
(2019) 03 P&H CK 0208

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1025, 884 Of 2009 (O&M)

Market Committee, Pundri And Another

APPELLANT

Vs

Hari Chand And Another

RESPONDENT

Date of Decision : 20-03-2019

Acts Referred:

Citation : (2019) 03 P&H CK 0208

Hon'ble Judges : Anil Kshetarpal, J

Bench : Single Bench

Advocate : Jagdish Manchanda

Final Decision : Allowed

Judgement

By this judgment, Regular Second Appeal No.1025 and 884 of 2009 shall stand disposed of.

In the considered opinion of this court, following substantial questions of law arise for consideration:-

(i) Whether a suit for declaration with consequential relief of mandatory injunction is maintainable for directing the respondents to refund the amount of interest paid on installments for purchase of plot for shop?

(ii) Whether payment of interest on installments can be directed to be refunded on the ground that in the New Vegetable Market sought to be set up, amenities have not been provided?

Plaintiffs in each of the case has been allotted a plot in New Vegetable Market, Pundri. The terms of allotment are similar, therefore, the relevant terms of allotment from Regular Second Appeal No.884 of 2009 are extracted as under:-

4. The sum of Rs.205000/- paid by you as 25% of the allotment price/bid cost of the plot has been adjusted in your plot account. You are, requested to remit a sum of Rs.615,000/- on account of balance 75% of the price of plot either

without interest within 30 days from the date of issue of this letter or in six half yearly instalments with 15% interest or at such rate of interest as may be specified by the Board from time to time, occurring from the date of issue of this letter of allotment as mentioned hereunder:-

Sr. No. of instalment

Due date of instalment

Amount of instalment

Interest @ 15% P.A.

Total amount of instalment

1

01/12/01

1,02,500-00

46123-00

1,48,623-00

2

01/06/02

1,02,500-00

38436-00

1,40,936-00

3

01/12/02

1,02,500-00

30749-00

1,33,249-00

4

01/06/03

1,02,500-00

23062-00

1,25,562-00

5

01/12/03

1,02,500-00

15375-00

1,17,875-00

6

01/06/04

1,02,500-00

7687-00

1,10,187-00

5. In case of failure to deposit the instalment in time penal interest @4% P.A. To be compounded half yearly shall be charged in addition to the normal interest. In case of default of two successive instalments, the plot and the building, if constructed, shall be resumed by the market Committee after giving an opportunity of being heard to you.

6. All payment shall be made in cash or by way of Bank Draft payable to the Market committee, Pundri.

7. The possession of the plot shall be offered to you within 30 days from the date of issue of this allotment letter.

Plaintiff filed a suit claiming that he has deposited 2 installments apart from 25% initially deposited and since amenities have not been provided, therefore, the Haryana State Agricultural Marketing Board (hereinafter referred to as 'the Board') is not entitled to charge interest on the amount of the installments in which price of the plot is to be paid. The plaintiff sought relief of mandatory injunction apart from declaration directing the defendants to refund the interest charged.

On appreciation of evidence, both the courts have decreed the suit and held on the basis of a report of a Local Commissioner that complete amenities have not been provided, therefore, the suit is decreed.

Both the courts have relied upon a judgment passed by the court in the case of Om Parkash and another vs. Haryana State Agricultural Marketing Board and another, 2004(1) R.C.R.(Civil), P&H, 573.

At the time of admission, following substantial questions of law were framed:-

i) Whether both the courts below have erred in appreciating/evaluating the evidence placed by the appellant committee on record?

(ii) Whether the judgments passed by both the learned lower courts are contrary to the terms and conditions of allotment agreed upon by the parties i.e respondents plaintiffs and the appellants?

(iii) Whether the judgments of learned lower courts are liable to be set aside on the ground that the relief of refund granted to the respondents plaintiffs by the learned lower court and affirmed by the learned lower appellate court was not even prayed for by them in their pleadings?

(iv) Whether any relief could have been granted to the respondents plaintiffs ignoring the fact that the interest is payable by them as per conditions of allotment, which have not been challenged by the respondents-plaintiffs?

Although, counsel for the Market Committee-appellant has not appeared, however, with the able assistance of learned counsel for the respondent, this court has gone through the judgments passed by the courts below and the record.

It is apparent from the reading of the allotment letter, there were two modes for payment of remaining 75% of the price. One was to pay lump sum within 30 days, whereas second option was to pay the balance amount in six half yearly installments with 15% interest. The payment of interest @ 15% was nowhere linked with either amenities or delivery of possession.

