
(2010) 10 P&H CK 0303

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4579 of 2009

Pioneer Profin Limited

APPELLANT

Vs

Residency Greens Residents Welfare Association

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Citation : (2011) 162 PLR 703

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This is Plaintiff's second appeal challenging the judgment and decrees of the Courts below whereby its suit for permanent injunction restraining the Defendant-Respondent and its officials from interfering in the construction of boundary wall/railing and other activities being carried out by the Plaintiff-Appellant as per the revised sanctioned site plan/lay out plan and from damaging the material and property of the Plaintiff-Appellant, was dismissed.

2. The present suit was filed by the Appellant on the averment that the Appellant is a well known colonizer and had initiated several projects like Residency Greens, Vista Villas etc. being projects within Green Wood City, Sector 46, Gurgaon. The lay out plan regarding the project Vista Villas was sanctioned vide letter dated 2.2.1999 and 26.10.2004 in the name of sister concern/partner of the Appellant. The Appellant is still carrying on the construction in the said residential colonies as per the site plan duly sanctioned by the competent Authorities and is still in the process of constructing boundary wall, sanitation, railing etc. which are required for the benefit of the residents and security of the said colonies. It was further averred that as per the policy matters of State of Haryana, the site plan/lay out plan of the said colonies floated by the Appellant are timely revised and due changes are made as per the existing requirements of law. The Appellant had initially got sanctioned the site plan regarding the said

project, namely, Vista Villas but State of Haryana through the Director Town and Country Planning (hereinafter called "DTCP") has sanctioned/revised the said site plan to some extent as per rules and Regulations and as per requirement and had finally sanctioned the site plan. The Appellants started the construction of boundary wall completely in accordance of the plan sanctioned by DTCP and also because the said construction of the said boundary wall and railing was essential for the security of the said colony i.e. Vista Villas and was necessary far fulfilling the requirements laid down by the DTCP as per the sanctioned plan. The Respondent who is representative of the residents of the colony adjoining the Vista Villas has no respect for law and when the construction of the boundary wall was in progress the officials of the Defendant along with other members of the Residency Greens and Green Wood City, Gurgaon came to the site and started obstructing the construction work and threatened the workers of the Plaintiff. The request of the Plaintiff to the Defendant paid no heed. The Plaintiff was constrained to move a complaint at Police Station Sadar, Gurgaon but the police did not take any step to stop the illegal activities of the Respondent. Left with no other option, the Plaintiff was compelled to file the present suit.

3. Upon notice, the Defendant filed written statement raising various preliminary objections. On merits, the Defendant admitted that the Plaintiff had developed the Residency Greens Colony. However, it was denied that the Plaintiff had got the lay out plan sanctioned vide letter dated 26.10.2004 in the name of its sister concern/ partner and if the Plaintiff had got sanctioned such lay out plan in collusion with the Government Authorities, it did not affect the rights of the Defendant and its members as no notice was ever served upon them regarding any change in the lay out plan. Moreover, the Plaintiff had no right to make any changes in the park in question which was provided to the members of the Defendant Association at the time of selling the properties to them. The Plaintiff had got no right to convert the area of Green Park in a residential/constructed area for their wrongful gain. The Plaintiff in collusion with Director, Town and Country Planning wanted to encroach upon the park of the Residency Green Colony without having right, title or interest in the same. Defendant was using the park in question for the last several years and now the Plaintiff under the garb of alleged sanctioned plan cannot convert any portion of the same into constructed area. The value of the properties of the members of the Defendant association will be diminished due to encroachment on the portion of part in question. The Plaintiff wanted to construct new built up units which were not earlier planned by the Plaintiff and wanted to mint illegal money by converting the area of green belt into residential houses and even the DTCP should not have been allowed the conversion of green belt into constructed area. The railing/sanctioned site plan already existed on the spot and the Plaintiff was not entitled to make boundary wall as per revised sanctioned plan by which the Plaintiff wanted to encroach upon the portion of the park in question. Both the colonies i.e. Residency Greens and Vista Villas are surrounded by pucca boundary wall from all sides. The members of the Defendant's Association never threatened

the workers of the Plaintiff. According to the Defendant, he had been writing letters to the Plaintiff. Even the illegal activities of the Plaintiff was highlighted in the newspaper and the Plaintiff under the garb of the present suit wanted to raise illegal construction. Thus, the suit of the Plaintiff was false, frivolous and baseless. The Plaintiff cannot be permitted to encroach upon the portion of the park in question which is part and parcel of the colony i.e. Residency greens which was shown to the members of the Defendant's Association as a public park at the time of selling the properties to them. Thus, the Plaintiff had no cause of action to file the present suit and the same deserves to be dismissed.

4. No replication was filed by the Plaintiff.

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

1. Whether the Plaintiff is entitled to the relief of injunction as prayed for ? OPP
2. Whether the Plaintiff has no cause of action to file the present suit? OPD
3. Whether the Plaintiff is estopped by his own act and conduct to file the present suit? OPD
4. Whether the suit is bad for mis-joinder and nonjoinder of necessary parties? OPD
5. Whether the Plaintiff has no locus stands to file the present suit? OPD
6. Relief.

