IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3932 of 2016 (O&M)
Date of decision: 06.03.2017

Haryana Urban Development Authority and another

... Appellants

Vs.

Krishna Singla and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Deepak Sabherwal, Advocate
for the appellants.

Mr. R.S. Sihota, Sr. Advocate with
Mr. B.R. Rana, Advocate
for the respondents.

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RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 18.08.2015 passed by the learned first appellate Court, whereby first appeal of the plaintiffs was allowed, setting aside the judgment and decree dated 22.07.2011 of the learned trial Court, dismissing the suit of the plaintiffs for declaration with consequential relief of permanent injunction, defendants have approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that a shop-cum-flat bearing No.153/9 was allotted to Smt. Krishna Singla and Smt. Renu Bansal on 21.08.1989 vide memo No.2184 for a total price of Rs.3,02,500/-. The shop-cum-flat in dispute was allotted to the appellants in open auction held on 10.04.1989. The bid money equivalent to 10% of the total sale price was deposited on the same day and 25% amount i.e. Rs.45,375/- was also deposited within 30 days from the date of issuance of letter. The balance amount of Rs.2,26,875/- was to be paid in lump sum without interest within 60 days from the date of issuance of allotment letter or in eight half yearly installments. The first installment was to be paid along with interest @ 10% per annum. The respondents were entitled to charge interest from the date of order of possession. The appellants deposited a sum of Rs.1 lac on 26.2.1996 vide three pay orders. The appellants were owners in possession of the shop-cum-flat in dispute since the allotment. The appellants entered into an agreement, to sell the said shop cum flat for a total sale consideration of Rs.1,05,000/- on 25.03.1992 in favour of Bir Singh. It was agreed that Bir Singh would pay the remaining installments. It was submitted that Om Parkash Gulati, Sunil Gupta and Krishna Gauri hatched a criminal conspiracy in order to grab the property of the appellants by way of forgery and they forged a receipt and agreement to sell dated 28.02.1996. On the basis of forged receipt, they filed a suit for specific performance. Appellants appeared in that suit and filed a counter-claim in the said civil suit. Bir Singh also made a complaint against them and case FIR No.349 dated 12.09.2000 was registered. It was submitted that due to pendency of the civil suit and counter-claim Bir Singh could not deposit the installments as interest was wrongly calculated by respondent No.2. Respondent No.2 calculated interest @ 18% per annum as compound interest and the penalty thereon. The said civil suit was withdrawn by the aforesaid Om Parkash. Respondent No.2 issued notices under Section 17(1), (2), (3) and (4) of the HUDA Act to the appellants calculating the amount of Rs.11,65,814/- by charging interest @ 18% per annum and imposing penalty on the remaining amount. At the time of allotment, the interest was agreed @ 10% per annum but the respondents claimed the interest @ 18% per annum illegally. The appellants were always ready to pay the amount in question subject to charging interest @ 10% per annum on flat rate excluding the penalty imposed by respondent No.2 which was contrary to law but instead of calculating the interest on flat rate of 10%, respondent No.2 has wrongly and illegally resumed the property in dispute on 19.01.2001 in spite of detailed reply filed on behalf of the appellants. Possession of the property in dispute was to be offered immediately after payment of 15% of the total amount after providing all the amenities and facilities like road, sewerage, electricity pavement etc. but the respondents had not provided civic amenities in the area and as such commercial activities being undertaken in the residential premises greatly effected the business activities in the market in which the suit property situates. The appellants were in possession of the suit property, but the respondents were bent upon to dispossess them from the suit property under the garb of resumption order.

After having been served, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the order of resumption is liable to be set aside? OPP
2. Whether the Civil Court has no jurisdiction to try and entertain the present suit? OPD
3. Relief.

With a view to substantiate their respective stands taken, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have failed to prove their case. Accordingly, suit for declaration with consequential relief of permanent injunction was dismissed, vide judgment and decree dated 22.07.2011. Plaintiffs filed their first appeal, which came to be allowed by the learned first appellate Court, vide impugned judgment and decree dated 18.08.2015. Hence this regular second appeal at the hands of the defendants.

Heard learned counsel for the parties.

