In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 4296 of 2012 (O&M)

Date of Decision: 24.02.2020

Satish Kumar Legal Representative of Smt. Shanti Kumar (since deceased)

... Appellant(s)

Versus

M/s Urban Improvement Co. (P) Ltd.

... Respondent(s)

2. Regular Second Appeal No. 4896 of 2009 (O&M)

Wg. Cdr. N.S.Panesar (Retired)

... Appellant(s)

Versus

Urban Improvement Company (P) Limited and Another

... Respondent(s)

3. Regular Second Appeal No. 3207 of 2012 (O&M)

B.L.Bhatia

... Appellant(s)

Versus

M/s Urban Improvement Co. (P) Ltd.

... Respondent(s)

4. Regular Second Appeal No. 3704 of 2012 (O&M)

Gurcharanjit Singh and Others

... Appellant(s)

Versus

M/s Urban Improvement Co. (P) Limited

... Respondent(s)

5. Regular Second Appeal No. 3705 of 2012 (O&M)

Ranjit Singh and Others

... Appellant(s)

Versus

M/s Urban Improvement Co. (P) Limited

... Respondent(s)

6. Regular Second Appeal No. 3706 of 2012 (O&M)

Ranjit Singh

... Appellant(s)

Versus

M/s Urban Improvement Co. (P) Limited

... Respondent(s)

7. Regular Second Appeal No. 3772 of 2012 (O&M)

Ranjit Singh and Others

... Appellant(s)

Versus

M/s Urban Improvement Co. (P) Limited

... Respondent(s)

8. Regular Second Appeal No. 2708 of 2013 (O&M)

Raj Malik

... Appellant(s)

Versus

The Urban Improvement Co. Pvt. Ltd. and Another

... Respondent(s)

9. **Regular Second Appeal No. 2984 of 2014 (O&M)**

Smt. Gulab Devi Narang and Others

... Appellant(s)

Versus

M/s Urban Improvement Company (P) Limited and Another

... Respondent(s)

10. **Regular Second Appeal No. 5942 of 2014 (O&M)**

Raj Kumar Malhotra and Another

... Appellant(s)

Versus

M/s Urban Improvement Co. (P) Limited

... Respondent(s)

11. **Regular Second Appeal No. 512 of 2016 (O&M)**

Smt. Asha Rani and Others

... Appellant(s)

Versus

M/s Urban Improvement Company Private Limited and Another

... Respondent(s)

AND

12. **Regular Second Appeal No. 659 of 2016 (O&M)**

Rajiv Aggarwal

... Appellant(s)

Versus

Urban Improvement Company Pvt. Ltd.

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Narinder Singh Panwar, Advocate
for the appellant (In RSA-4296-2012).

Mr. Rakesh Gupta, Advocate
for the appellant (In RSA-4896-2009).

Mr. Sanjeev Sharma, Senior Advocate
with Mr. Shekhar Verma and Ms.Aarushi Jain, Advocates
for the appellants (In RSA-3207-2012 & RSA-512-2016).

Mr. Anand Chhibber, Senior Advocate
with Mr. Deep Prabhu and Mr. Atul Sandhu, Advocates
for the appellants (In RSA-3704-2012, RSA-3705-2012, RSA-3706-2012 & RSA-3772-2012).

Mr. Satya Pal Jain, Senior Advocate
with Mr. Dheeraj Jain and Mr. Vijay Kumar Chaudhary, Advocates for the appellant (In RSA-2708-2013).

Mr. Sanjay Kaushal, Senior Advocate
with Mr. Arjun Shukla and Ms. Shelly Arora, Advocates
for the appellants (In RSA-2984-2014).

Ms. Madhu Dayal, Advocate
for the appellants (In RSA-5942-2014).

Mr. Manoj Kumar Sood, Advocate
for the appellant (In RSA-659-2016).

Mr. Aashish Aggarwal, Senior Advocates
with Mr. Kunal Dawar, Advocate
for the applicant-respondent (In RSA-2708-2013).

Mr. D.V.Sharma, Senior Advocate
with Mr. Vaneet Soni, Advocate
for the respondent (In all the cases).

Anil Kshetarpal, J.

