

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

**Regular Second Appeal No.2855 of 2016
Date of Order:14.07.2017**

Municipal Council, Malerkotla

..Appellant

Versus

Amarjit Bansal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Khunger, Advocate,
for the appellant.

Mr. Nakul Sharma, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

Defendant-Municipal Council, Malerkotla, is in appeal against the judgments and decrees passed by both the Courts below.

Plaintiff-respondent Amarjit Bansal filed a suit for possession by way of specific performance of contract/promise to transfer property and one plot measuring 687 square yards situated at Malerkotla in his favour.

In brief, detailed facts have already been given by the Courts below. However, to complete the narrative brief facts are being given.

Plaintiff in this suit had sought specific performance of contract on the basis of resolutions passed by the Municipal Council, Malerkotla dated 16.10.2001 and 26.10.2006, wherein offer was made to the plaintiff to purchase the property in his possession. It was asserted in the plaint, which is in fact the admitted position that pursuant to the offer initially made, vide letter dated 16.10.2001, Ex.D2, on the file, plaintiff had deposited the entire

sale consideration i.e. Rs.34,26,412.50 paise.

Pursuant to the notice, defendant appeared and filed its written statement. Defendant had taken a stand that plaintiff had not fulfilled the terms and conditions as required by the defendant and defendant did not get the sale deed executed on his expenses up to 31.12.2001. It was further asserted that now the plaintiff is not entitled to get the sale deed executed as the scheme under which plot was offered to be sold was valid only for a period of six months. It has further been asserted that, although, the policy was extended but High Court by passing an order stayed the alienation of the properties belonging to the Municipal Councils. It has further been asserted that Municipal Council further passed a resolution allowing sale in favour of the plaintiff, on 14.12.2002, however, the same was suspended by the Deputy Director, Local Bodies, Patiala, which was further confirmed by the Director, Local Bodies, Chandigarh.

During the course of evidence, plaintiff further produced copy of the resolution passed by the Municipal Council, Malerkotla, the appellant, dated 26.10.2006, Ex.P10 on record, whereby the Municipal Council, Malerkotla had once again reiterated its decision to sell the plot in question to plaintiff. The trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff. An appeal preferred by the Municipal Council, Malerkotla was ordered to be dismissed, vide judgment dated 24.08.2015.

I have heard learned counsel for the parties and with their able assistance gone through the record.

Counsel for the appellant has submitted that once the policy decision of the government directing the Municipal Committees/Municipal

Councils to sell the property in the possession of tenants, has been declared illegal, then suit filed by the plaintiff is not maintainable for enforcement of the resolution. Counsel for the appellant has further submitted that since the plaintiff/respondent failed to get the sale deed executed within the time, therefore, no right vests in the plaintiff to get the sale deed executed. He has further submitted that as per the judgment passed by the Hon'ble Division Bench, not only the policy but even the proceedings taken thereunder were declared illegal.

On the other hand, counsel for the plaintiff-respondent has supported the judgments passed by the Courts below with all vehemence and has pointed out that plaintiff-respondent had deposited the amount on 23.10.2001, thereafter there were two resolutions of the Municipal Council permitting sale of the property in favour of the plaintiff. First resolution was passed on 14.12.2002, which was followed by another resolution dated 26.12.2006.

A reading of resolution dated 26.12.2006, Ex.P10, on file would show that the Municipal Council, Malerkotkla, after noticing the judgments passed by this High Court wherein liberty was given to the Municipal Council to sell their properties irrespective of the instructions having been declared illegal. Municipal Council decided to sell and proceeded to pass a resolution, authorizing the sale of the property. In view of this resolution in fact it did not lie in the mouth of the Municipal Council to raise any defence because it is not in dispute that payment was deposited by the plaintiff pursuant to the offer within time. Even if any period was prescribed under the instruction issued by the Government for execution of sale deed although there was none, but after the orders of the High Court

Municipal Councils took a independent decision. Now, thereafter, Municipal Council cannot fall back upon the instructions of the Government. Counsel for the respondent has further pointed out that sale deed in its favour has already been executed during the pendency of the present appeal on 28.11.2006.

The Municipal Council has been granted liberty to take independent decision. In this case Municipal Council did take a decision and allowed the sale of the property, therefore, merely because instructions issued by the State Government were declared illegal. The Municipal Council cannot take a stand that now it is not bound by its resolution particularly when the amount has been accepted. In fact Municipal Council took a conscious decision even after noticing the order passed by the High Court to sell the property.

Taking into consideration the entire facts and circumstances, I am of the opinion that there is no merit in the present appeal, the same is ordered to be dismissed, in limine.

July 14, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No