In this regard, it may be noticed that initially various judgments came to be passed while holding that amenities are to be provided and if there is deficiency in the same, the interest and penal interest on the installments cannot be charged. However, with regard to allotments made by Chandigarh Administration, the issue was resolved by the Hon'ble Supreme Court, in the case of Municipal Corporation, Chandigarh vs. Shantikunj Investments(P) Limited, (2006) 4 SCC, 109. The Hon'ble Supreme Court held that payment of installments cannot be delayed on the ground that amenities have not been provided.

This matter was once again examined by the Hon'ble Supreme Court in the case of Union Territory, Chandigarh Administration and another vs. Amarjeet Singh and others, AIR 2009 SC, 1607. In the aforesaid case also, the Court was interpreting allotments made by the Chandigarh Administration or Municipal Corporation of the Chandigarh.

With respect to the appellant-Board, the matter was once again considered by the Hon'ble Supreme Court in the case of Haryana State Agricultural Marketing Board and another vs. Raj Pal, 2011(13) SCC 504. After relying upon various judgments passed with respect to Chandigarh Administration as also Haryana Urban Development Authority, the Court held that simple interest @ 15% shall be payable. Operative part of the judgment is extracted as under:-

17. In view of the principles laid down in Bahadurgarh Plot Holders' Association (supra), Shantikunj (supra) and Amarjeet Singh (supra), it is clear that the allottees cannot postpone the payment of instalments merely on the ground that some of the amenities were not ready. If they were not entitled for postponement of the instalments, it follows that they will be liable to pay the

normal interest on the delayed instalments up to date of payment. However, having regard to the fact that the Rules did not contemplate compound interest and penal interest and the Market Committee was yet to complete certain 11 infrastructural work like water, sewerage disposal, as held in Shantikunj (supra), the Market Committee will not be entitled to claim any compound interest or penal interest."

Learned counsel for the appellant has relied upon a Single Bench judgment of this Court in the case of Vinod Mittal and others vs. State of Haryana and others 2009(4) RCR(Civil) 528 wherein the judgment passed in the case of Amarjit Singh has also been noticed. The reliance placed by learned counsel for the respondent is wrong because in the allotment letter issued by the Haryana Urban Development Authority, Clause no.5 provided that interest shall accrue from the date of offer of possession. Still further, regulation 5 of the concerned regulation also provided for charge of interest from the date of delivery of possession. Hence, the aforesaid judgment would not have any application.

Learned counsel for the respondent has further relied upon an order passed by the Hon'ble Supreme Court in the case of Punjab Urban Planning & Development Authority vs. Shiv Bir Singh, 2015 (4) RCR (Civil) 240. In the aforesaid order, Hon'ble Supreme Court was examining the correctness of various orders passed by the National Consumer Disputes Redressal Commission. The terms of the allotment are not clear from the order. The Hon'ble Supreme Court dismissed the appeals by a short order upholding the orders of National Consumer Disputes Redressal Commission. Hence, the aforesaid order cannot be read in a manner as suggested by learned counsel for the respondent.

Accordingly, in view of the judgment passed by the Hon'ble Supreme Court in the case of Haryana State Agricultural Marketing Board (supra), the appeals filed by the Market Committee deserve to be allowed.

In view of the aforesaid discussion, both the questions framed are answered in favour of the appellant and it is held that neither the suit was maintainable as the suit could only be filed for recovery of the amount after paying proper court fee. It is further declared that the amount of interest charged by the authority is on account of deferred payment of the price of the plot and it is nowhere linked with the amenities to be provided. Providing of the amenities is not a pre-condition for payment of interest on the installments representing the price of the property.

As regards questions of law framed at the time of admission, it may be noted that counsel for the appellant has not appeared. Hence, this court proceeds to decide after reading the file. Question No.(i) does not arise as there is no error in appreciating and evaluating the evidence.

As regards question no.(ii), the judgments passed by the courts below are erroneous being contrary to the terms and conditions as noted above. Hence question no.(ii) is answered in favour of the appellant.

As regards question no.(iii), the plaintiffs have prayed that interest which has been deposited on the principal amount at the time of payment of installments should be refunded. Hence, prayer for refund has been made. Accordingly, question no.3 also does not arise.

As regards question no.(iv), the same is covered by the question framed by this court in the beginning and that also stands answered in favour of the appellant.

Accordingly, both the appeals are allowed. Judgments and decrees passed by the courts below are set aside. The suit filed by the plaintiff shall stand dismissed.