

Sr. No.222

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

**RSA No.3109 of 2012 (O&M)
Date of Decision: 28.01.2020**

Haryana Urban Development Authority

... Appellant

Versus

O.D.Sailly and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. R.D.Bawa, Advocate and
Mr. Rohit Sharma, Advocate,
for the appellant.

Mr. Ashwani Gaur, Advocate,
for respondents No.1 to 3, 5 to 7 and 11.

ARUN MONGA, J.(ORAL)

CM No.8280-C of 2012

For the reasons stated in the application, prayer for
condonation of delay of 609 days in re-filing the appeal is
accepted.

Delay stands condoned.

Main case

1. Having suffered judgment and decree by the two
Courts below defendant is in second appeal before this Court to
challenge the decreeing of suit in favour of the plaintiffs for
declaration and consequential relief for permanent injunction. The
trial Court believed the case set up by the plaintiffs and decreed

the suit in their favour and the First Appellate Court too upheld the findings rendered by the trial Court.

2. Succinct factual narrative first. Plaintiffs were owners in possession of their respective houses for last more than 35 years. The plots over which the plaintiffs raised their construction were allotted on agreed price which was already paid and deposited and nothing remained due against the plaintiffs. But in 1986, the defendant issued notices to the plaintiffs under Sections 17(1) and (2) of the HUDA Act, 1977 claiminig increased prices from the plot holders. Plaintiffs approached the defendant to supply the details of increased prices and criteria but no details were ever supplied by the defendant. Plaintiffs applied for issuance of “No dues Certificate” but defendant claimed enhanced prices. Plaintiffs claimed that they had already paid full and final sale consideration against their plots. No opportunity of hearing was granted to plaintiffs before demanding enhanced prices. The demand of defendant is barred by limitation.

3. Defendant on merits stated that plots were allotted at a tentative price, which is liable to be enhanced in case compensation relating to the acquired land of plots is increased by the authorities. It was submitted that the compensation relating to land acquired for the plots has been enhanced and, therefore, additional amount has been claimed from the plaintiffs.

4. Based on the rival pleadings, the trial Court framed the following issues:-

1. Whether the impugned notices issued by the defendant

to the plaintiffs are null and void? OPP.

2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD.

5. Issue No.1 was decided by the trial Court in favour of the plaintiffs. It was held that plaintiffs produced the terms and conditions of allotment for residential sites in urban estate, Faridabad as Ex. P2. The clause No. 1 of these terms and conditions of allotment categorically states that allotment of residential sites was made by the defendant at reserved prices. None of the clause of the terms and conditions of documents provides that the amount which was charged from the allottees was tentative and they were liable to pay the enhanced prices, in case compensation amount has ever got increased by the authorities. So, it comes out that plots to the plaintiffs were allotted on a fixed price. The notices have been issued in violation of the regulation of 1978 as enhanced prices can only be demanded in case where plots have been allotted on tentative prices. There was no such stipulation that plots have been allotted on tentative prices and plaintiffs will be liable to pay enhanced prices.

6. As regards issue No.2 the defendants did not press this issue. This issue was also decided against the defendant and in favour of the plaintiffs.

7. The First Appellate Court agreed with the findings rendered by the trial Court and upheld the judgment and decree passed pursuant thereto.

8. I have heard the learned counsel and have perused the

judgments and decrees of both the Courts below.

9. As is borne out from the judgment passed by the trial Court and rightly affirmed by the First Appellate Court. There is not an iota of evidence to show that the additional price sought to be recovered from the plot holders was in respect of any additional compensation paid by HUDA to the original land owners. Merely because there has been a clause in conveyance Deed, the price of the plot can be increased at a later stage cannot be construed to hold that HUDA has unfettered discretionary powers to enhance the price of the plot at a later stage without there being any commensurate increase of the plot price owing to the additional compensation to be paid to the original land owners from whom the land was acquired.

10. Appellant/defendant failed to adduce any evidence to support its case before the trial Court. The concurrent findings of the Courts below seem to have been rightly returned against HUDA.

11. Another aspect that deserves to be noticed is that there seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below.

12. Further more, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab

Courts Act read with Section 100 of Civil Procedure Code.

13. In view of my discussion above and the reasons recorded therein, this appeal is dismissed.

14. Pending application, if any, shall also stand disposed of.

28.01.2020
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No