

(2012) 08 SC CK 0028

In the Supreme Court Of India

Case No : Civil Appeal No. 5887 of 2012 (Arising out of Special Leave Petition (Civil) No. 8734 of 2009) and Civil Appeal No. 5888 of 2012 (Arising out of Special Leave Petition (Civil) No. 22823 of 2009)

Punjab Urban Planning and Dev. Authority and Others

APPELLANT

Vs

Raghu Nath Gupta and Others

RESPONDENT

Date of Decision : 16-08-2012

Acts Referred:

Citation : AIR 2012 SC 3194 : (2012) AIRSCW 4619 : (2012) 5 ALLMR 901 : (2012) 4 AWC 5164 : (2013) 1 CDR 146 : (2012) 7 JT 348 : (2013) 2 LW 50 : (2012) 4 RCR(Civil) 305 : (2012) 7 SCALE 335 : (2012) 8 SCC 197 : (2012) 5 Supreme 552 : (2013) 1 WBLR 132

Hon'ble Judges : Madan B. Lokur, J;K.S. Panicker Radhakrishnan, J

Bench : Division Bench

Advocate : Rachana Joshi Issar, Nidhi Tiwari and Ambreen Rasool, for the Appellant; P.S. Patwalia Tushar Bakshi, Rajat Singh, Amita Gupta and Jagjit Singh Chhabra, for the Respondent

Final Decision : Allowed

Judgement

K.S. Panicker Radhakrishnan, J.—Leave granted.

2. The questions raised in both these appeals are the same, hence, we are disposing of both the appeals by a common judgment.

3. The question that has come up for consideration in these appeals is whether the Respondents are legally obliged to pay the interest, penal interest and penalty on account of the delayed payment of installments after having accepted the allotment of commercial plots by way of auction. The High Court has taken the view that since there was delay on the part of the Punjab Urban Planning and Development Authority (for short "PUDA") in providing the basic amenities like parking, lights, road, water, sewerage etc. in time, PUDA cannot legally claim the interest, penal interest as well as penalty on account of the delayed payment of installments. The High Court placed reliance on the judgment of this Court in

Municipal Corporation Chandigarh and Others Etc. Vs. Shantikunj Investment Pvt. Ltd. Etc., to reach that conclusion.

4. We heard Mrs. Rachna Joshi, Learned Counsel appearing on behalf of PUDA as well as Shri P.S. Patwalia, learned senior Counsel assisted by Mr. Tushar Bakshi, appearing for the Respondents.

5. For the disposal of these appeals, we may refer to the facts of Civil Appeal No. ... of 2012 [arising out of SLP (Civil) No. 8732 of 2009], as follows: PUDA, on 16.3.2001, conducted a public auction for sale of the commercial plots. Raghu Nath Gupta, the Respondent was the successful bidder of a single storey shop No. 134 in Phase III BIT, for a total consideration of Rs. 31,75,000/-. The possession of the said shop was handed over to the Respondent on 25.5.2001 on payment of Rs. 7,93,750/- being 25% of the total cost of site. Installment facility was extended to the Respondent for paying the balance 75% of the amount, that was Rs. 23,81,250/- The relevant clauses of the Allotment Letter dated 16.3.2011 are extracted below for easy reference:

4. The sum of Rs. 7,93,750/- being 25% of the total cost of the site deposited by you after the been adjusted as 25% of the sale.

5. The balance amount i.e. Rs. 23,81,250/- being 75% of above piece of the writ, can be paid in lump sum without interest within 60 days from the date of auction or in 4 equated yearly installments along with interest @ 15 % per annum.

