

**In the High Court of Punjab and Haryana at Chandigarh**

**RSA- 1355 of 2018(O&M)**

**Date of Decision:16.4.2018**

**Mukhtiar Singh and others**

**---Appellants**

**vs.**

**M/s Capex Projects Private Limited**

**---Respondent**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

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**Present:** Mr. Saurabh Dalal, Advocate  
for the appellants

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**Rekha Mittal, J.**

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for recovery of Rs. 90 Lakhs alongwith interest on the basis of agreement to sell dated 24.7.2006 was partly allowed by the trial court whereby suit of the respondent/plaintiff was decreed with costs for recovery of Rs. 90 Lakhs by way of refund of earnest money and part of sale consideration. The appeal preferred by the appellants/defendants did not find favour with the Additional District Judge, Gurugram whereby findings recorded by the trial court were affirmed without any variance.

The sole submission made by counsel for the appellants is that as the respondent/plaintiff did not file a suit for specific performance of agreement on a false pretext that the appellants did not obtain 'No Objection Certificate' from the office of DTP, courts have committed gross error rather perversity by allowing refund of Rs. 90 Lakhs received under the agreement of sale, admittedly,

executed between the parties. It is argued with vehemence that a wrongdoer cannot take advantage of his own wrong nor can seek indulgence of the court on equitable consideration.

I have heard counsel for the appellants, perused the paper book particularly the judgments passed by the courts.

Counsel for the appellants has not disputed execution of agreement dated 24.7.2006 whereby land was agreed to be sold @ Rs. 1,50,50,000/- per acre and a sum of Rs. 90 Lakhs having been received by the appellants. The sale deed was agreed to be executed on 9.9.2006. It is not denied that on 11.9.2006, a representative of the respondent-company marked his presence before the Sub Registrar, Gurgaon with regard to readiness of the company to get the sale deed executed. It is also not disputed that the respondent-company has been able to prove that there were sufficient funds available for payment of balance sale consideration and expenses of registration etc.

The respondent/plaintiff filed the suit for recovery but still expressed its readiness to buy the land if the appellants/defendants would provide a clear title. It is also undisputed that before the suit was instituted in September 2009, land in question already stood acquired by the State of Haryana and the appellants received compensation in regard thereto.

The appellants filed the written statement and concealed the factum of land having already been acquired and payment of compensation but rather raised a plea that they are still ready and willing to perform their part of the contract by executing the sale deed in favour of the proposed vendee despite their having lost title to the land in question on account of acquisition of land by the State Government. The courts on the basis of materials have rightly held that the appellants cannot be allowed to enrich themselves at the cost of respondents, therefore, they are liable to refund Rs. 90 Lakhs received under the agreement of sale. It has also come on record that the land was agreed to be sold @ Rs.

1,50,50,000/- per acre but value of the land was more than Rs. 5 Crores per acre, therefore, the appellants have not suffered any loss even if the respondent has been allowed refund of earnest money in place of specific performance of the agreement which otherwise was not possible in the given scenario. I do not find any reason to interfere in the concurrent findings recorded by the courts even when the case is examined from the point of view of equity.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

**(Rekha Mittal)**  
**Judge**

**16.4.2018**  
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Whether speaking/reasoned: Yes  
Whether reportable : Yes/No