyed the status of respondents as stood on the date of said letter.

v) Therefore, we are of the considered view that communication as per Ex.P27 cannot be construed as a "letter of cancellation". It is only a communication informing the respondents that the offer of allotment had stood cancelled as they had failed to remit the said amount within the stipulated period. Cancellation of allotment was automatic due to default on the part of the allottee.

vi) Resultantly, we also hold that a Board resolution was unwarranted.

18. Re: Point No. 3: Whether any enforceable contract was in force on the date of issue of Ex.P27 dated 05.03.2007?

i) It is important to note that the appellants are a State Owned Statutory Board established for the purpose of securing establishment of Industrial Areas and to promote establishment and orderly development of Industries. In furtherance of those objects, land was offered for allotment to entrepreneurs. Allotment of every piece of industrial land is regulated by the KIADB Regulations, 1969. Allotment of land being a policy decision was rightly made in pursuance of a Board Resolution. The terms of allotment was communicated as per Ex.P22 dated 15.7.2003. But, the respondents abandoned the allotment and committed default in remitting the land cost within the stipulated period. Nearly after a lapse of two years respondents wrote a letter as per Ex.P25. After a further lapse of 18 months, they wrote Ex.P26. By both these letters, respondents have done

nothing more than asking for a fresh survey map delineating the land allotted to them including alternative land to compensate the area of land utilized for laying HT Cables. Except writing these two letters namely, Exs.P-25 & P-26, the respondents have remained completely oblivious and indifferent to the allotment of land.

ii) If the letter of allotment is to be construed as an offer, then logically, the acceptance of offer can be nothing short of compliance of terms of allotment and particularly remittance of Rs. 250 Lakhs within the stipulated time. Clinical analysis facts noted above clearly indicates that the respondents had abandoned the allotment and the offer had stood extinguished by efflux of time. The submission that the respondents have deposited the entire land cost before the Trial Court does not lead their case any further because the deposit is said to have been made in execution proceedings.

iii) Therefore, we hold that, there was no enforceable contract between the parties as on 05.03.2007.

19. Re: Point No. 4: Whether the instant suit to declare Ex.P27 as "non-est in law" is maintainable?

While dealing with the first two points, we have held that Ex.P27 cannot be construed as a letter of cancellation and there was no concluded contract between the parties. Therefore, the instant suit for declaration seeking a discretionary relief is not maintainable.

20. Re.point No. 5: Whether in the absence of a suit for specific performance of a concluded contract, a consequential relief in a suit for injunction in the form of a direction to work out the actual area and to receive the cost of land is maintainable?

i) Learned Counsel for the appellants is right in his submission that the prayer sought by the respondents-plaintiffs is a camouflaged one. The respondents sought for a consequential relief to direct the appellants to work out actual area, fix price and to receive the same within a reasonable period. Firstly, there was no concluded contract. Secondly, the respondents had designedly and cleverly sought the relief which could be granted only in a suit for specific performance. Thirdly, Court fee was intelligently avoided by designating the main relief as a consequential one.

ii) Therefore, in the facts and circumstances of this case, we hold that in the absence of a prayer for specific performance of a concluded contract, a consequential relief in the form of a direction to work out the actual area was inconceivable and such a suit was not maintainable.

21. Further, the learned Counsel for the appellants is also right in his submission that the respondents have not come to Court with clean hands, It is the specific case of the respondents that the land in question was thrust upon them. In the plaint they have averred as follows:

"9. That the plaintiff No. 2 was an unwilling horse, which was not only drawn to the water, but was compelled to drink the water too, as a result of which the transaction in the form of allotment is a completed contract in the eyes of law. All this in the background of the fact that there were no bidders notwithstanding the fact that the schedule property was put up for auction twice."