In the considered view of this Court, the following questions of law arise for consideration:

1. Whether order of cancellation of allotment of plot passed by the builder/colonizer can be set aside by the Court

even if it is proved that the allottee has consistently defaulted in complying with the terms of the allotment?

2. Whether dismissal of Special Leave to Appeal by the Hon'ble Supreme Court in *limine* results in declaration of law binding on the Courts under Article 141 of the Constitution of India?

This judgement shall dispose of the following regular second appeals involving identical issue:

1. Regular Second Appeal No. 4296 of 2012;
2. Regular Second Appeal No. 48966 of 2009;
3. Regular Second Appeal No. 3207 of 2012;
4. Regular Second Appeal No.3704 of 2012;
5. Regular Second Appeal No. 3705 of 2012;
6. Regular Second Appeal No. 3706 of 2012;
7. Regular Second Appeal No. 3772 of 2012;
8. Regular Second Appeal No. 2708 of 2013;
9. Regular Second Appeal No. 2984 of 2014;
10. Regular Second Appeal No. 5942 of 2014;
11. Regular Second Appeal No. 512 of 2016; And
12. Regular Second Appeal No. 659 of 2016;

Learned counsel for the parties are also *ad idem* that all these appeals can be disposed by a common judgement. All these appeals have been filed against concurrent finding of fact arrived at by the Courts below while dismissing separate suits filed by the plaintiff/appellants. Some facts are required to be noticed. Although, allotment letter has not been produced by any of the parties, however, it is undisputed that the respondent/defendant company (Urban Improvement Company Private Limited) had allotted plots after purchasing 440 acres of land around Surajkund (now a part of District Faridabad). The respondent company, after obtaining "No Objection" from District Board, Gurugram, developed the land as a colony. When the land was purchased by the respondent company, there was no legislation for regulating and developing the residential colonies. The respondent company started developing a residential colony and allotting the plots on receipt of "No Objection".

The State of Punjab (the Joint Punjab) enacted the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as "the 1963 Act"). The respondent company applied for grant of license under Section 7 of the 1963 Act. Thereafter, the joint State of Punjab was bifurcated resulting in creation of the State of Punjab, State of Haryana, State of Himachal Pradesh and Union Territory of Delhi. In 1969, on an application filed by the respondent company, layout plan of the colony was approved pursuant to the license granted by the Director, Town & Country Planning, Haryana. In the meantime, the respondent company started allotting the plots on receipt of payment. It appears that initially, the plots were being sold at the rate of ₹15/- per square yard, but thereafter, the rates were increased to ₹ 22/- per square yard. The terms & conditions of the sale as printed on the reverse side of the receipt are extracted as under:

"1. The intending purchaser shall pay:

a) 15% of the total sale price on account of earnest money at the time of booking.

b) 20% of the sale price on account of additional earnest money within one month after the date of booking of the plot.

c) 20% of the total sale price on provision of the following services, irrespective of the serial order given below:-

(i) Metalled road touching the plot.

(ii) Water mains along the road touching the plot.

(iii) Sewerage line along the road touching the plot.

d) Further 5% on the completion of arrangements for street lighting.

e) Such other additional charges as determined by the company from time to time for meeting the escalated development cost both internal and external services.

N.B.: A rebate of 5% will be allowed on payments made according to the following scale:

1. On the total sale price of full amount is paid within 15 days of the date of booking.

2. On 85% of the total sale price if 15% is paid at the time of booking and balance with 30 days of the date of booking.

3. On 65% of the total sale price if 35% is paid on account of earnest money under (a) & (b) above and the balance 10 days before the next 20% instalment under (c) above becomes due.

3. On 45% of the total sale price if 55% is paid on account of earnest money & instalments under (a), (b) & (c) above and the balance 10 days before the next 20% instalments under (c) above becomes due.

5. On 25% of the total price if 75% is paid on account of earnest money and instalments under (a), (b) & (c) above and the balance 10 days before the next 20% instalments under (c) above becomes due.

