
(2017) 02 P&H CK 0196

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4921 of 2016 (O&M)

Urban Improvement Co. Pvt. Limited

APPELLANT

Vs

S.V. Babbar

RESPONDENT

Date of Decision : 06-02-2017

Acts Referred:

Citation : (2017) 2 LawHerald 1250

Hon'ble Judges : Mr. Rameshwar Singh Malik, J.

Bench : Single Bench

Advocate : Mr. Gurdeep Singh, Advocate, for the Appellant; Mr. S.V. Babbar, in Person, for the Respondent No. 1

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J. (Oral)—Feeling aggrieved against the impugned judgment and decree dated 17.8.2016 passed by learned first appellate court, whereby first appeal of the plaintiff was allowed, decreeing his suit for declaration with consequential relief of permanent injunction and mandatory injunction, thereby setting aside the judgment and decree dated 29.5.2014 passed by learned trial court, defendant has approached this Court by way of present regular second appeal.

2. Brief facts of the case, as noticed by learned first appellate court, in para 2 of its impugned judgment, are that one Shikha Dutta wife of Keshav Dutta purchased a plot No. AM-37, situated in Green Field Colony, Faridabad measuring 445 Sq.Yds. from respondent No.1 in an auction held on 10.5.1985 and thereafter the appellant purchased the said plot from the above said allottee and got the same transferred in his favour from the respondent No.1 after completing requisite formalities. Respondent No.1 also acknowledged the appellant as owner of the plot in question and executed various documents in favour of the appellant and, as such, the appellant became the exclusive owner of the property in question w.e.f. 25.2.1988. The appellant also paid first instalment of External Development Charges (EDC) amounting to Rs. 22,550/- plus Rs. 9345/-, as

interest, on 19.3.1994, however, respondent No.1 failed to provide basic amenities such as roads, sewerage, water, street lights etc. in the colony despite several requests made by the appellant.

3. It was mentioned that the appellant vide letter dated 25.7.2002 requested respondent No.1 to change his address as B-4/43, Safdarjang Enclave, IIIrd Floor, New Delhi and communicate with him on this address and the said letter was delivered to respondent No.1 by hand. After allotment of the plot in the name of the appellant, respondent No.1 carried out the demarcation and found that exact area of plot was 450.67 Sq.Yds. instead of 445 Sq.Yds. The respondent also renumbered the plot as C3649 instead of earlier number as AM-37. Respondent No.1 got published on 15.6.2002 an illegal threat of cancelling certain plots and the plot of the appellant was one of them. Respondent No.1 also issued a letter dated 26.8.2002 in this regard but the said letter was issued on previous address of the appellant. However, when the appellant came to know about the issuance of such letter to other plot holders, he sent a letter dated 19.9.2002 along with banker's cheque No. 40838 dated 17.9.2002 for Rs. 2,20,000/- through registered post but respondent No.1 did not receive the said registered envelope and the same was received back by the appellant with the remarks "Refused". The appellant again visited respondent No.1 on 27.9.2002 and obtained letter dated 26.8.2002 and thereafter the appellant again sent the cheque of Rs. 2,20,000/- vide his letter dated 1.10.2002 to respondent No.1 against its demand of Rs. 2,15,202/- assuming the same as legal although the said demand was totally illegal and arbitrary. However, respondent No.1 again returned the cheque of the appellant alleging that the appellant did not respond within the stipulated period as per letter dated 26.8.2002. The appellant sent another letter dated 25.10.2002 requesting that letter in question was issued on the wrong address and the same was personally collected by him on 27.9.2002 and requested some more time to deposit the said amount, however, the said request of the appellant was declined by respondent No.1 vide letter dated 7.11.2002. The appellant again wrote letters dated 2.6.2004 and 14.6.2005 requesting to restore the plot on payment of balance EDC along with interest but respondent No.1 did not pay any heed to the legitimate request of the appellant and it was bent upon to cancel the plot allotted to the appellant illegally, forcibly and without any justification.

4. It was further mentioned that the appellant had earlier filed a suit for declaration with consequential relief of permanent injunction as well as for mandatory injunction against respondent No.1, to which written statement was filed by respondent No.1 disclosing that the plot in dispute had been sold to Amitabh Sinha vide conveyance deed dated 5.8.2004. After coming to know about this illegal and arbitrary cancellation of the plot and resale of the same, the appellant got impleaded said Amitabh Sinha by moving application under Order 1, Rule 10 CPC. Since the appellant, at the time of transfer of the plot in question in his favour, has paid the full sale consideration to respondent No.1 in pursuance of the agreement to sell, cancellation of the allotment of plot in

dispute from the name of the appellant and its re-transfer in favour of respondent No.2 was wrong, illegal, arbitrary and not binding on the rights of the appellant and he was also entitled to decree of specific performance of the agreement to sell directing respondent No.1 to execute and get registered the sale deed in respect of the plot in question.