(emphasis is by us)

22. Though the plaintiffs have presented their case employing the idiom of an unwilling horse taken to water and made to drink, on a careful perusal of the facts of the case and evidence on record, we are constrained to point out that the right idiom befitting the conduct of respondents is an "attempt to flog a dead horse" at intervals by indulging in un-wanted correspondence after a lapse of two years and again after further lapse of 36 months. It is no more *res integra* that plaintiffs seeking equitable relief should come to Court with clean hands. Plaintiffs-Respondents have unhesitatingly blown hot and cold. They have taken a conscious position in the plaint that the appellants had forced upon them to purchase the land in question. If that is so, there was no necessity for them to file the instant suit. On the aspect of approbation and reprobation, we may usefully refer to the Judgment of the Hon"ble Supreme Court in the case of *Karam Kapahi and Others v. Lal Chand Public Charitable Trust & Another* reported in (2010) 4 SCC 753, wherein it is held as follows:

"49. The contentions of the Club cannot be accepted on another legal ground also. It is clear that the Club has taken inconsistent pleas. On the one hand the Club alleged that the Trust is not its lessor and has no right to receive the lease rent and it questions the title of the Trust. On the other hand the Club is seeking the equitable remedy against forfeiture under Section 114 of the Transfer of Property Act where it has proceeded on the basis that the Trust is its lessor and the Club is the lessee and as a lessee it has to pay the lease rent to the Trust. Therefore, the Club seeks to approbate and reprobate.

50. The phrase "approbate and reprobate" is borrowed from Scots law where it is used to express the common law principles of election, namely, that no party can accept and reject the same instrument.

51. In the instant case while filing its suit and questioning the title of the Trust, the Club seeks to reject the lease deed. At the same time while seeking the equitable remedy under Section 114 of the Transfer of Property Act, the Club is relying on the same instrument of lease. Legally this is not permissible. (See the observation of Scrutton, L.J. in *Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd.* [(1921) 2 KB 608 : 1921 All ER Rep 215 (CA)], which has been approved by a Constitution Bench of this Court in *Bhau Ram v. Baij Nath Singh* [AIR 1961 SC 1327])"

Adverting to the facts of that case, the Hon"ble Supreme Court has further held as follows:

"57. Therefore, the common law doctrine of election is a part of our jurisprudence and squarely applies in this case inasmuch as the Club has advanced inconsistent pleas as noted herein above."

23. Applying the ratio of above Judgment of the Hon''ble Apex Court, we are of the view that the Respondents-Plaintiffs shall be dis entitled for a discretionary relief of declaration.

24. Now, advertng to the arguments addressed with regard to the aspect of arbitrariness, we are afraid, whether at all they remain for consideration. We have held that the allotment stood extinguished by efflux of time and default on the part of the allottee. Hence, a prior notice was unwarranted. We say so because, it was a different matter, if the appellants had suo motu issued Ex.P27. Possibly, such an act on the part of the appellants may have given leverage to the respondents to plead and urge the ground of arbitrariness and cry foul by leaning upon the doctrine of audi alteram partem. In view of our answers to the points for consideration framed by us, we are certain that a prior notice was uncalled for.

25. In the premise, we are of clear opinion that the trial Court fell in an error and misguided itself by treading into a wrong direction with the issues in its hand. Hence, the conclusions arrived at by the trial Court are perverse and deserve to be set aside. We also hold that the rulings cited by the learned Senior Counsel for the respondents are not applicable to the facts of this case in view of the findings recorded by us. On the other hand, we may usefully refer to a recent and more relevant Judgment of the Hon''ble Supreme Court in the case of Industrial Infrastructural Corpn. Ltd. v. Shivani Engg. Industries, reported in (2015) 7 SCC 241. In the said case, the allottee of an industrial land had delayed in implementing the project. The authority had imposed a penalty of 3% the same was challenged by the allottee. Coming down heavily upon the conduct of the authorities, the Hon''ble Supreme Court not only dismissed the appeal but also directed an enquiry by the police authorities. The Hon''ble Supreme Court has precisely held thus:

"23. We have very carefully examined the rival legal contentions urged on behalf of the parties with a view to find out as to whether the impugned Judgments [2013 SCC Online AP 426, decided on 20-8-2013 (AP)], [WP No. 11978 of 2012, decided on 26-4-2013 (AP)] and order warrant interference of this Court.