6. After hearing learned Counsel for the parties and perusing the evidence on record, the trial Court held issue No. 1 against the Plaintiff. Issues No. 2 to 5 were held against the Defendant being not pressed and resultantly, the suit of the Plaintiff-Appellant was dismissed.

7. While dismissing the suit, the trial Court recorded a finding to the effect that the site plan was revised at the instance of the Plaintiff and not by the Director Town Planning, Haryana (hereinafter called "DTP") on his own volition, as alleged by the Plaintiff and since the site plan was already sanctioned on 2.2.1999, the Director Town Planning, Chandigarh, was not competent to revise the site plan to extend benefit to the Plaintiff. From the evidence on record, the trial Court also concluded that the area of park attached with the Residency Greens, the Society belonging to the Defendant, cannot be reduced and thereby causing loss to the members of the Defendant's Association which was not permissible, either legal or ethical.

8. Aggrieved from the aforesaid judgment and decree of the trial Court, the Appellant filed an appeal before the Lower Appellate Court which was also dismissed vide impugned judgment and decree dated 28.5.2009.

9. While dismissing the appeal, the Lower Appellate Court concurred with the findings of the trial Court to the effect that the agreement cannot confer any

right, title or interest adverse to that of the Defendant in favour of the Plaintiff. The Defendant and its members had purchased the site or built up flats keeping in view the existence of Green Park etc. As per the brochures etc. shown to them at the time of sale; now they cannot be deprived of the use of such area of the colony under the garb of carrying out work on the basis of a revised sanctioned plan vide which the area of the Defendant's colony has been included in another colony i.e. Vista Villas being constructed by the Plaintiff-Appellant.

10. Still not satisfied, the Appellant has filed the instant appeal challenging the judgment and decrees of the Courts below submitting that the following substantial questions of law arise in this appeal:

(a) Whether the Defendant/Respondent could restrain the Plaintiff-Appellant from raising of the boundary wall/railing as per the revised/sanctioned Site Plan, which has been duly approved by the Competent Authority, without there being any challenge to the said sanctioned Site Plan by way of filing any suit/counter claim etc.?

(b) Whether the Defendant could have been permitted to take law in their own hands by interfering in the right of the Plaintiff to carry on its activities in accordance with the revised plan sanctioned by the Competent Authority?

(c) Whether the evidence of the Plaintiff and Defendant and the documents produced on record have been completely misread and misconstrued, resulting in perverse findings?

(d) Whether the learned Courts below have recorded a perverse finding as it fails to consider that with the slight changes as indicated in the plan and Site Plans Ex.P-17 to Ex.P-19, no prejudice would cause to the Defendant's association which is an association of a different colony where the changes are being made?

(e) Whether the acts done by the Government Authorities are presumed to have been done in good faith and by valid reason, more so, when there being no challenge to the said act by any body?

(f) Whether the terms and conditions of the Agreements entered into between the Appellant and residents/members of the Residency Greens/Association providing for change of layout plan, as per the orders/approvals of the DTCP, is binding upon both the parties, more so when there is no challenge to the same?

(g) Whether the adverse inference is to be drawn against the Defendant for not producing documents in its possession?

(h) Whether the learned Courts below have completely misconstrued and misread the evidence of the parties resulting in perverse findings?

(i) Whether the fact that no prejudice has been caused to the Residency Green is apparent from the fact that no objection has been raised by any individual resident nor the name of any such resident has been given in the pleadings/evidence so as to even remotely show any loss has been caused to him/her with

the revision in the Site Plan?

11. In support of his case, learned Counsel for the Appellant has vehemently argued that the suit should have been decreed simply on the ground that the revised plan has been duly sanctioned by the Competent Authority i.e. Director Town and Country Planning and the aforesaid revised site plan has not been challenged by the Respondent and the changes are being carried out in accordance with the aforesaid sanctioned plan and therefore, the Defendant-Respondent have no right to take law in its own hands and interfere in the construction work of the Appellant and they are required to be restrained from doing the same. Moreover, the Defendant is not even remotely affected by the construction being carried out by the Appellant and whatever land is sought to be withdrawn on the basis of the revised plan has been compensated from the other colony. Moreover, the construction work is in fact for the welfare and security of the residents of the Residency Green Residents Welfare Association. Learned Counsel has farther argued that from the site plan Ex.P-17 and P-19, it is clear that slight change is sought to be made in the Vista Villas colony and Defendant is not being effected in any manner. Counsel for the Appellant has further argued that every act of the Government Authorities is to be presumed to have been done in good faith for valid reasons and in accordance with law. In the present case, revision of site plan duly sanctioned by the DTCP has not even been challenged. Moreover the agreement between the parties clearly envisages that the changes/alterations can be made out in a lay out plan by the DTCP. The said agreement between the parties is binding and the Defendant has nothing to do with the open/common areas and have no right except the plot/flats sold to them and thus, the judgment and decrees of the Courts below are liable to be set aside and the Plaintiff-Appellants are entitled to be decreed as prayed.