5. Having been put to notice, defendant No.1 appeared and filed its written statement, raising more than one preliminary objections. Defendant No.2 did not contest the suit. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiff is entitled for a decree of declaration as prayed for? OPP
2. Whether the plaintiff is entitled for a decree of permanent as well as mandatory injunction, as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the suit is bad for mis-joinder and nonjoinder of necessary parties? OPD
6. Whether the suit is liable to be rejected under Order 7, Rule 11 CPC? OPD
7. Whether the suit is barred by limitation as well as under Section 14 of HUDA Act? OPD
8. Relief

Following additional issue was re-framed vide order dated 10.1.2014:

2A: Whether the plaintiff is entitled for the decree of specific performance of the agreement to sell in respect of plot bearing new number C-3649 situated in Green Fields Colony, Faridabad (old No.Am-37) against the defendant No.1 or by process of Court? OPP

6. With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has failed to prove his case. Accordingly, suit was dismissed by learned trial court vide its judgment and decree dated 29.5.2014. Dissatisfied, plaintiff filed his first appeal, which came to be allowed vide impugned judgment and decree dated 17.8.2016. Hence this regular second appeal at the hands of the defendants.

7. Learned counsel for the appellant raised only one argument that since plaintiff-respondent did not pay EDC in time despite repeated reminders, the allotment was rightly cancelled by the appellant-Company. Since learned first appellate court failed to appreciate this material aspect of the matter, while passing the impugned judgment and decree, the same have resulted in miscarriage of

justice. He prays for setting aside the impugned judgment and decree, by allowing the present appeal.

8. On the other hand, plaintiff-respondent No.1, who is appearing in person, vehemently contended that appellant-defendant never ensured service of any show cause notice on him before cancellation of allotment, thereby glaringly violating the basic principles of natural justice. He further submits that the moment he came to know about the demand of EDC at the hands of defendant-appellant, he immediately sent a cheque for sum of Rs. 2,20,000/- on 17.10.2002, but it was returned by the appellant-company. He next contended that he was very much aware about his obligation to pay in time. He had been paying in time but the appellant company proceeded on a wholly arbitrary approach, while cancelling the allotment, without there being any justified reason, thereby imposing this unwarranted litigation on him. He concluded by submitting that he had always been ready and willing to pay and still he is not running away from his responsibility to pay Rs. 2,20,000/-. He prays for dismissal of the appeal with costs.

9. Having heard learned counsel for the appellant as well as respondent No.1, in person, at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that since cogent findings of facts recorded by learned first appellate court have been found based on sound reasons, the same deserve to be upheld. Present appeal is without any merit and liable to be dismissed. To say so, reasons are more than one, which are being recorded hereinafter.

10. No doubt, the sole ground for cancellation of allotment by the appellant was alleged non payment of EDC by the allottee-plaintiff. During the course of hearing, when confronted as to whether the appellant had ensured service of any show cause notice on the plaintiff-respondent, before cancelling the allotment, learned counsel for the appellant failed to refer to any such show cause notice or any other relevant material in this regard and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that appellant proceeded on an arbitrary approach, while cancelling the allotment in most illegal manner, without there being any justified cause for the same. Since learned trial court miserably failed to appreciate this basic issue which goes to the root of the cause, while passing its judgment and decree, the same were rightly set aside by learned first appellate court, while allowing first appeal of the plaintiff.

11. Learned first appellate court examined, considered and appreciated all the relevant facts and circumstances of the case as well as relevant principles of law applicable thereof, before passing the impugned judgment. Cogent findings recorded by learned first appellate court in para 13 to 15 of its impugned judgment, which deserve to be noticed here, read as under:-

" It would be important to go through the record to adjudicate the above mentioned question. Ex.P1 is the letter of auction of the plot in dispute and date

