

201

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 06.02.2017

1.

CWP-8212-1994 (O&M)

Lalita Mehta and others

... Petitioners

Versus

State of Haryana and others

... Respondents
2.

CWP-3732-1994 (O&M)

Smt. Kulwant Kaur

... Petitioner

Versus

Chief Settlement Commissioner and another

... Respondents
3.

CWP-8473-1994

Raj Kumar Khanna

... Petitioner

Versus

State of Haryana and others

... Respondents
4.

CWP-8213-1994

Smt. Phoolan Bai

... Petitioner

Versus

State of Haryana and others

... Respondents
5.

CWP-8333-1994

Naresh Kumar Bhatia and others

... Petitioners

Versus

State of Haryana and others

... Respondents

6. CWP-8173-1994

Joginder Lal ... Petitioner

Versus

State of Haryana and others

... Respondents

7. CWP-13099-1994

M.L. Verma ... Petitioner

Versus

State of Haryana and others

... Respondents

8. CWP-12765-1994

Ravinder Kumar Khanna ... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Saini, Advocate
for petitioner No.1 in CWP-8212-1994.

Mr. Ashok Sharma Nabhewala, Advocate
for the newly added petitioners i.e. Petitioner Nos.2 to 6.

Mr. Som Nath Saini, Advocate
for the petitioner in CWP-3732 1994.

Mr. Jaideep Verma, Advocate for
Mr. C.P. Sapra, Advocate
for the petitioner(s).

Mr. Shiv Kumar, Advocate
for the applicant/respondent No.4.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

AMIT RAWAL, J. (ORAL)

CM-7911-CWP-2015

Prayer in this application under Order 1 Rule 10 CPC is for impleading the applicant as co-petitioners i.e. Petitioner Nos.2 to 6 in the aforementioned writ petition.

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the applicants are ordered to be impleaded as co-petitioners i.e. Petitioner Nos.2 to 6.

The amended memo of parties is taken on record subject to all just exceptions.

CM stands disposed of.

CM 15105-CWP-2015

The present application has been moved on behalf of the applicant Girraj Bakhshi son of Daulat Ram Bakhshi for impleading as a party i.e. Respondent No.4, in the aforementioned writ petition on the ground that Daulat Ram Bakhshi was allotted a plot measuring 229 sq. yards by the Rehabilitation Department, Faridabad, who stated to have been paid the entire amount of consideration and accordingly, deed of Conveyance was executed on 14.11.1960 (Annexure A-1) and out of the aforementioned allotted area, Daulat Ram Bakhshi had sold the area measuring 90 sq. yds. to Lalita Mehta vide registered sale deed dated 08.01.1980 for a consideration of ₹ 17,000/-, in essence, remaining area of 139 sq. yds., remained as owner in possession of Daulat Ram Bakhshi.

It has been submitted that that the applicant, namely, Girraj Bakhshi along with Brij Lal Bakhshi are the only sons out of the wedlock of

Daulat Ram Bakhshi and their mother Asha Devi Bakhshi. Their father and mother have already died, thus, they are the successors-in-interest. However the vendee of 90 sq. yds. i.e. Lalita Mehta asserted the right in the entire plot measuring 229 sq. yds. It is, in this aspect of the matter, the applicant is stated to have filed a civil suit claiming the declaration of 139 sq. yds.

However, this order of mine would be confining to the ownership of Lalita Mehta as per sale deed dated 08.01.1980. Of course, it would be subject to the outcome of the rights of the parties in a pending civil suit.

Accordingly, the present application is allowed and the applicant, namely, Girraj Bakhshi, is ordered to be impleaded as a party i.e. Respondent No.4 in the aforementioned writ petition.

CM stands disposed of.

MAIN CASES

This order of mine shall dispose of the eight writ petitions, aforementioned as common questions of law and facts are involved. The facts are being taken from the petition bearing **CWP No.8212 of 1994.**

This Court had already vide order dated 14.08.2013 disposed of 10 writ petitions including the present one by accepting the grievance of the petitioner(s) for depositing the additional cost of the area as per the Clause 6 of the offer of allotment by calling upon them to pay the amount along with interest @ 9% from the date of demand till the date of actual payment.