Facts are hardly in dispute. The Hon'ble Supreme Court as well as this Court have repeatedly held on more than one occasions that power of cancellation or resumption of allotment must be exercised only as a last resort. Since the cancellation of allotment would have far-reaching civil consequences, such power is to be exercised not in a case of mere failure to pay but it should be exercised only when the allottee has no intention to pay at all. It is so said because the allottee can be asked and directed to pay the interest and penalty etc. for the delay, as per the peculiar fact situation in a given case. The Hon'ble Supreme Court has deprecated the exercise of powers of resumption or cancellation of allotment mechanically. Under these circumstances, it can be safely concluded that exceptions apart, an allottee does not gain anything in delaying the payment in time, because his additional financial burden of interest will keep on increasing.

The abvoesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Roochira Ceremics Vs. Haryana Urban Development Authority, 2002 (9) SCC 599.***
2. ***M/s Gagan Foods Processors (P) Ltd. Vs. Union Territory, Chandigarh and others, 2003 (2) RCR (Civil) 645.***
3. ***M/s Teri Oat Estates (P) Ltd. Vs. U.T. Chandigarh and others, 2004 (2) SCC 130.***
4. ***M.D. H.S.I.D.C. and others Vs. M/s Hari Om Enterprises and antoher, 2009 (16) SCC 208.***
5. ***Haryana Urban Development Authority and another Vs. Om Parkash Sharma, 2009 (4) PLR 575.***
6. ***Haryana Urban Development Authority through its Chief Administrator and another Vs. Kedar Nath, 2010 (2) RCR (Civil) 700.***
7. ***Dheera Singh Vs. UT Chandigarh Admn. and others, 2012 (4) RCR (Civil) 970 (FB).***
8. ***The Administrator, Haryana Urban Development Authority, Hisar and another Vs. Anguri Devi and others, 2013 (2) RCR (Civil) 224 (DB).***
9. ***Urban Improvement Co. Pvt. Limited Vs. S.V. Babbar and another, decided on 06.02.2017 in RSA No.4921 of 2016.***

When confronted with the abovesaid law laid down by the Hon'ble Supreme Court as well as this Court, learned counsel for the appellants, despite making his best efforts, had no answer and rightly so, it being a matter of record. The relevant observations made by the Division Bench of this Court in paras 7 and 9 of its judgment in **Anguri Devi**'s case (supra), which can be gainfully followed in the present case, read as under:-

> *"We, however, feel that it would not be just and equitable to pin down price of the shopping booths as on the date of allotment in 1991, if the price is pegged down to 1991 then it would act as a premium on default of payment of installments. The consequences of pinning down prices to 1991 in the present case would unjustly work as a lottery for defaulters, or manna from heaven which would not be legally palatable. We would not pass an order that might tend to lead to unjust enrichment. We, therefore, expanded the debate during the course of arguments before us on the doctrine of proportionality as lucintly expounded in Teri Oat Estates (P) Ltd. case (supra and relied upon in the judgment in appeal) with a view to examine how best to strike a proper balance between adverse effects, which the legislature or the administrative authority's order may have on the rights, liberties or interests of persons, keeping in mind the purpose which they were intended to serve. In Teri Oat Estates (P) Ltd. case (supra) the Hon'ble Supreme Court has held that every case is to be examined on its own facts when applying the said doctrine. It was perhaps on this solid line of reasoning that the First Bench of this Court passed the interim order dated 6.4.2011, which reads as under :-*
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> > *"Before passing any final orders in the appeal, we are of the view that the following information should be laid before us by the learned counsel for the appellants:-*

1. The total amount that would be payable in terms of the order of the learned Single Judge i.e. allotment price interest and penalty;

2. What was the valuation of the property on the date of the appellate order i.e. 25.7.2007 by which the resumption order was set aside, as per rates applied by the HUDA?

3. What would be the price of the property as on date as per the HUDA norms? The above information be laid before us on the next date of hearing. List on 21.7.2011."