and time of auction as mentioned in the letter was 10.5.1985 at 10.30 a.m. Ex.P2 shows that one Shikha Dutta purchased the plot in question being highest bidder bearing Plot No.37 in block No. AM. The appellant purchased the said plot from Shikha Dutta and the respondent No.1 transferred the said plot in the name of appellant. There are various receipts on record Ex.P4 to Ex.P7 showing payment made by the appellant to the respondents. Hence, Ex.P2 and Ex.P3 are the letters substantiate the contention of the appellant to the extent that the property was transferred to the appellant by one Smt. Shikha Dutta. It is admitted by the respondent in its written statement that the plot was allotted to the appellant by the respondent as it has been mentioned in para No.6 of the preliminary objections in the written statement that "the defendant No.1 after cancelling the allotment of the plaintiff on 9.7.2002 has re-allotted the plot to the defendant No.2 Amitabh Sinha". Further the allotment is not disputed by the respondent as in the written statement it is mentioned that the cancellation of allotment was made on the basis of nonpayment of EDC. Ex.P9 is the letter dated 25.7.2002 vide which he intimated the respondents his new address for the purpose of communication with request to note his changed address in the record. The case of appellant was that the respondent No. 1 on 15.6.2002 published a notice in the newspaper in which there is an information regarding cancellation of certain plots in which name of the appellant was also mentioned. Ex.P11 is the letter dated 26.8.2002 by which the respondent No.1 made new offer after revoking earlier cancellation for restoration of the plot on certain terms and conditions. Ex.P12 is the payment made by the appellant to the respondent No.1 in view of the letter Ex.P11. It is further relevant to mention that Ex.P11 is the letter issued by the respondent No.1 on 26.8.2002 at the old address of the appellant despite the fact that vide Ex.P9 dated 25.7.2002, new address was communicated to the respondent No.1 for communication. It is only when the petitioner became aware of the letter dated 26.8.2002 (Ex.P11), he approached the respondents with a cheque Ex.P12 for an amount of Rs. 2,30,000/- on 17.9.2002. The same was sent to the respondents vide letter dated 19.9.2002 which is Ex.P14. Ex.P11 shows that cancellation was made for non payment of EDC and again offer was made for restoration on the payment of said amount. Ex.P16 is the photocopy of registered AD envelop in which remark "refused" has been mentioned by postal authority showing that the respondent refused from accepting the envelop containing payment by the appellant. Ex.P18 is the letter again sent by the appellant to the respondent in response of the letter dated 7.10.2002 vide which the respondent has returned the cheque of the appellant. Ex.P20 is the representation made by the appellant to the respondent on 2.6.2004. It is also a matter of record that the appellant paid first EDC in 1994 Ex.P7 by which he deposited instalment of Rs. 22,250/- with interest of Rs. 9345/-. Ex.D11 is the letter written by the respondent No.1 to the appellant regarding clearance of EDC. In the last paragraph of this letter, it is clearly mentioned that in case payment is not received by 15.4.1994, the company shall have no option but to arrange finance from outside source at the cost of appellant to makeup shortfall which will entail higher rate of interest to be

recovered from the appellant and also from other such defaulters. Hence, it is clear that once the act of respondent No.1 itself was not towards the cancellation of the allotment on the basis of recovery of EDC charges, the act and conduct of the respondent in cancelling the allotment of the property of the appellant cannot be said to be free from malafide. These communications as well as various letters on record show that the appellant was always ready to pay arrears of EDC charges. The appellant further relied upon the judgment delivered by Hon"ble High Court in CWP No.10374 of 1995, decided on 11.2.2016 in which it has been held by Hon"ble High Court that the present respondent No.1 company was entitled to get refund of the amount of Rs. 5,44,83,065/- from the State. Para No.17 of the judgment passed by Hon"ble High Court in CWP No.10374 of 1995 is as follows:

"The respondent No.1 M/s. Urban Improvement Co. Pvt. Ltd. shall pay to the petitioner-State Rs. 5.16 crores towards EDC dues till 6th January, 1994 plus interest thereon calculated till that day. The said amount to be paid by the 1st respondent on or before 30th April, 1994. The petitioner-State will give the details of the principal amount and the interest to the first respondent within one week from today.

The amount of interest that the first respondent is required to pay will be subject to the first respondent's right to challenge its correctness and validity. The first respondent may challenge it in such forum as it may be advised.

The petitioner shall adhere to the time table providing basic services covered under EDC to make the colony functional which time table is handed over to the Court and will form part of this order. It is made clear that since the amount of Rs.5.16 crores is to be paid by 30th April, 1994, the amount will have to be paid with interest on the same from 7th January, 1992 till the date of payment. The interest to be paid at the rate of 18% per annum.

The petitioner State will clear the zoning plan within one week from the payment of the entire amount of Rs. 5.16 crore with interest, if any. The respondent No.3 is permitted to submit the written arguments.

The petitioner thereupon deposited a sum of Rs.5,33,63,013/-."

In para No.1 of the reply on merits, it has been specifically mentioned that "the plot in question was cancelled by the defendant company due to non-payment of External Development Charges (EDC) by the plaintiff". Hence, it is also clear that only dispute behind cancellation of the plot of the appellant, was non-payment of External Development Charges (EDC) and interest by him. Hence, the gist of the dispute is that plot of the present appellant was cancelled as the respondents asked for some amount for EDC charge in the present case. However, in case of Raj Dulari Kaul v. Haryana Urban Development Authority and others, decided by Hon"ble High Court in CWP No. 6200 of 1991, decided on 29.8.2013, it has been observed by Hon"ble High Court that after getting the allotment letter, the petitioner acquired vested right in the plot in question and opposite party was

estopped from taking a turn around and to cancel the allotment and that too without giving any valid reason and without affording an opportunity of hearing to the petitioner. In the present case also neither any plausible reason has been given by the respondent to cancel the allotment of the appellant except some dues of EDC, however, out of that some was paid by the appellant and remaining was offered by the appellant to the respondent from time to time. Further, nor any opportunity has been afforded to the present appellant before cancellation and this act and conduct of the respondent tantamount to violation of vested right of the present appellant.

