

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-1686-2014 (O&M)

Date of decision: 27.08.2019

Bharat Bhushan and others

..... Appellants

Versus

Municipal Council, Fatehabad

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Malkeet Singh, Advocate for the appellants.

Respondent already proceeded *ex parte*
vide order dated 19.01.2016.

RAMENDRA JAIN, J. (ORAL)

Un-successful plaintiff-appellants have filed instant regular second appeal against the judgment and decree of the Ist Appellate Court dated 04.12.2013, affirming the judgment and decree of the trial Court dated 09.05.2012, whereby their suit for declaration with consequential relief of permanent injunction was dismissed.

Briefly, respondent-Municipal Council, Fatehabad, offered some commercial plots for sale in open auction. Pursuant thereto, the appellants compete in auction and were declared successful bidders qua Plot No. 105 in auction held on 15.03.1991, against payment of sale consideration of ₹3,61,000/-, out of which appellants have paid ₹2,17,400/-. However, respondent-Council cancelled allotment in their favour vide order dated 16.04.2004. Being aggrieved, appellants

approached the civil Court for declaring the cancellation order as illegal, null and void, having no binding effects upon them, filing suit in the year 2010.

Upon notice, the same was contested tooth and nail by respondent-Council. After holding trial, the trial Court dismissed the suit vide judgment and decree dated 09.05.2012.

Being aggrieved, the appellants approached the lower Appellate Court, but remained un-successful as their appeal too was dismissed, vide impugned judgment and decree dated 04.12.2013.

Learned counsel for the appellants *inter alia* contends that despite making payment of huge amount i.e. more than around 70% of the auction price, respondent-Council was not legally liable to cancel allotment of the appellants. Cancellation of the plot of appellants by respondent-Council, even otherwise, was bad in law as no notice was served upon them, before passing cancellation order.

Having given thoughtful consideration to the submissions of learned counsel for the appellants, this Court finds the instant regular second appeal merits dismissal for the reasons to follow:

Undisputedly, the appellants were declared successful bidders on 15.03.1991, qua commercial plot No. 105 situated at Fatehabad. The same was cancelled by the respondent-Council in the year 2004 i.e. after around 13 years. Thus, it is apparent that during this long spell of 13 years, respondent-Council must have afforded several opportunities to the appellants to make payment of entire sale consideration before handing over possession of the aforesaid plot to

them and for execution and registration of conveyance deed in their favour. However, there is nothing on the record that the appellants ever approached the respondent-Council, after 1995. Thus, it is apparent that the appellants went in a great slumber and awoke in the year 2010 after 15 years. The above misconduct of the appellants has debarred them to claim any right in plot No. 105 after around 20 years, without payment of entire sale price.

The constant stand of the appellants is that as per terms and conditions of the auction, possession of the allotted plot was to be handed over to them, after deposit of 25% of the auction price, but they did not produce copy of auction notice or terms and conditions thereof, pursuant to which they participated in the auction proceedings, for the reasons best known to them. Therefore, an adverse inference is required to be drawn against appellants that they did not choose to produce the same intentionally and deliberately, knowing well that terms and conditions of the auction notice would go against them.

The argument raised by learned counsel for the appellants that notice Ex. D-4 dated 16.04.2004, was never issued to them, whereby plot No. 105 allotted to them was cancelled has no legs to stand, because perusal of para 9 of the judgment and decree of the trial Court dated 09.05.2012, shows that notice Ex. D-4 was very much received by them.

The plot of the appellants was admittedly cancelled on 16.04.2004, whereas the instant suit for declaration with consequential relief of permanent injunction was filed by them on 06.10.2010. Thus, the same has rightly been concurrently held by both the Courts below as

hopelessly barred.

No question of law, much less substantial, has been raised in this regular second appeal. Hence, the same is not held maintainable.

No other point was argued.

I have carefully gone through the impugned judgments and decrees of both the Courts below and find no illegality or perversity in the same.

The instant regular second appeal, being meritless, is dismissed.

August 27, 2019
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(RAMENDRA JAIN)
JUDGE

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