(2011) 08 P&H CK 0164

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4429 of 2009

Pawan Kumar and Others APPELLANT

Vs

Market Committee, New Grain and Vegetable Market RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Citation : (2011) 08 P&H CK 0164

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.—The present appeal has been filed by the legal heirs of Jagdish Chand and Rajender Parshad, Plaintiffs, who had participated in the auction of shops held on 17.7.1998 by the Respondent-Market Committee, Ballabgarh, District Faridabad. The shops were to be provided in Vegetable Market at Ballabgarh. In an open auction, the Plaintiffs had purchased shop/plot bearing No. 37 on 17.7.1998. The allotment letters were issued by the Defendant-Market Committee on 8.6.1999. As stipulated in the terms & conditions of the allotment letter, the Plaintiffs deposited 25% of the total cost on 17.7.1998 with the Market Committee. The balance 75% amount of the total bid money was to be paid either in lump-sum, without any interest within a period of 30 days or in six equal half yearly instalments. As pleaded in the suit, interest had to be paid at the rate of 12%. The Plaintiffs intended not to make the balance payment of 75% taking a plea that the Defendant-Market Committee had not kept its promise of providing modern facilities and basic amenities to them at New Vegetable Market, Ballabgarh or in alternative to refund the amount of Rs. 3,54,500 along with the interest at the rate of 25%. The Plaintiffs have referred to the pamphlets, according to which a promise has been made that modern facilities and basic amenities were to be given to them in the New Vegetable Market at Ballabgarh.

2. Upon notice, the Defendant had caused appearance and filed a written statement, wherein a plea has been taken that inspite of making various

requests, the Plaintiffs had failed to pay remaining 75% of the total bid money. A further plea was raised by the Defendants that all the amenities and facilities, as promised, have been provided.

3. The Plaintiffs have placed reliance upon M/s. Shanti Kunj Investment (Pvt.) Ltd. Vs. U.T. Administration, Chandigarh, and Haryana Urban Development Authority v. Dharam Pal Gupta 2006 (1) RCR 671 (P&H) to contend that until and unless the amenities are provided, the authorities, who allotted the land, are not entitled to claim interest on the instalment of premium. Thus, the trial Court decided issues No. 1 and 2 in favour of the Plaintiffs and held that the demand notices dated 16.5.2003 and 2.8.2004 are illegal, null and void and the Plaintiffs are also entitled to decree of mandatory injunction directing the Respondents to provide all the facilities. The amount to be paid by the Plaintiffs would be accepted by the Defendants. Issues No. 3 and 4 were not pressed by the Defendant, therefore, the same have been decided in favour of the Plaintiffs. Issue No. 5 was also decided in favour of the Plaintiffs and against the Defendant by holding that the Plaintiffs have cause of action to file the suit. The trial Court issued a decree of declaration to the effect that impugned demand notices dated 16.5.2003 Ex.P4 and 2.8.2004 Ex.P7 are illegal, null and void and further a decree of mandatory injunction was passed in favour of the Plaintiffs directing the Defendant to accept the remaining 75% of the total bid money from the Plaintiffs after calculating the interest at the rate of 15% per annum for the period in which all six instalments were to be paid by the Plaintiffs.

4. Aggrieved against the judgment and decree, passed by the trial Court, Respondent-Market Committee filed an appeal. The lower Appellate Court, vide its judgment dated 18.3.2009, accepted the appeal and held that since the remedy of statutory appeal was not availed by the Plaintiffs, the suit was bad on that account. The lower Appellate Court held as under:

16. The Plaintiff did not pay any amount over and above the earnest money of 25%. Almost ten years have gone. The suit was instituted in 2004. The litigation has taken almost five years. The Plaintiffs had expressed their willingness to deposit 75% with 15% interest but that amount was not deposited. Equities are not in favour of the Plaintiff. They could have made their own calculations and could have deposited the amount. They were aware of the litigation pending in the Hon''ble Apex Court. The Market Committee had not hidden any fact. There was no condition in the allotment letter that any basic amenity was to be provided. The Plaintiff had no cause of action. The findings recorded by the lower Court have to be set aside as it is against record and the rules. The Plaintiff had failed to deposit the amount in time. They did not give prior notice, which was mandatory. The Plaintiff was not entitled to any relief. The judgment and decree passed by the lower Court is set aside. The appeal is accepted. The suit is dismissed with costs. Decree sheet be prepared and file be consigned.

5. Aggrieved against the judgment and decree, passed by the lower Appellate Court, the present appeal has been filed by the legal heirs of the Plaintiffs.

6. Mr. Ramesh Hooda, Advocate, appearing for the Respondent-Market Committee, has relied upon U.T. Chandigarh Administration and Another Vs. Amarjeet Singh and Others, , wherein it was held as under:

42. Interpreting the said provisions, this Court held that while interest could not be demanded till possession was offered, it was not necessary that such offer should be of fully developed plots. This Court held:

... As the offer had stated that modern amenities noted above "will be provided", it cannot be held that till the amenities as mentioned have become fully functional, the offer is incomplete. It is for this reason that the fact that full development has not yet taken place, even if that be the position as contended by Shri Bhandare, cannot be a ground to hold that interest has not become payable. It is true that the applicants were given to understand that the amenities noted above would become available (and within reasonable time), the fact that the same did not become available to the desired extent could not be a ground not to accept delivery of possession. From the order of the High Court which we have quoted above, we find that the offer of possession of the undeveloped plot was not accepted by the counsel of the Appellant. That order being of 17-10-1980, we are of the view that interest did become payable from that date. The fact that the plot has not yet been fully developed, as is the case of the Appellant, has, therefore, no significance insofar as charging of interest is concerned. We are not in a position to accept the submission of Shri Bhandare that equity would not demand charging of interest, even though the plots are yet to be fully developed. When parties enter into contract, they are to abide by the terms and conditions of the same, unless the same is inequitable. In the present case, question of equity does not really arise inasmuch as the condition relating to interest is founded on a statutory rule, vires of which has not been challenged...

If interest could not be denied to the state government even where there was an assurance of all "modern amenities", it is needless to say that the claim of the government will be much more stronger, when there is no assurance at all, as in this case...

7. Learned Counsel for the Respondent has further submitted that if, in consonance with the allotment letter and rules, the entire payment is made within a period of three months from the date of issuance of the notice by the Defendant/Respondent, no resumption order shall be passed.

8. Mr. Lokesh Sinhal, Advocate, appearing for the Appellants, has submitted that after receipt of the notice wherein the amount to be paid by the Appellants/ Plaintiffs is reflected, the entire payment shall be made within a period of three months. However, he submits that liberty be granted to the Appellants to assail the notice in case the same is not in consonance with the allotment letter and rules.

9. In view of the broad consensus, arrived at between the parties, the present

appeal is disposed of. The Respondent/Defendant shall issue a notice calling upon the Appellants/Plaintiffs to make payment of the entire amount in consonance with the allotment letter and rules and the payment shall be made by the Appellants within a period of three months from the date of receipt of the notice.

