

RSA No.553 of 2008 (O&M)

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

RSA No.553 of 2008 (O&M)

Reserved on 23.04.2018

Pronounced on: 26.04.2018

Haryana State Industrial Development Corporation Ltd.

.....Appellant

versus

Ravi Kant Arya and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Argued by: -

Mr. Kamal Sehgal, Advocate, for the appellant.

Mr. Arun Jain, Sr. Advocate, with

Mr. M.S. Rana, Advocate, for the respondents.

RAMENDRA JAIN, J.

After remaining unsuccessful before two Courts below, the defendant-Corporation has filed the instant Regular Second Appeal challenging the judgment and decree of the First Appellate Court dated 29.09.2007, dismissing its appeal and affirming the judgment and decree of trial Court dated 12.09.2006, whereby while decreeing the suit of the respondents-plaintiff, letter dated 11.05.1999 issued by the appellant, raising demand of ₹25,58,370/- has been set aside being illegal and *ab initio* observing that officials of the appellant-defendant acted in arbitrary and discriminatory manner.

Put pithily, on application of respondent-plaintiff No.1, he was allotted industrial plot No.899 vide letter dated 24.09.1993 by the appellant. On depositing the sale consideration, respondent No.1 was handed over physical possession of the said plot by officials of the appellant on the spot on 25.10.1995. In the meanwhile, respondent No.1 had agreed to sell the

said plot in favour of respondent No.2 for a payment of ₹5.00 lakh.

In terms of the condition of the allotment, respondent No.2

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completed the construction on the said plot. Thereafter, he moved an application to grant him permission to lease out the same to M/s Eltek SGS Pvt. Ltd. on 31.01.1997. Instead of granting any such permission to lease out the suit property, appellant issued notice dated 13.06.1997 threatening to resume the said property on account of its lease out to M/s Eltek SGS Pvt. Ltd. to which respondent No.1 replied that he had already applied for lease permission vide his application dated 31.01.1997. However, appellant again threatened respondent No.1 for resumption of the suit property vide its letter dated 18.02.1998 on account of unauthorised lease and transfer of the suit property.

Appellant called GPA of respondent No.2 for meeting with its Managing Director on 14.12.1998 at Gurgaon, in which after due deliberations Managing Director of the appellant decided to grant permission to respondent No.1 for sale and lease out the suit property in favour of M/s Eltek SGS Pvt. Ltd., but on payment of double the amount of transfer fee as well as double the amount of lease charges in accordance with the then, prevalent policy of 1995 formulated by the appellant. Respondents were called to deposit the interest over the aforesaid amount. The said decision of the Managing Director was reduced into writing in the form of minutes of the meeting.

Thereafter demands were made by the respondents to specify the unpaid amount in accordance with the decision aforesaid of the Managing Director, but after prolonging the matter on one pretext or the other, upon instructions of the appellant, respondent No.2 moved an application on 24.12.1998 as advised for grant of transfer permission and to recognise the transfer made by respondent No.1 in favour of respondent No.2 also asking to disclose the requisite amount so to be paid by them in lieu thereof.

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Officials of the appellant issued letter dated 11.05.1999 to respondent No.2 asking to deposit a sum of ₹25,58,370/-.

Respondents, by way of their suit, laid challenge to the demand aforesaid being illegal, arbitrary and *non est* in the eyes of law. The trial Court after holding trial, decreed the suit of the respondents with costs, thereby declaring letter dated 11.05.1999 as null and void, simultaneously directing the appellant to restrain from resuming the suit property or effecting any recovery on the basis of aforesaid letter and to issue a fresh demand as per decision of its Managing Director dated 14.12.1998 in accordance with the policy prevalent at the relevant time, vide impugned judgment and decree dated 12.09.2006.

Being aggrieved, appellant-defendant preferred an appeal before the First Appellate Court, but remained unsuccessful as the same was dismissed vide impugned judgment and decree dated 29.09.2007.

Learned counsel for the appellant relying upon the judgment of the Hon'ble Supreme Court in ***Indu Kakkar v. Haryana State Industrial Development Corporation Ltd. and another***, AIR 1999 Supreme Court 296 contended that both the Courts below failed to appreciate that respondent No.1 had unauthorisedly sold the vacant plot without fulfilling the terms and conditions of the allotment letter qua construction over the same even prior to issuance of regular letter of allotment. Both the Courts below have also failed to appreciate the facts of the case while setting aside letter dated 11.05.1999 of the appellants allowing the transfer of plot by charging transfer fee equivalent to prevalent reserve price less principal amount and payment of leasing fee double the normal rate. The First Appellate Court has heavily relied upon minutes of the meeting held between the respondents-plaintiff and Managing Director of the appellant on 14.12.1998

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without any iota of evidence in this respect, because no such communication was ever sent to the respondents-plaintiff. The First Appellate Court has wrongly held that action of the appellant for demanding double the amount of transfer fee and double the amount of lease charges was illegal and arbitrary in view of the fact that some other properties in similar situation were transferred subject to payment of transfer fee at the double rate along with interest from the date of sale agreement.

On the other hand, learned counsel for the respondents, while pleading the legality and validity of the impugned judgments and decree, urged that appellant-Corporation in similar circumstances and situation had transferred the industrial plots akin to the respondents charging nominal fee, therefore, both the Courts below have rightly declared the action of the appellants asking the respondents to pay double the amount of transfer fee as well as double the amount of lease charges, as illegal and null and void.

Having given considerable thought to the submissions made by learned counsel for both the sides, I find that this appeal is completely devoid of any merit for the reasons to follow.

According to the First Appellate Court during the relevant period and for similar type of violations allegedly done by the respondents, the appellant had accorded permission for sale subject to payment of double of the transfer fee as per rules in favour of M/s Elna Fashions Pvt. Ltd. vide letter Ex.P25, Mrs. Sushila Devi Kapoor was granted permission to resale her plot No.252 vide letter Ex.P26 dated 19.02.1998 on payment of interest from 26.07.1994 to 15.03.1998. Ms. Anjana Verma and Ganga Verma were allowed to sell their plot No.895 on payment of lease fee with interest @ 18% per annum.

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to sell or lease out their property without charging double of the reserve price or the lease amount, therefore, both the Courts below have rightly declared letter dated 11.05.1999 (Ex.P23) of the appellant issued to the respondents as illegal being arbitrary and discriminatory. The appellant cannot be allowed to discriminate and act arbitrarily. The First Appellate Court has, therefore, rightly held that it is a matter of concern that officials of the appellant-defendant have taken too much lenient view in connection with the plots of persons mentioned above and on the other hand have passed harsh order qua plot of respondent No.1 without any reason or basis, more particularly, when learned counsel for the appellant could not make it clear as to why quite different view was taken as mentioned above. Resultantly, letter dated 11.05.1999 issued by the appellant has rightly been declared illegal.

Facts and circumstances of the judgment, referred to above relied upon by learned counsel for the appellant are not identical to the facts of the present case, therefore, no benefit of the same can be given to the appellant.

I have gone through the impugned judgments of both the Courts below and find no illegality or perversity in the same. Rather they are well-reasoned.

No question of law muchless substantial has been raised or arises for consideration in this appeal.

Resultantly, this appeal being devoid of any merit, is hereby dismissed.

(Ramendra Jain)
Judge

April 26, 2018
R.S.

Ravinder Singh
2018.04.27 15:44
I attest to the accuracy and
authenticity of this document

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.