6. The annual quoted installment with interest @ 15% per annum will be payable as per the following schedule:

Installment

Due date

Amount Installment

of Interest

Total amount payable

1st

16.3.2002

5,95,313/-

3,57,188/-

9,52,501/-

2nd

16.3.2003

5,95,313/-

2,67,891/-

8,52,501/-

3rd

16.3.2004

5,95,312/-

1,78,594/-

7,73,906/-

4th

16.3.2005

5,95,312/-

89,297/-

6,84,609/-

23,81,250/-

8,92,970/-

32,74,220/-

In case the installment is not paid on the 10th of the month following the month in which it falls due, PUDA can impose penalty. The penalty Clause 9 reads as follows:

9. In case the installment is not paid by the 10th of the month following the month, in which it falls due, the Estate Officer shall proceed to take action for imposition of penalty charged @ 2% per month of the amount i.e. from the due date in addition to normal simple interest. In case of non-payment of the installment along with interest due thereon for a continuous period of 3 months, the whole or any part of the money paid in respect of the site shall be forfeited and the Estate Officer shall cancel the allotment and resume the site, after giving you appropriate notice and an opportunity of being heard shall continue to be charged in the whole due amount till the date of payment of amount due.

6. Above mentioned conditions were accepted and the plot was allotted. On getting possession after payment of 25% of the total cost, Respondent raised construction on the allotted site in the year 2002. PUDA completed the development work by 20.12.2002 and provided all the facilities for the enjoyment of the various commercial plots allotted.

7. Respondent filed CWP No. 6156 of 2002 before the High Court seeking a direction to PUDA not to charge interest on the balance installments till the basic

amenities were provided on the site. The writ petition was disposed of by the High Court on 22.4.2002 directing the Estate Officer, PUDA, Mohali to pass a speaking order. Consequently, the Estate Officer passed the order on 5.9.2002 rejecting the demand made in the notice, which was challenged by the Respondents by filing CWP No. 18753 of 2002, which was disposed of vide order dated 13.7.2006 directing the Respondents to file detailed representations before the Additional Chief Administrator. Consequently, a detailed representation was filed by the Respondents on 29.8.2006 before the Additional Chief Administrator stating that since PUDA had failed to provide the basic amenities like drinking water, drainage and public toilets, Respondents were not legally obliged to pay interest, penal interest, penalty etc. on the delayed installments. PUDA took up the stand before the Additional Chief Administrator that the basic amenities like parking, lights, roads, water, sewerage etc. were not provided at the site when they were allotted, but the toilet was shown near SCF No. 124-125. PUDA submitted that the electrical works had been completed by 24.12.2002, public health works had been completed by 22.11.2002 and the development of the commercial pocket had been completed by 20.12.2002.

8. After having examined the contentions raised by both, Respondents and PUDA, the Additional Chief Administrator rejected the representation vide his order dated 31.3.2007, which was challenged by the Respondents before the High Court by filing CWP No. 6929 of 2007. The High Court allowed that CWP vide its judgment dated 5.11.2008 placing reliance on the judgment of this Court in *Shantikunj Investment (supra)*, which is impugned before this Court.

9. Mrs. Rachana Joshi took us through the terms and conditions of Auction Notice and also to the various terms and conditions of the allotment, as well as the judgment of this Court in *Shantikunj Investment (supra)*.

10. Shri P.S. Patwalia submitted that the High Court was justified in allowing the writ petition, since there was a failure on the part of PUDA in providing the necessary facilities for enjoyment of the plots allotted to the Respondents. Further, it was also contended by the learned senior Counsel that the High Court had rightly applied the principle laid down by this Court in *Shantikunj Investment (supra)*.

11. We are of the view that the terms and conditions stipulated in the auction notification for allotment of commercial plots, published by PUDA, has got considerable bearing in resolving the disputes between the parties. We, therefore, called for the auction notification published by PUDA and the same was made available to us. There was no dispute that the plots were auctioned on 16.3.2001 on the basis of the terms and conditions stipulated therein. Clause 25 is the most important clause, which binds both the parties, reads as follows:

25. The site is offered on "as is where is" basis and the Authority will not be responsible for leveling the site or removing the structures, if any, thereon.