12. I have heard learned Counsel for the Appellant and perused the impugned judgment and decrees of the Courts below.

13. The dispute in hand is very short. Admittedly, there is a vacant common place in the Residency Green Colony, which was left as a Green Park by the Appellant/colonizer at the time of selling the said Society as per Ex.D1. The said area is adjoining to the another colony namely Vista Villa. Now under the garb of Revised Sanction Plan dated 26.10.2004 the Appellant wants to withdraw the common area left as Green Park in the Defendant's colony and add the same in colony Vista Villa and raise huge construction as per P-17 and P-19. The Respondents who are residents of Residency Green Colony who are being deprived of Green Park of the colony are objecting to the same. The factum of disputed area was left as Green Park in the Residency Green's Colony for the common use of its residents is not in dispute. It may also be noticed that the Appellant had not filed any replication to controvert the stand taken by the Defendant Respondent in the written statement.

14. From the evidence adduced on the file, it has been clearly established that at the time of selling the plots/flats, the Appellant has shown site plan/brochure of

the colony Ex.D1 to the various prospective buyers. In that brochure boundaries of Vista Villa and Residency Greens are shown separately. Even Sh. Sanjay Dutta, PW-3 had admitted that Iron Grills are already in existence and no body from the Residency Greens colony can go into Vista Villa and vice versa. Both the colonies are adjoining each other and are having boundaries which are separated by Iron Grills and are having separate gates and separate securities.

15. Not only this, it is also established on record that the sanctioned plan of the Residency Green colony was sanctioned by the DTCP in consonance with the brochure Ex.D1 as shown to the members of the Defendant's Association and the have purchased the site or built up flats keeping in view the open area and existence of green park etc. in the said colony. Thus, a right had accrued in favour of the Respondent to enjoy the common area as per the sanctioned site plan of the Green Residency colony.

16. Admittedly, while revising the lay out plan of this colony vide order dated 26.10.2004, no notice was given to the residents of this colony and they are being deprived of use of such green park/common area on the basis of the aforesaid order. The revision of site plan vide order dated 26.10.2004 by the DTCP, Haryana, cannot be justified in any manner. The stand of the Appellant that the revision in the site plan was necessitated on the advise of the DTCP is not proved from the record. In fact, there is nothing on record to suggest that revision of the lay out plan was initiated at the instance of the Government or by the DTP suo motu. The contention of the learned Counsel for the Appellant that as per Clauses 4 & 17 of the agreement of the buyers of the flats of Residency Green, the Appellant has a right to effect the alterations in the lay out plan, is misconceived. Not only this, a perusal of the revised site plan dated 26.10.2004 (Ex.P-7) shows that three more villas are being constructed by the Appellant-Company by reducing the area of Defendant's colony which has resulted into increase of land under Vista Villas colony. The sanction of the Government cannot in any manner authorize the Plaintiff to act to the detriment of the rights of the Defendant and the Plaintiff cannot be permitted to reduce the green area attached with the flats of the members of the Defendant's Association. The Appellant has not come to the Court with clean hands. It is not a simple case of carrying out minor constructions on the basis of revised lay out plan but under the garb of the aforesaid revised lay out plan, the Appellant wants to take out the open/common area of the colony of the Defendant with an intention to include the same in the Vista Villa colony for its commercial activities to earn more money by raising huge constructions.

17. There is another aspect of the case. Admittedly, the Residency Green colony has already been sold out by the Plaintiff and the common area such as streets, roads and green parks left for the use of residents of the colony vests in the Government/Municipal Corporation. The Appellant cannot claim the ownership or use of common area over the suit land, after selling the colony. It is not understandable as to how the ownership of common area which vests in the

Government can be withdrawn at the behest of Appellant and included in the adjoining colony which is being developed by the Appellant for making more constructions on the said area and thus, giving benefit to the said colonizer.

18. In view of the aforesaid, I find no merit in this appeal.

19. No substantial question of law as raised by the Appellant arises for consideration of this Court. Dismissed.

20. From the above narrated facts, it seems that there is a nexus between the Appellant/colonizer and the Department of Town and Country Planning, Haryana, which needs to be probed. The colony of Defendants i.e. Residency Greens had already been developed and the common area left vacant for parks, street etc. vests in Govt./Municipal Corporation still the DTCP has sanctioned the plan of vista villa vide Ex.P-7 to include the disputed area, which has already vested in Govt. in that colony. The DTCP had no such Authority to act against the interest of the State.

21. In this view of the matter, let a copy of this judgment be sent to the Chief Secretary of the State of Haryana to initiate suitable fact finding inquiry and take action thereafter in accordance with law and compliance report be submitted to this Court.