

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

RSA No.2671 of 2013 (O & M)

Date of Decision:-24.01.2017

Estate Officer, Haryana Urban Development Authority, Jind

...Appellant

Versus

Rajbir Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. A.K. Kansal, Advocate
for the appellant.

Mr. U.K. Agnihotri, Advocate
for the respondent.

HARI PAL VERMA J.(Oral)

The appellant/defendant has filed the present regular second appeal against the judgment and decree dated 2.2.2013 passed by learned Additional District Judge, Jind, whereby the appeal filed against the judgment and decree dated 10.10.2011 passed by learned Additional Civil Judge (Sr. Division), Jind, was dismissed.

Briefly stated, respondent/plaintiff has filed a suit for mandatory injunction against the appellant/defendant-Estate Officer, Haryana Urban Development Authority, Jind, directing the defendant to deliver the possession of plot No.4630, Sector 11 Extension, Jind measuring 162 square meters or 193.75 square yards i.e. 9 x 18 meters allotted to him

@ Rs.900/- per square yards for total sum of Rs.1,74,375/-. In the alternative it was also prayed that defendant be directed to make payment of less area allotted to the plaintiff as per market value and as per allotment price along with interest thereon @ 24% per annum from the date of allotment i.e. 30.10.2000 till final payment alongwith compensation and damages. In fact, vide letter/memo dated 30.10.2000, the respondent/plaintiff was allotted plot measuring 162 square meters. He was legally entitled to take possession of the plot as per allotment letter. However, on demarcation of the plot, it was found that the area of the plot was not commensurating with the area of allotment letter. Accordingly, plaintiff made a representation to the defendant to demarcate the plot and to give possession of the complete area, in terms of the allotment letter. The plaintiff has made the payment of 162 square meter land to the appellant/defendant.

The appellant/defendant, while filing written statement, has admitted that the respondent/plaintiff was allotted 162 square meter plot. However, in the advertisement, it was mentioned that number of plots and size of plots is tentative and liable to be changed. It is also mentioned in the allotment letter that during demarcation or at any stage after allotment, if the plot of any allottee is falling in the area under any litigation or development could not be done due to litigation or possession delayed due to litigation, then allottee in such case will have to either wait for the possession of his plot till the litigation is over/development work is completed in the pocket. Further the allottee can seek refund of the amount

paid by him to HUDA, and the amount shall be refunded to the allottee without any interest. But in either case, the allottee shall not have any right to claim any alternative plot. On 20.3.2001, the plaintiff was offered for possession and he did not care, therefore, is estopped to file the present suit. The allottees of plots No.4629 and 4630 have got their plan sanctioned and raised construction. However, at the spot, it was found that the plot is not as per specifications made in the allotment letter. The plot at the spot was 7.5 meters x 18 meters (135 square meters) instead of 9 x 18 meters.

From the pleadings of the parties, following issues were framed by the trial Court vide order dated 16.1.2009 :-

- “1. Whether the plaintiff is entitled to decree for mandatory injunction as prayed for ? OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether the plaintiff has estopped by his own act and conduct from filing the present suit ? OPD
4. Whether the plaintiff is guilty from suppressing the true and material facts from the Court ? OPD
5. Relief.”

Since the respondent/plaintiff was allotted plot of lesser size than the plot offered to him in the allotment order, the trial Court decreed the suit. Accordingly, a decree of mandatory injunction dated 10.10.2011 was passed in favour of respondent/plaintiff to make payment in the form of compensation, the amount at prevailing market value for less area offered/to be given to the plaintiff. Since the area was not as per the allotment letter, the plaintiff was held entitled for interest @ 6% per annum over the due

amount. But after the expiry of 90 days, in case amount of compensation is not paid, in that situation, the plaintiff would be entitled to interest from the date of pronouncement of judgment till realization the decretal/compensation amount.

Aggrieved against the aforesaid judgment and decree dated 10.10.2011, the appellant/plaintiff has filed the first appeal. However, the appeal was also dismissed vide judgment and decree dated 2.2.2013 passed by the learned Additional District Judge, Jind. The learned lower Appellate Court has observed as under :-