6. On 5% of the total sale price if 95% is paid on account of earnest money and instalments under (a), (b) & (c) above and *the balance within 20 days of the dates of payments of the last instalment under (b) above.*

2. *The purchaser shall get his address registered with the Vendor and shall inform the Vendor about the change in his address and all notices and letters posted to the last known address of the purchaser shall be deemed to have been received by him at the time when they should ordinarily reach at such address.*

3. *The sale deed shall be executed and registered at the cost & expense of the tending Purchaser. Stamp duty and registration charges shall also be payable by the intending Purchaser.*

4. *In Case the Intending Purchaser is keen to build before execution & registration of sale deed on full payment he may do so on payment of 75% of the agreed sale price & will be permitted to enter in possession of the land as a licensee after execution of an agreement of this effect.*

5. *The intending Purchaser shall have the first option to purchase from the Company (at the price to be mutually settled) all trees; if any, standing on the said plot.*

6. It shall be open to the company to effect suitable & necessary alterations in the plan if and when required & offer an alternative in revised plan.

7. It shall be incumbent on the buyer to comply strictly with the terms & conditions of sale laid down above failing which he shall lose the amount of earnest money deposited by him the company, in favour of the company under the conditions of sale & he shall be left with no lien on the plot.

8. The Company will pass a clean & clear title free from all encumbrances of the said plot on completion of sale".

It is not disputed that all the appellants or their predecessors-in-interest have deposited the price of the land, the development charges, the new additional development charges etc. There is some material on the file which shows that new additional development charges were paid in instalments. However, that is not the subject matter of controversy in these appeals.

It has also come on record that there were some restrictions on construction on the plots on account of interim order passed by the Supreme Court and which were lateron relaxed.

The State of Haryana enacted the first legislation to regulate the development of the colonies under the title "The Haryana Restrictions of Development and Regulation of Colonies Act, 1971" (hereinafter referred to as "the 1971 Act"). The respondent company applied for and granted license under the aforesaid Act on 08.08.1973. However, the 1971 Act was declared ultra vires of the Constitution of India by a Division Bench in ***Jai Chand Bhagat and Another v. The State of Haryana and Others 1975 PLR 277***, which was affirmed by the Supreme Court.

The State of Haryana came up with another enactment, which is in force today, i.e. the Haryana Development & Regulation of Urban Areas Act, 1975 (hereinafter referred to as "the 1975 Act").

The respondent company applied for exemption under Section 23 of the 1975 Act, which was granted on 05.04.1982 by the competent authority, subject to certain terms & conditions. Those terms & conditions were complied with by the respondent company. On 28.09.1987, development of the colony was completed and the respondent company applied for approval of the zoning plan. There was another round of litigation as the state of Haryana revised the external development charges in the year 1988 for the colonisers who were granted exemption under the 1975 Act and the Rules framed thereunder. The respondent company filed a writ petition challenging payment of external development charges. A Division Bench, by an order and judgement in ***Urban Improvement Co. (P) Ltd. v. State of Haryana 1993(2) PLR 317*** quashed the communications dated 20.04.1988, 07.01.1992 and 14.09.1992. The directions were issued to the State of Haryana to sanction the zoning and other service plans submitted by the respondent company within a period of two months. The State of Haryana filed a petition for Special Leave to Appeal bearing No. 9331 of 1993. The Hon'ble Supreme Court passed the following interim order on 17.01.1994:-

"The respondent No. 1 M/s Urban Improvement Co. Pvt. Ltd. shall pay to the petitioner-State Rs.5.16 crores which amount includes the principal amount payable towards EDC dues till 6th January, 1994 plus interest thereon calculated till that day. The said amount to be paid by the Ist respondent on or before 30th April, 1994. The petitioner-State will give the details of the principal amount and the interest to the first respondent within one week from today.

The amount of interest that the first respondent is required to pay will be subject to the first respondent's right to challenge its correctness and validity. The first respondent may challenge it in such forum as it may be advised.

The petitioner shall adhere to the time table providing basic services covered under EDC to make the colony functional which time table is handed over to the Court and will form part of this order.

It is made clear that since the amount of Rs.5.16 crores is to be paid by 30th April, 1994, the amount will have to be paid interest on the same from 7th January, 1992 till the date of payment. The interest to be paid at the rate of 18 percent per annum.

The petitioner State will clear the zoning plan within one week from the payment of the entire amount of Rs.5.16 crores with interest, if any.

The respondent No.3 is permitted to submit his written arguments".