This Court is of the view that the suit filed by the appellant is liable to be decreed on the following grounds:

1. As discussed above, allotment to the appellant by the respondent is admitted.
2. The plot was cancelled only on the ground of non-payment of External Development Charges (EDC). However, the appellant was very much ready from the very beginning to deposit the amount of EDC, as asked by the respondent No.1.
3. It is also a matter of record that the appellant deposited instalment of EDC in 1994 which is clear from Ex.P7 showing bona fide of the appellant.
4. Ex.D11 is the letter issued by company itself in which the company itself offered for arrangement of finance against the dues outstanding towards the appellant and other defaulters and respondent company has nowhere mentioned regarding cancellation of allotment even its own letter. Hence, the respondent cannot be permitted in peculiar facts and circumstances to turn around and to cancel the allotment.
5. It is also a matter of record that not any valid reason has been given to the appellant for cancellation except nonpayment of some external development charges (EDC) and that too as per the appellant was offered by the appellant to the respondent since beginning. Further, not any opportunity of hearing before cancellation of allotment has been given to the appellant.
6. The respondent during the pendency of case while filed written statement mentioned in para No.6 of the written statement that they are owners in possession of the suit plot and hence, if the plot has been sold by the respondents during the pendency of litigation, the same shall be governed by principle of lis pendence."
12. A bare reading of the above said cogent findings recorded by learned first appellate court would make it crystal that the appellant company glaringly violated the basic principles of natural justice, while cancelling the allotment. It goes without saying that cancellation or resumption of allotment is a drastic step, which must be taken only as a last resort and that too, in a rare case where the allottee has no intention at all to pay. As noticed herein above, learned counsel for the appellant failed to point out any such intention on the part of the allottee-

respondent. Under these circumstances, it can be safely concluded that learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason as well.

13. The view that has been taken by this Court also finds support from the judgments of the Hon''ble Supreme Court as well as of this Court in *M/s. Teri Oat Estates (P) Ltd. v. U.T.Chandigarh and others*, 2004 (2) SCC 130 (SC); *M.D.H.S.I.D.C. and others v. M/s. Hari Om Enterprises and another*, 2009 (16) SCC 208 (SC) and *Dheera Singh v. U.T. Chandigarh Admn. and others*, 2012 (4) RCR (Civil) 970 (P&H).

14. It has been repeatedly held by Hon''ble Supreme Court that powers of resumption or cancellation of allotment must not be exercised mechanically. Since the cancellation of allotment has far reaching civil consequences, such power is to be exercised not in a case of mere failure to pay but only when the allottee has no intention to pay at all. Respondent plaintiff has been found justified in contending that he never intended to make any default in payment. The moment he came to know about demand letter dated 26.8.2002 (Ex. P-11), he immediately approached the defendant appellant with a cheque dated 17.9.2002 (Ex.P-12) for a sum of Rs. 2,20,000/-. The cheque was sent to the defendant-appellant vide letter dated 19.9.2002, vide Ex.P-14, just within one month of demand raised.

15. Correctness of above said basic facts could not be denied by learned counsel for the appellant, during the course of hearing. It is also pertinent to note here that once Ex.P11 itself was making an offer for restoration of allotment on demand of the said amount, there was no occasion or justification for the appellant to return the cheque (Ex.P-12). In this view of the matter, it could not be held, by any stretch of imagination, that plaintiff-respondent was not intending to pay the EDC, alleged non payment of which, was the sole basis for cancellation of allotment. In this view of the matter, no fault can be found with the above said factually correct and legally justified findings recorded by learned first appellate court and the impugned judgment deserves to be upheld, for this reason also.

16. Finally, no question of law much less substantial question of law has been pointed out by learned counsel for the appellant, nor any substantial question of law has been found involved in the present appeal, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon''ble Supreme Court in *Naryanan Rajendran and another v. Lekshmy Sarojini and others*, 2009 (2) RCR (civil) 286 and *Santosh Hazari v. Purshottam Tiwari*, 2001 (3) SCC 179.

17. No other argument was raised. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is

wholly misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

18. Resultantly, with the above said observations made, instant regular second appeal stands dismissed, however, with no order as to costs.