

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2956 of 1998 (O&M) &
Cross-objections No.16-C of 1998
Date of Decision: May 02, 2018

Kanti Parshad Jain (deceased) through L.Rs

...Appellant

Versus

M/s Greater Ashoka Land & Development Company, 3, Shankar Market,
Cannaught Circus, New Delhi

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

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

Mr.Kulbhushan Sharma, Advocate,
for the respondent/cross-objector.

AMIT RAWAL, J.

Appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 7.8.1998 rendered by the Lower Appellate Court, whereby the appeal of the respondent-defendant preferred against the judgment and decree of the trial Court dated 29.3.1996 decreeing the suit, has been allowed.

The appellant-plaintiff instituted the aforementioned suit claiming specific performance of the contract on the premise that the defendant was engaged in the business of colonisers under the name and style of M/s Greater Ashoka, Land and Development Company. In the year 1963, the defendant caused an advertisement for development of a colony called "Ashoka Enclave Extension, Part-3 situated at Delhi Mathura Road.

In November 1963, the defendant entered into an agreement to sell a plot

bearing No.103 at the aforementioned colony measuring 233 sq.yards @ 25/- per square yard. On consideration of the said agreement to sell, plaintiff paid a sum of ₹500/- vide cheque dated 30.10.1963 and another cheque dated 6.11.1963 amounting to ₹950/-. The defendant in lieu of the aforementioned amount, issued a receipt dated 20.11.1963 for a sum of ₹1450/-. The aforementioned receipt contained 13 terms and conditions of sale, whereby it was intimated that the plots were free hold and the mode of payment was 25% at the time of booking as earnest money, 20% within one month of booking as balance earnest money, 20% against metalled roads touching the plot of the purchaser, 15% against surface drains, 15% against provision of electric poles and 5% against provision of tubewell water or 25% at the time of booking as earnest money and the balance if paid within one month from the date of booking of the plot would entail rebate of 5% on the total sale price and the Company shall provide at their own cost metalled roads, storm water drains, electric poles and tubewell water. As per the terms and conditions, the plaintiff, vide cheque dated 30.1.1967, paid a sum of ₹1165/-, another sum of ₹2320/- vide cheque dated 12.7.1969 and ₹4945/- against the total agreed price of ₹5825/- and only a sum of ₹880/- remained to be paid by the plaintiff to the defendant.

Several requests were made by the plaintiff to the defendant, but the defendant failed to develop the colony or hand over the possession of the plot in question. In all the communications, the defendant informed the plaintiff that the defendant had applied for approval of the layout plan in the department of Town and Country Planning because it was required under the provisions of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (for brevity “1963 Act”)

and further demanded a sum of ₹4/- per square yard.

On 11.3.1968, defendant addressed a letter to the plaintiff stating that the defendant was in the process of getting sanction under 1963 Act. However, in 1969, defendant demanded another instalment of 20% of the total agreed amount, which was stated to be paid by the plaintiff vide cheque dated 12.7.1969 and receipt in lieu thereof was issued by the defendant, wherein defendant allotted Plot No.231 with an area of 233 sq.yards instead of Plot No.103 to the plaintiff. The plaintiff kept on requesting the defendant for making the plot available, but the defendant sought more time to hand over the possession of the plot and complete remaining formalities.

Vide letter dated 13.12.1982, the defendant informed the plaintiff that in case he was interested in allotment or handing over the possession, should pay ₹135/- per square yard in respect of the plot in question within ten days as the colony had now been developed because the land was de-requisitioned so that the defendant would give fresh allotment of plot to the plaintiff as the earlier contract had frustrated. Vide letter dated 27.12.1982, plaintiff called upon the defendant about the break up of the amount, but the aforementioned notice/request was not adhered to. Since the defendant failed to perform his part of the contract, cause of action accrued to file Civil Suit No. 342 of 4.1.1986.

The suit aforementioned was contested by the respondent-defendant by taking various preliminary objections qua limitation, jurisdiction, cause of action, frustration of the contract etc. On merits, the factum of booking of the plot in the year 1963 was not denied, but it was stated that the plaintiff did not make the payment of the amount as per the

terms and conditions printed on the receipt nor he was ever ready and willing to pay the full sale consideration. In view of the provisions of 1963 Act, the sale and transfer of the plot was prohibited, for, the approval of the layout plan of the colony was required to be taken, therefore, the alleged contract became frustrated. However, the plaintiff in lieu of Plot No.103 was offered alternative Plot No.231 subject to the condition that he would make the payment of additional charges. The aforementioned demand was raised in the year 1967, but the plaintiff failed to make such payment nor did confirm the booking of the plot and, thus, provisional booking of Plot No.103 or even Plot No.231 lapsed. Thereafter, Government of Haryana promulgated a new Act, i.e., Haryana (Restriction of Development and Regulation) of Colonies Act, 1971 (for short "1971 Act") and owing to the enforcement of the Act, the sale and transfer of the plot in the colony was prohibited. Then 1975 Act, i.e., Haryana Development of Urban Areas and Regulation Act, 1975 (for brevity "1975 Act") was promulgated. On the enforcement of the Act, the layout plan of colony, which was earlier approved in the year 1961, was again withdrawn. Even acquisition proceedings initiated in the year 1977 and owing to the request, the land of the defendant was released from acquisition and a new layout plan of the colony was got sanctioned. The revised estimate for the internal work of the colony was submitted in the department as per the provisions of 1975 Act on 7.2.1977, which was approved on 14.7.1980. Various other payments amounting in crores were deposited in the department and in this respect, the defendant had paid huge amount on account of internal as well as external development. The letter dated 13.12.1982 was issued to make the booking of the plot if he was interested in the said colony subject to