The respondent company, pursuant to the direction, deposited a sum of ₹ 5,33,63,013/-. The Special Leave Petition was finally disposed of by an order and judgement dated 06.10.1994, which reads as under:-

"It is common ground before us that in compliance of the directions given by this Court dated 17.01.1994 deposit of the required amount has been made by respondent No.1-Urban Improvement Company P. Ltd. Learned counsel for the petitioners submits that nothing therefore survives in this matter.

Learned counsel for respondent No.1 then submitted that even though the respondent No.1 has made the required deposit as directed by this Court yet the petitioners have not provided the basic services covered under the EDC to make the colony functional, which is the obligation of the petitioners. Shri Jaitley, learned counsel for the petitioners informs us, on instructions, that two of the five actions required to be taken by the petitioners, namely, the provision of roads and street lights have been substantially complied with by the petitioners while steps have been taken to provide the remaining services as well. He adds that all the services, as required would soon be provided. As observed in the order dated 17.01.1994 the direction given to the respondent No.1 to make the deposit the *consequent deposit made by respondent No.1, are without prejudice to the rights of the respondent No.1 in this behalf including enforcement of the petitioners' liability to provide all the basic services. This is not dispute.*

The Special Leave Petition is disposed of accordingly".

In the meantime, the respondent company started addressing communications to its allottees for deposit of external development charges as demanded by the State of Haryana. Notices demanding payment of external development charges were sent from time to time and first instalment of external development charges was to be paid at the rate of Rs.50/- per square yard. The respondent company was also to comply with the order passed by the Hon'ble Supreme Court dated 17.01.1994. Thus, the repeated notices were sent to the allottees to deposit the amount. In one of the written statements filed, various notices sent to the allottees on various dates have been stated in the following manner:-

"Communications dated 15.02.1992, 06.04.1992, 18.05.1992, 14.11.1992, 19.02.1993, 02.06.1993, 17.09.1993, 02.11.1993, 02.02.1994, 24.03.1994, 11.05.1994, 09.12.1994, 06.06.1995, 03.01.1996, 17.02.1997, 17.12.1997, 23.12.1999, 12.01.2000, 08.02.2000, 03.03.2000, 15.04.2000, 29.11.2000 and 30.05.2002".

Ultimately, the respondent company published in national newspapers that the plots allotted to the allottees, who have failed to deposit the amount, have been cancelled.

In Regular Second Appeal No. 2708 of 2013, after cancellation of the allotment, the plot was subsequently allotted to defendant No.2 (respondent No.2 herein), who has already constructed his house.

The plaintiff/appellants, thereafter, filed various suits as noticed above. In most of the suits, prayer is for grant of decree of declaration that the communications sent by the respondent company, while cancelling the allotment at the same time refunding the amount, deposited by the allottees after deducting the charges as per the contract, is illegal, arbitrary and perverse and therefore, liable to be set aside. In one case, the suit has been filed for specific performance of the agreement to sell. The respondent company defended the suits. It was pleaded that most of the allottees have already deposited the amount and the respondent company made sincere attempts by granting more than enough opportunities to the allottees to deposit the amount. It is significant to note that the communications were sent spanning over a period of approximately ten years.

All these suits were dismissed by the Courts while recording various reasons. However, all the Courts have held that cancellation of the allotment and refund of the amount deposited is in accordance with the terms & conditions of the allotment. The Courts have also found that the allotment letters have not been produced.

These appeals have now come up for hearing challenging correctness of the judgements passed by the Courts below.

Learned counsel for the appellants have drawn attention of the Court to the judgement passed by the Division Bench in ***Urban Improvement Company Pvt. Ltd. v. The State of Haryana and Others***

(Civil Writ Petition No. 10374 of 1995, decided on 11.02.2016) to contend that the communications issued by the respondent company demanding the amount of external development charges along with interest are illegal because the interest is no longer payable as per the decision in the aforesaid writ petition. Learned counsels have also submitted that the respondent company had no jurisdiction to cancel the allotment by exercising the powers to resume the plots allotted.

