

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

RSA No.4585 of 2016 (O&M)

Date of decision:20.11.2018

Manju Jain

... Appellant

Vs.

Punjab Small Industries & Export Corporation Limited and another
... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikas Bahl, Senior Advocate with
Mr. Amandeep Singh, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful in laying challenge to the show-cause-notice dated 04.11.2009 with regard to commercial site bearing SCO No.7 situated at Phase VIII-B, Industrial Focal Point, Mohali, allotted vide allotment letter dated 20.03.2006, with a prayer of mandatory injunction directing the defendants to reschedule their installments and development of commercial site and further restraining the defendants from cancelling the allotment of commercial site.

The suit was based on the fact that vide allotment in 2006, commercial site was purchased in open auction and the highest bid was ₹3,20,00,000/-. A sum of ₹32 lakhs was deposited vide demand draft dated 07.02.2006 and ₹25 lakhs vide receipt dated 09.03.2006 and another ₹23 lakhs vide receipt dated 13.03.2006. Defendant, vide letter dated 24.04.2007

admitted that the development work in the area had started and the date of allotment would be made effective from the date of completion of basic amenities instead of date of issuance of allotment letter.

Despite that the plaintiff was flabbergasted to receive the notice dated 04.11.2009 calling upon him to pay a sum of ₹64,84,205/-. The aforementioned notice was duly replied by making request to withdraw the show cause notice but the defendant did not pay any heed, thus, cause of action arose to file the suit.

The defendant contested the suit on the premise that development of the commercial pocket was completed on 30.11.2008 and due intimation in this regard was given to the plaintiff, vide letter dated 07.08.2009 which was not disclosed in the plaint accompanied by the revised reschedule of payment. On the basis of evidence brought on record, the trial Court dismissed the suit and the appeal was also dismissed.

Mr.Vikas Bahl, learned senior counsel assisted by Mr. Amandeep Singh, Advocate appearing on behalf of the appellant submitted that as per the documentary evidence brought on record the site in dispute has not yet been developed. In such circumstances, the respondents were estopped to raise the demand. The photographs are the testimony of the aforementioned assertion, thus, there is gross illegality and perversity. Even the amenities as required have not been developed, therefore, it is a fit case for reschedule of the installments

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, it was apprised that site in question is yet to be developed. The factum of letter dated 07.08.2009 relied upon by the defendant intimating the plaintiff with regard to development of work on 30.11.2008 was not pleaded. The plaintiff is always at liberty to approach the department for rescheduling the payment if contents of the letter dated 07.08.2009 were faulted, instead of laying challenge to the same inviting the findings against. The respondents-PSIEC had also come out with a scheme defraying the charging of interest. In the wake of non-cancellation, I am of the view that there was no cause of action to institute the suit which was premature. In case, the plaintiff received any fresh notice, the judgment rendered by the Court would not be impediment to raise the dispute, if permitted in law.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 20, 2018

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No