payment of amount demanded in the letter.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the defendant entered into an agreement with the plaintiff for sale of plot no.103 at Ashoka Enclave Part III at the rate of Rs.25/- per square yard, if so to what effect? OPP*
- 2. Whether a total amount of Rs.4945/- was paid by the plaintiff? OPP*
- 3. Whether the plaintiff has always been ready and willing to perform his part of contract? OPP*
- 4. Whether the defendant has made breach of the contract? OPP*
- 5. Whether the suit is not maintainable? OPD*
- 6. Whether the suit is barred by time? OPD*
- 7. Whether the plaintiff has got no cause of action? OPD*
- 8. If issue No.1 is proved, whether the contract stand frustrated? OPD*
- 9. Relief.”*

The plaintiff in support of his case, examined himself as PW-1 and brought on record documents Ex.P1 to Ex.P36, whereas the defendant examined Baldhari DW1, Nirmal Chand DW2, Nar Singh Dass Patwari DW3, Kulbhushan Sharma DW4, Satish Kumar Kawatra DW5 and Siri Chand DW6 and also brought on record as many as seven documents.

The trial Court, on the examination of the documentary evidence noticed above, decreed the suit of the plaintiff by directing the defendant to perform the contract of sale of plot No.231 in Ashoka Enclave Colony Extensions Part 3 and to get the sale deed executed and registered in favour of the plaintiff on payment of sale consideration @ ₹135/- per square yard and ₹65/- per square yard of external development charges. Amount of ₹4945/- already paid by the plaintiff was ordered to be adjusted by the defendant with the stipulation that the stamp and registration charges for the

execution of sale deed would be borne by the plaintiff.

The aforementioned judgment and decree of the trial Court was assailed by the defendant before the Lower Appellate Court. The Lower Appellate Court reversed the findings of the trial Court and dismissed the suit holding that it was not a case of grant of discretionary relief under Section 20 of the Specific Relief Act and ordered recovery of ₹43,000/- along with interest @ 6% per annum w.e.f. 3.1.1986 when the suit was instituted till final realisation thereof.

Mr.Sandeep Khunger, learned counsel representing the appellant-plaintiff, in support of the memorandum of appeal, raised the following submissions:-

a) The Lower Appellate Court, by relying upon the provisions of Section 56 of the Indian Contract Act, 1872 held that the contract stood frustrated, but committed perversity to appreciate that there was no semblance even remotely with the facts of the case of Urban Development Company Versus Ujagar Singh, 1996 (1) PLR 237, wherein the High Court had held otherwise. Rather, on perusal of the record, it has been established that there was no other colony in the village for the benefit for which any such sewerage, drain or road or electrical work was required. The provision for internal development was to be made by the respondent;

b) Conceded position on record was that the permission to lay down the colony was obtained by the respondent under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and there was no

application of 1970 Act. It also remained oblivious of the fact that the delay in development of the colony was squarely attributed to the respondent, therefore, it could not be said that the contract stood frustrated;

c) Plaintiff had never refused to even accept the offer @ ₹135/- per square yard in pursuance to the letter dated 13.12.1982, but only sought break up. That would not render the contract unenforceable, for, the trial Court granted the relief only at the rate demanded by the defendant. Rather, the defendant should not have contested the suit and would have come out with the proposal to offer rate as noticed in the aforementioned letter and, thus, urged for setting-aside the findings under challenge.

Mr.Kulbhushan Sharma, learned counsel appearing on behalf of the respondent-defendant submitted that with regard to decree of recovery of ₹43,000/-, respondent has filed cross-objections No.16-C of 1998, for, the plaintiff did not make the payment of the amount as per the terms and conditions nor was ready and willing to purchase the plot and get the sale deed registered in his favour on payment of full consideration. On the contrary, the defendant company had paid huge amount for external development, which had been explained in the written statement. Admittedly, the letter Ex.P26 was received by the plaintiff on 18.12.1982. The offer @ ₹135/- per sq.yard was only for a period of ten days and in case of non-acceptance of the offer within the stipulated period, the same automatically stood withdrawn. During the course of the hearing, he drew the attention of this Court to the letter Ex.P21 dated 27.1.1975, wherein the

plaintiff though called upon the defendant to know the latest progress in the development of the colony and if no reason came forth, requested to return the money along with interest. Though the aforementioned letter was not duly replied, but the fact of the matter is that plaintiff was not interested in going ahead with the plot, therefore, estopped to lay claim of seeking specific performance of the agreement to sell. The Lower Appellate Court rightly applied the provisions of Section 56 of the Indian Contract Act and, thus, urged this Court for upholding the findings by dismissing the appeal.