In order to buttress their arguments, the learned counsels have relied upon various judgements passed by the Courts that power of resumption of immovable property should be exercised in exceptional cases only, as a matter of last resort. They have also drawn attention of the Court to an order passed by the National Consumer Disputes Redressal Commission, New Delhi, while dismissing the revision petition bearing No. 1651 of 2019, filed by the respondent company against Kunj Bihari Lal. This revision petition was filed by the respondent company against an allottee. The National Consumer Disputes Redressal Commission, while dismissing the revision petition, found no ground to interfere particularly when the Forum found that no notice was served on the allottee before cancelling the allotment. Learned counsel has also referred to the order passed by the Hon'ble Supreme Court dismissing the Special Leave to Appeal (Civil) No. 28580 of 2019 vide order dated 13.12.2019 against the order of National Consumer Disputes Redressal Commission.

Learned counsels have also relied upon a judgement in ***Urban Improvement Co. Pvt. Limited v. S.V.Babbar and Another (Regular Second Appeal No. 4921 of 2016, decided on 06.02.2017)***.

On the other hand, learned senior counsel appearing for the respondent company has submitted that the appellants are not entitled to any relief as allottees had consistently failed to deposit external development charges, although they were given more than enough time and opportunities to deposit the amount. He, hence, submitted that as per the terms & conditions of the allotment as incorporated on the reverse side of the receipt, the respondent company was well within its rights to cancel the allotment and refund the earnest money. He highlighted that over a period of ten years, from 1992 till 2002, repeated communications were sent to the allottees requesting them to deposit the amount.

On analysis of the arguments of learned counsel for the parties and perusal of the record, it becomes clear that the Government of Haryana had fixed external development charges at ₹ 3,68,000/- per acre in respect of Green Fields Colony. The respondent company informed the allottees/plot holders that the external development charges are payable by the company at the rate of ₹ 3,68,000/- per gross acre and therefore, the allottees will have to pay the amount to the respondent company. The allottees were called upon to deposit ₹ 140/- per square yard depending upon the size of the plot within 30 days. In 1992 itself, communications were sent to the plot holders. Thereafter, over a span of 10 (ten) years, the respondent company continued sending communications demanding the amount of external development charges along with interest. However, the plaintiff/appellants failed to deposit. It has come on record that more than 15 letters were sent through registered post to each of the plaintiffs. Finally, in May 2002, communications were sent to all the plaintiffs directing them to clear the outstanding dues along with interest at the rate of 21% within seven days. The plaintiffs still failed to make the payment forcing the respondent company to cancel the allotment and refund the amount deposited after deducting earnest money to the extent of 35% of the cost of the plot. Even after having sent the cheque and cancel the plot, the respondent company, once again, granted an opportunity to each of the plaintiff by communication in August, 2002 to clear the outstanding payment, but no payment was made. Thus, the plaintiffs cannot be permitted to contend that they were not granted sufficient opportunity. As per clause 1(e), the allottees were made liable to pay such other additional charges as determined by the company from time to time for meeting the escalated development costs for both external and internal services. Clause 7 of the terms & conditions makes it incumbent on the buyers to strictly comply with the terms & conditions of the sale, failing which they shall lose the amount of earnest money deposited by him and left with any lien on the plot. The plaintiffs, therefore, cannot claim any right after having committed consistence default in deposit of the amount. It will be noted here that the respondent company also published a notice in Nav Bharat Times on 22.06.2002 informing the allottees about the cancellation. Similar notice was published on 15.06.2002 in the newspaper i.e. Times of India. As noticed above, still the respondent company gave another opportunity to the plaintiff/appellants to deposit the amount vide communication issued in August, 2002 i.e. after having published the notices intimating cancellation of the plots in the newspapers.

Mere allotment of plot by the colonizer subject to certain terms cannot be equated with sale of the property. The sale of the immovable property worth more than ₹ 100/- takes place only through a sale/conveyance deed registered with the Registration Authority. Thus, at the most, the plaintiffs can claim to be allottee of the plot. In the present case, no sale deed has been executed in favour of the plaintiffs. They have also not been delivered the possession of the plots. Thus, the plaintiffs cannot claim to be owners of the plots without execution and registration of the sale deeds.