24. We have to consider the relevant clauses of the provisional allotment letter, which are extracted as above, particularly, the original allotment of plot was made in favour of the respondent on 20-6-2006 subject to payment of Rs. 72,00,000 within 90 days from the date of receipt of the allotment letter. Further, Clause 7 of the said provisional allotment letter provides that if the above said plot cost is not made within 90 days of receipt of the allotment letter the allotment of plot shall stand cancelled and the EMD paid shall remain forfeited by the Corporation. It is an undisputed fact that on 22-9-2006 the allotted plot in

favour of the respondent was found to be more than the area mentioned in the provisional allotment letter and the area was revised as 14,046 sq. m. as also the cost payable was revised at Rs. 84,27,600 and despite the Corporation extending time for making payment by the respondent till 30-11-2006, the same was not paid. Therefore, the provisional allotment was cancelled by the Corporation for not making the payment within stipulated time.

25. The representation was given on 3-2-2007 by the respondent for restoration of allotment of the plot and the same was accepted by the Corporation by informing the respondent that the restoration of the provisional allotment of plot will be done subject to the payment of total cost of plot with interest on belated payment and penalty of 10% of the land cost at the prevailing rate. The same is the concession given by the Corporation to the respondent as it could not have restored the provisional allotment of the plot as the said restoration of allotment was totally impermissible in law. The concession was made in favour of the respondent by executing the agreement of sale of the plot on 13-3-2007 and the possession of the plot was also given on the same day and within two years from the date of possession of the said plot the project should have been implemented by the respondent. Despite the change of manufacturing activity from mosquito coil to heavy engineering project and bus-body manufacturing unit, the project was not implemented by the respondent within the said period. Therefore, the terms and conditions of the provisional allotment letter and the agreement of sale executed on 13-3-2007 are violated by it, therefore, the Corporation was entitled to cancel the allotment of plot and resume the land from the respondent; instead of doing so, the Corporation has again made concession by calling upon the respondent to pay the condonation fee at 3% which is totally impermissible in law.

26. The same was challenged by the respondent taking untenable stand that it is not liable to pay the same in view of the fact that the plot cost with interest on delayed plot cost and 10% penalty has already been paid to the Corporation and the Corporation is not empowered to levy 3% of the land cost as condonation fee for delay in implementation of the revised project. If that condition was not acceptable to the respondent, the only course left open for the Corporation was to cancel the allotment and resume the land and allot the same in favour of an eligible applicant in accordance with the rules prevailing in law in this regard by giving advertisement in the newspapers and inviting applications for allotment of the project in public auction, as the property is required to be sold in the above manner to get the market value of the industrial plot in the absence of allotment rules is the law laid down by this Court in a catena of cases. Instead of doing so, the Corporation has proceeded to issue the demand notice of 3% of the plot cost towards the condonation fee for delay in implementation of the project. The same was not acceptable to the respondent and therefore it has approached the High Court seeking to quash the same contending that the Corporation has no right to demand such fee and therefore, it is not liable to pay condonation fee to the Corporation.

27. The High Court should not have passed the impugned Judgment and order quashing the demand notice and giving direction to the Corporation to register the sale deed in respect of the plot in favour of the respondent; undisputedly the respondent has not implemented the revised project within 2 years from the date of agreement though it was put in possession of the plot and granting permission to change the manufacturing activity and extended the period. Hence, the impugned Judgment and order of the Single Judge which was affirmed by the Division Bench of the High Court is liable to be set aside. Liberty is also given to the Corporation to take necessary action to invoke the relevant clauses of agreement of sale to cancel the allotment of the allotted plot and resume the same by issuing notice to the respondent. It is also brought to our notice by the learned Counsel Mr. Annam D.N. Rao on behalf of the respondent that the Corporation has extended time in favour of nearly more than 150 similarly placed plot allottees for not implementing the projects within 2 years and extending period by collecting interest and 10% penalty amount on the allotment cost on provisional allotment of land but no condonation of delay fee for non-implementation of the project was levied and collected from them and therefore, the action of the Corporation is arbitrary and discriminatory.

28. In view of the above submissions, we are of the view that the Corporation is not diligent in disposing of the industrial plots acquired by it in accordance with law in favour of the eligible applicants keeping in view after acquiring the land of the owners for the purpose of the development of industrial estate and allot the same in favour of eligible persons to start industries on the allotted plots to generate employment to provide employment to the unemployed youth in the State.

