

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.237/2014

(Nagpur Improvement Trust and anr. ..vs.. Ghanshyamdas Nathmal Mundhada)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R. G. Chhabra, Advocate for appellants.
Mr. Dubey, Advocate for respondents.

CORAM : A. B. CHAUDHARI, J.
DATE : MARCH 22, 2016

Heard learned counsel for the appellant at length.

Learned counsel for the appellant contended that the Nagpur Improvement Trust had already taken sympathetic view of levy of penalty for late construction of the house over and above the period of default and the lower appellate Court ought not to have interfered with the policy to levy 30% premium for the period in question. He submitted that the period should have been computed up to the date of reallotment since there was cancellation of the allotment due to the failure on the part of the allottee to make construction within time.

Per contra, Mr. Dubey, learned counsel for the respondent, supported the impugned judgment and order and submitted that the lower appellate Court has acted on the stipulations in the allotment letter made known to the allottee-respondent and there is nothing wrong with the

lower appellate Court in giving the benefit within four corners of law to the allottee to make construction. At any rate, according to Mr. Dubey, there is no substantial question of law, which is *sine quo non*, for entertaining the second appeal. He, therefore, prayed for dismissal thereof.

Upon hearing learned counsel for the rival parties and upon perusal of the reasons recorded by the lower appellate Court, particularly paragraphs 11 and 12, I am fully satisfied that there is no perversity committed by the lower appellate Court in extending the benefit to the allottee in accordance with the speculations in the allotment letter. I quote paragraph 12 from the judgment, which reads thus:

“12. *The respondent is ready to pay the amount as per rules. The allotment of the suit plot was made to respondent on 11.03.1986. As per the terms of allotment letter the respondent is not required to pay any additional premium if the construction is made within 3 years from the date of taking possession, meaning thereby the respondent was exempted from payment of additional premium for first three years i.e. up to 10.03.1989. Then, as per the terms of allotment the respondent shall have to pay additional premium @ 5% for fourth year, @10% for fifth year and 25% for sixth year of the allotment. Admittedly the respondent has not make construction within the period of six years of allotment and therefore he shall*

have to pay additional premium for further three years as per the above rate and thereafter he shall have to pay additional premium as per Rule 17 of the aforesaid Rules.”

I do not think that extension of some benefit to the allottee of not allowing the recovery of premium from him by way of penalty in entirety, should be interfered with. At any rate, no substantial question of law is involved in the present second appeal. Hence, I make the following order.

ORDER

(i) Second Appeal No.237/2014 is rejected summarily. No order as to costs.

JUDGE