Argument of learned counsel for the appellants that notice demanding external development charges are illegal in view of the judgement passed by the Division Bench on 11.02.2016 in the case of ***Urban Improvement Company*** *(supra)* appears to be attractive in first blush, however, on deeper consideration, found without substance. In the aforesaid judgement, the Division Bench has ordered that the interest shall not be payable either by the allottees or by the company. However, that does not *ipso facto* absolve the allottees from payment of their share towards external development charges. It is not the case of the plaintiffs that they have deposited the remaining amount representing external development charges within the time prescribed. In the absence of deposit by the plaintiffs, they cannot take benefit of the judgement passed by the Division Bench in the case of ***Urban Improvement Company*** *(supra)*.

Next argument of learned counsel for the appellants is with reference to the order passed by the Court in ***S.V.Babbar*** *(supra)*. This Court has carefully read the judgement passed in the case of ***S.V.Babbar*** *(supra)*. The aforesaid appeal was filed by the respondent company against the judgement passed by the Court in favour of Sh. S.V. Babbar, an allottee.

The Court, as a matter of fact, found that no notice was received by Sh.S.V.Babbar. Therefore, there was violation of principles of natural justice. In the considered view of this Court, in absence of evidence of the fact that each of the plaintiff did not receive notice or they did not come to know inspite of publication of notices in the newspapers, no benefit can be claimed as per the judgement passed in ***S.V.Babbar*** *(supra)*.

Now let us examine the order passed by the National Consumer Disputes Redressal Commission, New Delhi in the case of ***Kunj Bihari*** *(supra)*. It is apparent from the reading of the order dated 01.08.2019 that the National Consumer Disputes Redressal Commission, New Delhi had dismissed the revision petition in *limine* after noticing that the allottee had not been given hearing before cancelling the allotment. Hence, the aforesaid order also does not come to rescue the plaintiffs.

In all these cases, the plaintiffs have failed to produce evidence to prove that they were not served with communications sent through registered post spanning over a period of 10 years. In absence thereof, the plaintiffs cannot claim that the allotment in their favour has been cancelled without giving them an opportunity of hearing.

Learned counsel for the plaintiffs have also drawn attention of the Court to the order passed by the Supreme Court dismissing Special Leave to Appeal (Civil) against the order passed in ***Kunj Bihari's case*** *(supra)* as well as in ***S.V.Babbar's case*** *(supra)*. The dismissal of Special Leave Petition in *limine* at the outset cannot be said to be a declaration of law by the Supreme Court. The Supreme Court has refused to entertain an application for leave to special appeal. However, such orders are not judgements which can be said to be laying down ratio decidendi.

The case of the plaintiffs can be examined from another angle. Allotment of plot by a colonizer to an allottee only signifies that the aforesaid plot has been booked in the name of the allottee. The parties are governed by the contract entered into between them. Unless an allottee is able to prove and establish that the cancellation of the allotment is either in violation of the terms of the allotment which is in the form of a contract or in violation of the statutory provision regulating the allotment, the allottees cannot claim any right. In the present case, learned counsels for the allottees have failed to draw attention of the Court to any violation of the terms of the contract or statutory provision.

Further, this matter can be examined from yet another angle. The plaintiff/appellants have no equity in their favour particularly when remaining allottees who were in large number deposited the amount but the plaintiffs inspite of repeated communications did not choose to deposit the amount. It is not the case of the plaintiffs that the amount is not payable. Once the amount is payable and the allottees have failed to deposit the amount payable and demanded without sufficient cause, the plaintiffs cannot be held entitled to the plots.

It will be significant to note here that none of the learned counsel for the appellants even made an attempt to contend that the plaintiffs did not receive notice/communication sent by the respondent company.

Keeping in view the aforesaid discussion, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below in all these appeals.

Hence, in view of the aforesaid discussion, it is declared that once it is proved that the allottee/the person who booked the plot with a colonizer has consistently defaulted to comply with the terms of the allotment, the cancellation by the colonizer on that account cannot be interfered with. Similarly, dismissal of the special leave to appeal by the Supreme Court in *limine* does not result in declaration of law so as to make it binding by the Courts under Article 141 of the Constitution of India.

Dismissed.

The miscellaneous application(s), if any, filed in all the appeals shall also stand disposed of.

(Anil Kshetarpal)
Judge

February 24, 2020
"DK"

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