“In the present case it is not the case of the defendant that delivery could not be made of complete plot to the plaintiff due to pendency of litigation. There appears to be a mistake at the end of the defendant himself while offering plots and then demarcating the plots. It has also come in evidence that area of plot No.4629 is 171 square meters but the area of plot of the plaintiff is 135 square meters only. It would indicate that the other plots offered to the allottees were complete while the area of the plot of the plaintiff has been reduced by 27 square meters. It is not a case of the defendant that area of all the plots have been reduced. When the area of concerned plot No.4629 is 171 square meters then the plaintiff only cannot be deprived to get his due area of 162 square meters. With due reverence the ratio of the case law **Subhash Chand vs. State of Haryana, 1997(2) All India Land Laws Reporter 166** relied upon by the learned counsel for the appellant, it is observed that same would not come to his rescue as in that case HUDA had failed to get possession of the land

but despite that it was directed that HUDA would pay interest at the rate of 15% per annum on equitable basis. In the instant case there is apparent failure on the part of the defendant HUDA while demarcating and allotting the plot to the plaintiff. The area of the plot of the plaintiff only cannot be reduced. He paid price of the complete allotted plot. Hence, he is entitled to the market rate of the plot, on equitable basis as well, as in case plaintiff has to purchase another plot of the same area, he shall have to pay prevailing market price. Learned Court below has dealt with the matter in right perspective and has rightly returned the findings on all the issues. No interference of this Court is required in well reasoned judgment of learned Court below. So, findings of learned Court below are hereby affirmed on all the issues.”

Still aggrieved against the judgment and decree dated 2.2.2013 passed by learned lower Appellate Court, the appellant/defendant has filed the present Regular Second Appeal.

Learned counsel for the appellant/defendant has argued that the Courts below have failed to take into consideration the fact that the possession of the plot in question was offered to respondent/plaintiff on 20.3.2001. The other allottees were also offered possession, but plaintiff has not come forward to take possession of the alleged plot despite the fact that the allottees of the adjoining plots have taken their possession and have rather raised their construction much prior to the plaintiff. He has further argued that as per Clause 2 of the allotment letter, the area was tentative and subject to adjustment in accordance with actual measurement at the time of

delivery of possession. Even if the plot was lesser in size, the plaintiff is entitled for refund of amount alongwith interest @ 6% per annum, but not the market price as held by the Courts below.

On the other hand, learned counsel for the respondent has argued that there is no substantial question of law in the present appeal. There is no illegality in the judgment and decree passed by the Courts below. Since defendant has failed to honour allotment to the respondent/plaintiff in terms of the allotment letter, no interference is warranted in the concurrent finding of facts, recorded by both the Courts below.

I have heard learned counsel for the parties.

There is no dispute that the plaintiff had applied for a plot of 162 square meters or 193.75 square yards having dimension of 9 x 18 meters @ Rs.900/- per square yards. The appellant/defendant has issued an allotment letter as well, but on the spot, it was found that the plot was under size and not as per the allotment letter. Instead of 162 square meters, it was found 135 square meters at the spot. In this manner, the area was 27 square meters less than the allotted area. The plea of the appellant that HUDA can refund the excess amount @ Rs.900/- per square meter for the area of 27 meter, cannot be accepted. The plaintiff has planned for a house for his family based upon his requirements. He has deposited the total sale consideration required for a plot measuring 162 Square meter, but on spot, it was found that the area is 27 meter less than what he applied/allotted. Thus, his very purpose of owing a house as per his requirements, was

defeated.

In this manner, the plaintiff was made to compromise with his requirement of smaller plot despite having paid the amount for the bigger size of plot. He had been fighting for his rights since the year 2008.

As per the allotment letter, the HUDA is entitled to claim interest @ 15% for delayed payment, which goes upto 24%. In case the respondent/plaintiff failed to deposit the amount, the appellant HUDA would have charged interest over the delayed payment @ 15% per annum. But in the case in hand, HUDA has enjoyed the excess money without making any attempt to refund and has rather opted to file the present appeal against the judgment and decree dated 02.2.2013 passed by learned Additional District Judge, Jind. In this manner, the respondent/plaintiff has been made to pursue his case upto this Court. It may be a luxurious litigation for the HUDA but at the same time it has an adverse financial effect on the respondent/plaintiff. Therefore, this Court finds that appeal filed by the appellant/defendant deserves to be dismissed. However, on account of continuous sufferings having been faced by the respondent/plaintiff, this Court finds that the appellant/defendant needs to be burdened with some exemplary cost.

Since the appellant/defendant has frustrated the very planning of the respondent/plaintiff and made him to compromise with smaller size of plot, this Court finds that the respondent/plaintiff deserves to be compensated.

Accordingly, as no substantial question of law arises in the

present appeal, therefore, the present petition is dismissed with costs of Rs.50,000/-. The cost shall be paid to the respondent/appellant.

January 24, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No