I have heard the learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is force and merit in the submissions of Mr.Khunger for the following reasons:-

1) The factum of allotment of earlier Plot No.103 and later on Plot No.231 @ ₹25/- per square yard containing conditions as indicated above and the reason for getting approved the plan at the instance of the defendant owing to 1963 Act, 1971 Act and 1975 Act, is not in controversy. The only point and question raised before this Court is whether the contract between the parties stood frustrated or not and the answer would be “No”, for, the perusal of the record and the correspondences exchanged leave to an irresistible conclusion that the defendant failed to develop the colony within the stipulated time and, therefore, was not in a position to hand over the possession as per receipt Ex.P3 containing the terms and conditions and the mode of payment as indicated above or in the alternative in lump-sum;

2) The payments, as indicated above, have been proved on

record. It was legitimately expected from the defendant to honour the promise expressed in black and white in Ex.P3;

3) Letter dated 13.12.1982 Ex.P26, if a contract stood frustrated, could not have been issued by the defendant to the plaintiff calling upon him to deposit the amount at the enhanced rate of ₹135/- per square yard instead of ₹25/-;

4) Any sane person was expected to seek the break up of the amount as people had regard for the value of the money. Instead of making break up, the defendant remained silent giving cause of action to the plaintiff to institute the suit. For the sake of brevity, Clauses 2, 4 and 7 of the letter read thus:-

“2. You will recall that the development of the colony was under taken in the year 1963 with the sanction of the Panchayat of the area as there was no specific bye-laws or other restrictions for the development of a colony in the said area. Consequently a large amount was then spent on sale organisation and other administrative measures. Later on, however, on account of subsequent legislation and restrictions imposed by the Government, further development in the colony had to be shelved inspite of the fact that the development in the colony had been carried out to a great extent at a huge expense by us. One such restriction was and 6 of the Land Acquisition Act, 1984, implying the acquisition of the land of the colony by the Government. Consequently, all the said provisional contracts for the plot become frustrated/infructuous.

4. In view of the frustration of the earlier contract, we have decided to offer to our earlier customers a plot in out colony at the rates which have been evaluated after taking into consideration the expenses incurred for

the sanction of the colony in accordance with the Government approval, cost of re-development of the colony at the present day high rates, for provision of additional areas for school, Parks, Community facilities, wider roads, etc. to compensate for the reduced plotted area and also for providing internal sewerage. (Note: According to original sale, the cost of sewerage was payable separately). The minimum rate of the plot in the colony works out at Rs.135/- per sq. yd. On the actual size of plot which may now be allotted. This price includes provision for the cost of land and the internal developments, such as internal sewerage, roads, storm water drains, provision of water supply and electric poles only. All charge paid or payable to Haryana Government on account of external development in respect of this colony will be additionally payable by the allottees alongwith administrative charges which the company may determine in connection therewith.

7. You are, therefore, requested to remit to us within 10 days hereof the amount indicated in clause 6(a) & (b) above by Bank Draft of Pay Order alongwith the enclosed application form duly filled in and signed so as to avail of this priority offer for an alternate plot in the approved layout of the colony. Please note that in case the acceptance of this offer is not received from you within the time stipulated above with the stipulated amount, this offer shall stand automatically withdrawn.”

5) Since the plaintiff had approached the Court for specific performance of the agreement to sell and that too at the rate offered by the defendant, the defendant, in my view, should not have contested the suit and should have been fair enough to come forward with the rate applicable at the time of the sale or the one reflected in the letter Ex.P21, but dragged into litigation

resulting into two verdicts and admission of the present appeal way back in the year 1998;

6) This Court, vide order dated 15.10.1998, while admitting the appeal, directed the respondent not to alienate the property till further orders. For the sake of brevity, the order reads as under:-

“The substantial question of law that arises in this appeal is whether the relief of specific performance of contract can be denied on the ground of frustration though the delay occurred due to fault of the respondent.

Admit.

The respondent is directed not to alienate the property till further orders.”

Even at that stage, the defendant would have come forward and offered for allotment. All these factors, in my view, have not been weighed in correct perspective by the Lower Appellate Court, whose focus had been only on the provisions of Section 56 of the Indian Contract Act, 1872, which deal with a contract, where it was impossible to do act and such impossible act would be void. On due consideration of the aforementioned provisions of the Act, I am of the view that the aforementioned provisions did not apply to the facts and circumstances of the present case, as referred to above;

7) It is a fit case where Lower Appellate Court ought to have applied the doctrine of “Legitimate Expectation”.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in

Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR

2016 SC 1213, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back. For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 - 29] ”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India.

This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the reasons stated above, I am of the view that the judgment and decree of the Lower Appellate Court suffers from illegality and perversity. The same is set-aside and that of the trial Court is restored. In essence, the suit of the plaintiff is decreed. Resultantly, the appeal stands allowed. Consequently, the cross-objections are dismissed.

Respondent-defendant is directed to get the sale deed executed within a period of two months from the date of receipt of certified copy of this order on receipt of the balance sale consideration.

May 02, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No