(underlined for emphasis)

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When we turn to the broad facts of the present case we find that it is not in dispute that the allotments were made as far back as in the year 1991; there was admitted default in payment beyond 25% of the allotment price; the resumption order was passed on 13.2.2001; no payments were made for ten years; it took the petitioners/respondents yet another six years to file appeals, which culminated in the order dated 25.7.2007 in their favour; and still further the respondents must have enjoyed the use, occupation, usufruct or rent of the premises unlawfully. We thought that 25.7.2007 would be the most appropriate date to work out the valuation of the shopping booths and call upon respondents/petitioners to pay the market rate as on the date of the appellate order i.e. Rs. 10,78,974/- and not Rs. 4,21,518/-. We, therefore called upon Mr. B.S. Malik, learned counsel for *respondent No.1 to take instructions from his client whether they would be prepared to settle the matter on payment of Rs.10,78,974/-. Mr. Malik, on instructions, received from his clients on the mobile, on a pass over of the matter granted for the purpose, informed us that they would be ready and willing to pay the amount suggested without demur. We would be happy to make this statement an undertaking to the Court."*

Following the abovesaid law laid down by the Division Bench of this Court, which was, in turn, based on the law laid down by the Hon'ble Supreme Court, in the cases referred to hereinabove, learned first appellate Court was well within its jurisdiction to pass the impugned judgment and decree, allowing the first appeal of the plaintiffs and the same deserve to be upheld.

Before arriving at judicious conclusion, learned first appellate Court reconsidered and appreciated the true factual as well as legal aspect of the matter, in correct perspective. Cogent findings recorded by the learned first appellate Court in paras 12 and 13 of its impugned judgment, which deserve to be noticed here, read as under: -

"After taking into consideration the aforesaid facts and circumstances of the case and after perusing the record of the case and after going through the judgment passed by Hon'ble High Court in case titled as The Administrator, Haryana Urban Development Authority, Hisar and anr. Vs. Anguri Devi and others (supra), it is settled law that power of resumption is the weapon of last resort. It is undisputed that the property in question was

allotted to one Krishna Singla and Renu Singla on 21.8.1989. Both the allottees filed a suit as well as the present appeal through their GPA namely Bir Singh. It is also not disputed that the property in question, which is shop-cum-flat, was allotted for total price of Rs. 3,25,000/-. 10% amount was deposited on the same day i.e. 30,250/- and remaining 25% amount i.e. Rs. 45,375/- was also deposited within 30 days. Allotment letter is Ex.P10. It is further the case of appellants that payment of Rs.50,000/- was deposited vide pay order No.1481226 dated 26.2.1996 and Rs. 30,000/- were deposited vide pay order No.896831 dated 26.2.1996 and Rs. 20,000/- were deposited vide pay order No.0013742 dated 26.2.1996. Now, it is also the case of the appellants that they are ready to pay market value as on the date of filing of suit. They relied upon case titled as The Administrator, Haryana Urban Development Authority, Hisar and anr. Vs. Anguri Devi and others (supra) in which Hon'ble Division Bench disposed of the letter patent appeal by applying doctrine of proportionality.

In the present case the property was allotted in the year 1989 and resumption order was passed in the year 2001 and departmental remedies were invoked in the year 2002 and the present suit was filed on 7.5.2003. Hence, the present appeal is disposed of in view of the statement made by the appellants as their case is covered with the judgment delivered by Hon'ble High Court in case titled as The Administrator, Haryana Urban Development Authority, Hisar and anr. Vs. Anguri Devi and others *(supra). It is directed to the respondents authority to give detail of the amount payable by the appellants in accordance with market rate as on the date of filing of the suit i.e. 7.5.2003. It is further directed to the respondents to provide detail of the amount within a period of 30 days from the date of receipt of certified copy of this order to the appellants. Direction is issued to the appellants to make payment to the respondents within a period of 60 days from the date of receipt of calculation by the respondents. In view of above mentioned observation, the present appeal is disposed of and the resumption order is hereby set aside."*

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the abovesaid cogent findings recorded by the learned first appellate Court. In fact, the impugned judgment of the learned first appellate Court has been found in consonance with the law laid down by the Hon'ble Supreme Court as well as this Court, in the cases referred to hereinabove, because of which no fault can be found with the reasoning adopted by the learned Additional District Judge, while passing the impugned judgment and the same deserves to be upheld, for this reason also.

Learned counsel for the appellants also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
06.03.2017 **JUDGE**
vishnu

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