

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

RSA No.5045 of 2009 (O&M)

Date of decision : 15.01.2016

HUDA and another

...Appellants

Versus

Sheela Gupta and ors.

...Respondents

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. Som Nath Saini, Advocate for the appellants.

Mr. V.K. Jindal, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The appellants-defendants are in Regular Second Appeal against the concurrent findings of fact, whereby suit seeking declaration and permanent injunction filed by the respondents-plaintiffs, has been decreed on the premise that notices under Section 17(3) could not be served, whereas notice under Section 55 of the HUDA Act 1977 should have been served.

Mr. Som Nath Saini, learned counsel appearing on behalf of the appellants has drawn the attention of this Court to Clauses 11 & 14 of the Allotment letter, which reads thus:-

“11. In the event of breach of any other condition of transfer the Estate Officer may resume the land in accordance with the provisions of Section 17 of the Act.

14. The plot/building shall not be used for any purpose other than that for which it has been allotted in accordance with the plans approved by the competent authority. No obnoxious trade shall be carried out in or any land/building.”

He further submits that notice contained two violations, one with regard to elevation of the plot and another one change of user of the plot and trading of LML Scooter on the said plot which is an industrial plot.

In the plaint, the plaintiff admitted that they have been using the building/plot for trading of the LML Scooter and as well as Service centre. The service centre would fall within the purview of Clauses 11 and 14 of the terms and conditions of the Allotment Letter and, therefore, notice under Section 17(3) was served upon. The trial Court and the lower Appellate Court has erroneously held that notice under Section 55 of the 1977 Act was required to be served as the provision of Section 17(3) deals with the non-payment of the installments towards price of plot.

Mr. Som Nath Saini, Advocate during the course of hearing of arguments has drawn the attention of this Court to the provision of Section 17 Sub Section 3 of 1977 Act and submits that aforementioned provision would apply, as the HUDA has power to issue notice to allottee whenever there commits breach of any condition of sale and, therefore, notice, challenged in the suit was rightly served.

Even the trial Court did not have jurisdiction to try the suit & remedy if any is to challenge the order passed under the Act i.e. before

appropriate authority. In support of the contention, he has relied upon judgment of this Court rendered in RSA No.2934 of 2007, HUDA & another Vs. Shishu Pal and ors., thus prays substantial question of law arises for determination.

Mr. V.K. Jindal, learned counsel appearing on behalf of respondents-plaintiffs submits that notice under Section 17(3) did not contain the alleged violation of running of the service centre. Since, it is industrial plot, the trading of the Scooter being industrial activity is permissible. Both the Courts below have concurrently held that HUDA was required to comply with the provision of Section 55 of 1977 Act.

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

It would be apt to reproduce Sections 17 and 55 of The Haryana Urban Development Authority Act, 1977:-

“17. Resumption and forfeiture for breach of conditions of transfer:- (1) Where any transferee makes default in the payment of any consideration money, or any installment, on account of the sale of any land or building, or both, under Section 15, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why a penalty which shall {be equal} ten percent of the amount due from the transferee, be not imposed upon him.

(2) After considering the cause, if any, shown by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order imposing the penalty and direct that the amount of money due along

with the penalty shall be paid by the transferee within such period as may be specified in the order.

(3) If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub-section (2), or commits a breach of any other condition of sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the land or building, or both, should not be made.

(4) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer, may for reasons to be recorded in writing, make an order resuming the land or building or both, as the case may be, and directing the forfeiture as provided in sub-section (3) of the whole or any part of the money paid in respect of such sale.

(5) Any person aggrieved by an order of the Estate Officer under Section 16 or under this Section may, within a period of thirty days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner, as may be prescribed:

Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by

sufficient cause from filing the appeal in time.

(6) The Chief Administrator may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit.

(7) The Chief Administrator may, either on his own motion or on an application received in this behalf, at any time within a period of six months from the date of the order, call for the record for any proceedings in which the Estate Officer has passed an order for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order in relation thereto as he thinks fit:

Provided that the Chief Administrator shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

{(8) Any person aggrieved by an order of Chief Administrator under sub-section (6) may within a period of ninety days of the date of the communication to him of such order, prefer a revision petition to the Secretary to Government, Haryana Town and Country Planning Department, in such form and manner as may be prescribed:

Provided that the Secretary to Government, Haryana, Town and Country Planning Department, may entertain the revision petition after the expiry of the said period of ninety days, if he is satisfied that the petitioner was prevented by sufficient cause from filing the revision petition in time.

(9) The Secretary to Government, Haryana Town and Country Planning Department, may, after hearing the revision, confirm, vary or reverse the order appealed from and may pass such order as he deems fit:

Provided that the Secretary to Government, Haryana, Town and Country Planning Department, shall not pass an order under this Section without hearing the parties.}”

“55. Penalty for breach of rules and regulations:- *Except as otherwise provided for in this Act, any contravention of any of the rules or regulations made thereunder shall be punishable with fine which may extend to five-hundred rupees, and in the case of a continuing contravention, with an additional fine, which may extend to fifty rupees, for each day during which such contravention continues after the first conviction; and the court, while passing any sentence on conviction of any person for the contravention of any rule or regulation, may direct that any property or part thereof, in respect of which the rule or regulation has been contravened, shall be forfeited to the Authority:*

[Provided that if a building is begun, erected or re-erected in contravention of any of the building regulations, the Chief Administrator shall be competent to require the building to be altered or demolished, by a written notice delivered to the owner thereof, within six months of its having begun or having been completed, as the case may be. Such notice shall also specify the period during which such alteration or demolition has to be completed and if the notice is not complied with, the Chief Administrator shall be competent to demolish the said building at the expense of the owner:

Provided further that the Chief Administrator may, instead of requiring the alteration or demolition of any such building, accept by way of composition. such sum as he may deem reasonable.]”

On comparative reading of the aforementioned provisions and

as well as terms and conditions of the allotment letter, the alleged mischief of trading of Scooter and as well as elevation of opening doors and window on the front and elevation of the building do not fall within the purview of Sub Section 3 Section 17, thus, respondents-plaintiffs have not been confronted with regard to such alleged violation. As per statute, HUDA was required to issue the notice under Section 55 of the HUDA Act and vis-a-vis the jurisdiction of the Civil Court, I am of the view that it was show cause notice which was challenged before the trial Court as it did not entail into passing of the final order and in case such order had been challenged, Civil Court, as submitted, would be having jurisdiction but such situation has not arisen in the present case.

Keeping in view the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below, much less, no substantial question of law arises for determination by this Court.

Accordingly, appeal is dismissed.

15.01.2016

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**(AMIT RAWAL)
JUDGE**