29. Having regard to the facts and circumstances of the case, the Corporation and its officers are very generous in extending time in favour of the allottees for implementing the projects on the allotted plots and not invoking its right for cancellation and resuming the plot for non-compliance with the terms and conditions of the allotment letter and agreement and re-allot the same in public auction in favour of eligible persons. Therefore, it is a fit case for this Court to give direction to CoD of Telangana State to conduct a detailed investigation in the matter against all the officers who are involved in the cases of allotment of plots and extending the period in favour of the allottees for implementation of the projects for which purpose the plots are allotted and not cancelling the allotments made by the Corporation and resumed the plots and dispose of the same in accordance with law by taking steps. CoD, Police must investigate the cases in the Corporation and take suitable action in this regard against the officers involved in such cases."

(emphasis is by us)

26. The case on hand is still worse. The respondents herein had completely abandoned the allotment. As per their convenience and at leisure, respondents wrote two letters and compelled the appellants to reply stating that the allotment

had stood cancelled. Misemploying the said communication, respondents dragged the appellants into litigation. Therefore, we hold in no uncertain terms that the impugned Judgment and decree is unsustainable in law.

27. Before this Court, respondents have filed I.A. 1/2014 under Order 41, Rule 27 CPC seeking to produce certain documents. It is contended in the affidavit accompanying the said I.A. that documents annexed thereto would throw light on the real value of the land as on the date of allotment. They have also filed I.A. 1/2015. In the affidavit filed in support of the said I.A., it is contended that respondents have deposited Rs. 250 lakhs in the execution proceedings in E.P. No. 260/2013. However, it is further stated that respondents were ready to pay Rs. 25 Lakhs per acre to avoid unnecessary complications and to put an end to litigation.

28. The appellants have also filed I.A. 2/2016 under Order 41, Rule 27 CPC seeking to produce copies of certain documents. It is contended in the affidavit accompanying the said I.A. there was no privity of contract between the parties and that 2nd respondent has obtained large number of land allotments. Therefore, the respondents have sought to produce copies of documents to substantiate their contentions. This I.A. is opposed by the respondents by filing objections.

29. It is well settled that additional evidence may be accepted only in exceptional circumstances. We may usefully refer to an authoritative pronouncement of the Hon"ble Supreme Court on this aspect in the case of Union of India v. Ibrahim Uddin and another reported in (2012) 8 SCC 148, wherein, it is held as follows:

"36. The general principle is that the appellate Court should not travel outside the record of the lower Court and cannot take any evidence in appeal. However, as an exception, Order 41, Rule 27 CPC enables the appellate Court to take additional evidence in exceptional circumstances. The appellate Court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate Court can pronounce a satisfactory Judgment. The matter is entirely within the discretion of the Court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself."

(emphasis is by us)

30. We are of the view that a satisfactory Judgment can be pronounced on the basis of materials already on record. Hence, we decline to allow the applications filed by both parties and they are rejected.

31. This Court can take judicial note of the phenomenal increase in the land cost. More than a decade has passed by from the date of allotment. The respondents by writing letters after a lapse of two years compelled the appellants to convey

the effect of non-remittance of land cost within the stipulated period. They made an unsuccessful attempt by challenging the communication in a writ petition and thereafter in a writ appeal. Even after dismissal of writ petition and withdrawal of writ appeal, respondents have crusaded further with the instant suit. The suit having been decreed, the appellants, a State owned body has been compelled to approach this Court in this appeal. Though there was intrinsic defect of non-compliance of conditions of allotment, the respondents have attempted a speculative litigation with an undercurrent of hidden prayers. In the bargain, they have dragged a party who has committed no breach into a long drawn litigation from 2007. If clever ploys are adopted as in this case and it results in allotment of land, it shall be travesty of justice and runs counter to the purpose of establishment of a State run Industrial Development Board. In addition, it would amount to placing a premium on a speculative litigant. Further, enormous judicial time has been spent in conducting the instant suit and this appeal to rectify the Judgment of the Trial Court.

32. In the result, this appeal deserves to be allowed with costs. Hence, the following:-

ORDER

- (i) Appeal is allowed;
- (ii) The Judgment and decree dated 12.12.2012, in O.S. No. 88/2010, on the file of Principal Senior Civil Judge and CJM, Dharwad, is set aside.
- (iii) O.S. No. 88/2010 stands dismissed.
- (iv) Respondents are directed to pay exemplary cost of Rs. 1,00,000/- to the appellants