

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.413 of 2015 (O&M)

Date of decision : 16.09.2015

Subhash Goyal

...Appellant

Versus

Haryana Urban Development Authority

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Amit Aggarwal, Advocate for the appellant.

Mr. S.N. Saini, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the impugned findings rendered by the Lower Appellate Court, whereby the appellant-plaintiff has been directed to pay extension fee as per the revised policy.

Before advertng to the arguments of the parties, it would be apt to refer to facts that in pursuance to the advertisement published by HUDA, the appellant and his wife applied for allotment of plots in draw of lots. The appellant and his wife were allotted the plots. However, the possession of the plot bearing No.662 was given to the appellant in pursuance to the allotment letter dated 14.08.1987, whereas possession of the other plot

bearing No.588-P was not given, as it was under litigation and on receipt of the application for allotment of alternative plot, the HUDA vide allotment letter dated 19.09.1997 allotted the alternative plot bearing No.1329-P. HUDA on acquiring the knowledge, that appellant had not disclosed the allotment of the earlier plot, issued show cause notice dated 25.11.1997 to both husband and wife. On 20.12.1997, FIR bearing No.1183 under Sections 420, 199, 200, 465, 468, 471, 120-B IPC at Police Station, Sector-5, Panchkula was registered. The appellant and his wife vide judgment dated 23.11.2007 were honorably acquitted, thereafter, the appellant submitted application for issuance of NOC, but the same was denied, which resulted into filing of the suit claiming declaration that plaintiff has become owner by virtue of draw of lots as the entire sale price/premium towards plot has been paid and injunction was also sought seeking restraint order against HUDA for not charging extension fee on account of the fact, that fate of the allotment, was in doldrums, as appellant was embroiled in the criminal litigation.

In response to the suit, the respondent-defendant, in the written statement stated, that a sum of ₹3,02,754/- as on 20.10.2008 i.e. date of the filing of the written statement was outstanding. During the pendency of the suit, appellant deposited a sum of ₹5,50,794/- vide receipt No.10708 dated 19.04.2012. The said amount was returned back by the HUDA on the ground that in 2007, a sum of ₹2,54,260/- was outstanding.

Mr. Amit Aggarwal, learned counsel appearing on behalf of appellant submits that appellant-plaintiff had no intention in not paying the extension fee, though he was embroiled in the litigation and for that, the suit

forementioned was instituted. He further submits that since as per the statement of DW1, Prithvi Singh, Assistant Officer of Estate Office, HUDA, Sector-6, Panchkula, amount of ₹2,54,260/- was outstanding in 2007 realizing that in 2012, sum would have been doubled, the appellant sent amount of ₹5,50,794/- but the same was not honoured. He further submits that trial Court on the basis of the oral and documentary evidence decreed the suit. However, Lower Appellate Court erroneously modified the same by directing the appellant to pay extension fee as per the revised policy noted above. He further submits that amount of ₹5,50,794/- was returned to the HUDA but the same is stated to have not been encashed.

He submits that following substantial questions of law arises for adjudication of the present appeal:-

1. Whether the appellant/plaintiff could have raised any construction on the property in question once it was considered as a case property during the pendency of the criminal proceedings?
2. Whether the lower Appellate Court has wrongly and illegally partly allowed the appeal of respondents?
3. Whether the impugned appellate judgment and decree are based upon the misreading of evidence?

Mr. S.N. Saini, learned counsel appearing on behalf of HUDA submits that appellant-plaintiff was required to raise construction up to 25% of the minimum required and HUDA would have no difficulty in case appellant-plaintiff pays extension fee as per the policy. He further submits that as per Section 50 of the Haryana Urban Development Authority, 1971, Civil Court did not have jurisdiction to try the suit.

I have heard learned counsel for parties and appraised the paper book.

The facts noticed above would reveal that in 2007, a sum of ₹2,54,260/- was outstanding. Nothing prevented the HUDA to drop the letter to the appellant calling upon him to pay aforementioned amount. It is admitted case of the HUDA that in 2008, sum of ₹3,02,754/- was outstanding towards plot bearing No.662, Sector-21, Panchkula.

The witness of the HUDA unequivocally to specific question put, in the cross-examination answered as under:-

“It is correct that in the original file of plot No.662/21 PKL brought by me, there is no such order/noting on the file by Estate Officer, Administrator, Chief Administrator, FCTCP Hry/Supdt/any concerned assistant of our department, from which it could be known that there is any amount due against this plot or not. It is wrong that today I am intentionally deposing falsely being official of HUDA in the court today. Again said that as per one noting dated 6.9.2011 extension fee of Rs.254260/- upto the year 2007 was made out due. It is correct that after that there is no noting on our file and nor is any calculation. It is correct that the plaintiff against plot in question has deposited an amount of Rs.550794/- vide receipt No.10708 dated 19.4.2012. A copy of the receipt of which is Ex.PX which as per our record is true and correct. With it a forwarding letter Ex.PY was also received in our office and the Ex.PX and PY are true and correct as per record of our department. The amount which was deposited by the plaintiff on above date 19.4.12, was refunded wrongly by our department to the plaintiff i.e. our department was required to deduct the dues of

Rs.2,54,260/- which were pending upto 2007 and to refund the balance amount to the plaintiff.”

Haryana Urban Development Authority has been set up for development of the industrial and residential township and does not act as shylock and render allottees shelterless. Haryana Government, as beneficial legislation incorporated under the aforementioned Act, binds parties to terms and conditions of their allotment.

It is a matter of record that till 2007, the appellant-plaintiff was embroiled in the criminal litigation. There is no dispute that no such amount towards the sale price of the plot is outstanding. Dispute is with regard to the payment of the extension fee, on account of non-construction. Since plaintiff had already deposited a sum of ₹5,50,794/- as per his calculation, the HUDA could have called upon the appellant to pay the exact outstanding amount alongwith fee usual chargeable interest as the matter was also subjudiced before the Court.

The view expressed by the Lower Appellate Court is not in consonance with the oral and documentary evidence, much less, candid admission of the DW1, witness of the HUDA. In my view, findings rendered by the Lower Appellate Court directing the appellant-plaintiff to pay extension fee as per revised policy is not correct, at the best, HUDA is entitled to charge extension fee, which was due at the time of filing of the suit or at the best till 2012 along with usual interest when the appellant-plaintiff had sent a draft amounting to ₹5,50,794/-.

It is settled law, where action of the respondent-authorities is without jurisdiction, the Civil Court, as per Section 9 of Code of Civil

Procedure would have jurisdiction to try the suit. Even otherwise, the relief sought was for declaration of the ownership which can be only granted by the Civil Court not by quasi Judicial Authority.

In my view substantial questions of law as noticed above are answered in favour of appellant-plaintiff and against the respondent-defendants.

It is made clear that HUDA would sent revised notice containing the element of extension fee and as well as usual interest outstanding up to 2012 and on receipt of the said calculation, the appellant-plaintiff shall deposit the same within a period of two months from the date of receipt of certified copy of the order.

Appeal stands allowed.

16.09.2015

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**(AMIT RAWAL)
JUDGE**