In other words, the plot in question was auctioned on "as is where is" basis and

the same was accepted by the Respondent on "as is where is" basis. Plot was allotted to the Respondent by PUDA vide Memo No. A-5/2001/3192 dated 25.5.2001. The relevant terms and conditions of the allotment have already been referred to by us in the earlier part of the judgment. Respondents could have paid the entire amount in lump sum, however, they availed off the installment facility offered. It was made clear in the allotment letter that, in case, there was a failure to pay the installment by the 10th of the month following the month in which the payment fell due, the Estate Officer should proceed to take action for imposition of penalty charged @ 2% per month of the amount i.e. from the due date in addition to normal simple interest. Further, it was also stated in the allotment letter that in case of non-payment of installment along with interest due thereon for a continuous period of three months, the whole or any parts of the money paid in respect of the site, should be forfeited and the Estate Officer could even cancel the allotment.

12. We notice that the Respondents had accepted the commercial plots with the open eyes, subject to the above mentioned conditions. Evidently, the commercial plots were allotted on "as is where is" basis. The allottees would have ascertained the facilities available at the time of auction and after having accepted the commercial plots on "as is where is" basis, they cannot be heard to contend that PUDA had not provided the basic amenities like parking, lights, roads, water, sewerage etc. If the allottees were not interested in taking the commercial plots on "as is where is" basis, they should not have accepted the allotment and after having accepted the allotment on "as is where is" basis, they are estopped from contending that the basic amenities like parking, lights, roads, water, sewerage etc. were not provided by PUDA when the plots were allotted. Over and above, the facts would clearly indicate that there was not much delay on the part of PUDA to provide those facilities as well. As noted, the electrical works and health works were completed by 24.12.2002 and 22.11.2002 respectively and all the facilities like parking, lights, roads, water, sewerage etc. were also provided.

13. On facts, we find that this is not a case where PUDA was callous or indifferent or had caused an inordinate delay in providing the basic facilities to allottees. In our view, the High Court has not properly comprehended the scope of the judgment of this Court in Shantikunj Investment (supra) and the terms and conditions of the auction. This Court, in that case, has specifically held as follows:

26. ... It is the common experience that for full development of an area it takes years. It is not possible in every case that the whole area is developed first and allotment is served on a platter. Allotment of the plot was made on an as is where is basis and the Administration promised that the basic amenities will be provided in due course of time. It cannot be made a condition precedent. ...

28. It is true that once allotment of the land has been made in favour of the allottee, he can take possession of the property and use the same in accordance

with the Rules. That does not mean that all the facilities should be provided first for so called enjoyment of the property as this was not the condition of auction. The party knew the location & condition prevailing thereon. The interpretation given by the Division Bench of the High Court of Punjab & Haryana and contended before us cannot be accepted as a settled proposition of law ...

(emphasis supplied)

We may also refer to another judgment of this Court in U.T. Chandigarh Administration and Another Vs. Amarjeet Singh and Others, , in which, after having referred to the judgment of this Court in Shantikunj Investment case, this Court held as follows:

19. ... In a public auction of sites, the position is completely different. A person interested can inspect the sites offered and choose the site which he wants to acquire and participate in the auction only in regard to such site. Before bidding in the auction, he knows or is in a position to ascertain, the condition and situation of the site. He knows about the existence or lack of amenities. The auction is on 'as is where is basis'. With such knowledge, he participates in the auction and offers a particular bid. There is no compulsion that he should offer a particular price.

20. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site. If all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/premium or the stipulated interest on the delayed payment, or the ground rent, on the ground that the site suffers from certain disadvantages or on the ground that amenities are not provided.

14. We are of the view that the judgment in Amarjeet Singh (supra) is a complete answer to the various contentions raised by the Respondents. We may reiterate that after having accepted the offer of the commercial plots in a public auction with a super imposed condition i.e. on "as is where is" basis and after having accepted the -terms and conditions of the allotment letter, including installment facility for payment, Respondents cannot say that they are not bound by the terms and conditions of the auction notice, as well as that of the allotment letter. On facts also, we have found that there was no inordinate delay on the part of PUDA in providing those facilities.

15. We are of the view that the High Court was not justified in holding that the Respondents are not liable to pay the interest, penal interest and penalty for the period commencing from 1.6.2001 to 31.12.2002 for the belated payment of installments. Consequently, the judgments of the High Court are set aside and

the writ petitions would stand dismissed and the appeals would stand allowed as above. There will be no order as to costs.