The aforementioned decision was assailed by the State of Haryana by filing Letter Patents Appeal bearing LPA No.835 of 2014 and

the Letter Patents Bench vide order dated 11.11.2014 allowed the appeal in the following terms by accepting one point out of the three points qua the payment of interest:-

11. Coming to the first plea, namely, rate of interest, it may be seen from the letter dated 23rd October, 1986 that the allottees were offered additional land on payment of lump sum amount subject to its payment within five years along with penal interest @15% per annum. The allottee was liable to pay additional rate of ₹ 250/- per square yard with 15% compound interest in case of the change of use of the area. The allottees unsuccessfully challenged these terms and conditions in an appeal which was rejected vide order dated 09th July, 1993. Thereafter, the Authorities gave an opportunity to deposit that amount within a period of 15 days vide notice dated 06th January, 1994. The allottees, however, came to this Court and obtained interim stay.

[12]. The plain reading of the order passed by the learned Single Judge unfolds that the respondent-allottees did not contest the case on merits. Rather, they agreed to deposit the due amount “along with interest @9% per annum from the date of demand till the actual payment, so as to save the property”. Their offer has been accepted by the learned Single Judge without the consent of the appellants or deciding the controversy on merits.

[13]. In our considered view, learned Single Judge could not have completely over-looked the Clauses 6 and 8 of the letter dated 23rd October, 1986 save after expressing views on legality, propriety and/or binding nature thereof. It is only in a case where the Court comes to a firm conclusion that the terms and conditions of a contract are unconscionable void-abinitio or in violation of public policy that the party to the contract can be permitted to wriggle out of the binding nature of agreed

terms and conditions. Since the learned Single Judge has not delved upon the above stated issue, we accept the first plea raised on behalf of the appellants; set aside the impugned order and remit the case to the learned Single Judge for adjudication on merits.

*[14]. As regard to the reliance placed by learned counsel for the respondents on the order dated 23rd January, 2014 passed in **LPA No. 698 of 1992**, suffice it to mention that the same Division Bench distinguished its order while issuing notice of motion in these appeals vide order dated 24th July, 2014. That apart, the cited order does not deal with any of the contentions noticed above.*

[15]. Parties are directed to appear before the learned Single Judge on 22nd December, 2014.

[16]. Having held that, we are also of the considered view that if the allottee-respondents agree to deposit the due amount along with 15% compound interest as per the terms and conditions of the offer, the learned Single Judge may accept the same and in that eventuality, the case need not be decided on merits.

[17]. Disposed of. Dasti.”

Mr. Som Nath Saini, learned counsel appearing on behalf of the petitioner(s) has drawn the attention of this Court to the Clause 6 of the offer to contend that his client is willing to pay additional amount along with compounding interest @ 15%, but that would only be from the date of the approval of the transfer.

The factum of the applicability of the terms and conditions of the offer indicated in Annexure P-2 dated 23.10.1986 is not disputed by Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

Keeping in view the judgment rendered in LPA, the present

writ petition is disposed of by giving an opportunity to the petitioner to deposit the amount strictly in consonance with the Clause 6 of the offer i.e. additional cost @ ₹ 250 per sq. yards along with compounding interest @ 15% from the date of the approval of the transfer of the additional area by the competent authority.

The State in compliance of this order shall raise the demand by giving the opportunity to the petitioner to deposit the amount within a specified period.

In case the petitioner(s) do not deposit the same, the impugned order shall automatically deemed to have been upheld.

It has also been pointed out that in certain cases, approval has not been granted, in that cases, concerned authorities i.e. Chief Settlement Commissioner/Joint Secretary/Secretary, Rehabilitation Department is directed to grant the approval within two months from the date of the receipt of the certified copy of this order. The reckoning date for compounding interest @ 15% will be from the date of the approval i.e. in the letter and spirit of Clause 6 of the offer, indicated therein.

06.02.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No