

Sr. No.228

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

RSA No.5022 of 2013 (O&M)

Date of Decision: 09.01.2020

Haryana Urban Development Authority and another

... Appellants

Versus

Brij Mohan Lal

... Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Pritam Saini, Advocate,
for the appellants.

Mr. Fateh Saini, Advocate,
for the respondent.

ARUN MONGA, J.

1. Appellants herein are in second appeal having suffered concurrent findings by the trial Court followed by the First Appellate Court and decreeing the suit in favour of the plaintiff whereby a mandatory injunction was granted directing the appellants/HUDA to demarcate the plot bearing No.R-113, Model Town, Tohana District Fatehabad and hand over its formal possession.

2. Brief factual matrix first, as noticed by the First Appellate Court.

3. The plaintiff along with his brother Madan Lal purchased plot No.R-113 and R-125 on 30.03.1979 in an auction of plots by New Mandi Township at Model Town Tohana. They deposited the amount due. Conveyance deed bearing No.205 dated 29.03.1984 with regard to plot R-113 was registered in favour

of plaintiff and his brother by the then Administrator New Township Haryana, Chandigarh. Thereafter in a family settlement plot No.R-125 came to the share of his brother Madan Lal and plot No.R-113 came to the share of plaintiff. Partition deed was also executed in this regard and in this way plaintiff became exclusive owner of the plot R-113 and his brother had no concern with its ownership.

4. After the incorporation of Haryana Urban Development Authority (HUDA), the area of Model Town Tohana was transferred to the former in place of new Mandi Township.

5. The plaintiff requested defendants number of times to issue possession certificate for the plot in dispute, but the defendants failed to do that.

6. In written statement, the defendants submitted that the extension fee was outstanding on account of non construction in accordance with the provision of extension policy of HUDA. It was also submitted that the plaintiff has filed the suit just to avoid resumption of the plot as per HUDA Policy, because of failure to carry out constructions despite expiry of 15 years.

7. Based on the pleadings, following issues were framed by the trial Court:

1) *Whether the defendants are liable to issue possession certificate in respect of plot No.R-113 and whether they are further not liable to charge any development charges? OPP*

2) *If issue No.1 is proved in favour of the plaintiff*

then whether the plaintiff is entitled to the damages from the defendants?OPD

3) Whether the suit of the plaintiff is not maintainable? OPD

4) Whether the plaintiff has no cause of action and locus-standi to file the present suit? OPD

5) Whether the plaintiff has not come to the Court with clean hands and suppressed the material facts from the Court?OPD

6) Whether this Court has no jurisdiction to entertain the present suit? OPD

7) Relief.

8. The parties herein adduced their oral as well as documentary evidence in support of the pleadings to discharge their respective onus in terms of the issues framed, *ibid*.

9. The trial Court held that plaintiff had deposited the entire auction amount and thereafter conveyance deed was executed vide Ex.P-1. But defendant dept. did not issue possession certificate to the plaintiff to enable him to raise any construction. Defendant Department directed the plaintiff to submit the allotment letter as well as possession letter. However, defendant No.2 is the vendor and having all the record pertaining to auction but still defendant insisted for the allotment and possession letter from the plaintiff.

10. The trial Court held that submission of the defendant that plaintiff has not raised any construction within 15 years and

they have to deposit non-construction fee with defendant was quite surprising, as unless the defendant issues the possession certificate and demarcates the property, the plaintiff cannot raise the construction. After depositing the entire auction amount by the plaintiff it is the duty of the defendant to demarcate the property and to give legal possession to the plaintiff so that he could raise any construction.

11. As far as deposit of non construction fee is concerned, it was found that this fee cannot be claimed from the plaintiff because no possession has been given to him and defendant Department can claim any charge or fees only after giving the possession letter to the plaintiff. Therefore, the plaintiff is not liable to deposit of any non-construction fee as claimed by the defendants.

12. Based on these findings, the suit was decreed as aforesaid. The defendants filed the first appeal contending that plaintiff was required to complete constructions within two years from the date of issue of allotment letter in terms of Clause 11 thereof. Since plaintiff did not seek approval of site plan for making construction over the plot in dispute during the said period, therefore, trial Court committed material irregularity in overlooking the same and decreed the suit. However, the Lower Appellate Court reaffirmed the findings of the trial Court and upheld the decree *inter alia* holding that after the allotment, the allottee was not offered possession of the plot, so that the construction over the same would have been raised within the

stipulated period. It is not evident from the oral as well as documentary evidence that till today either the defendants or their predecessor-in-interest i.e. administrator new Mandi Township Haryana Chandigarh offered possession of the plot to the allottee. Conveyance deed Ex.P-1 of the plot in dispute was executed in favour of the plaintiff and his brother on 29.03.1984, but if there was any violation of terms and condition of allotment contained in letter dated 30.03.1979, the defendants/appellants could have refused to execute that document. It shows that the defendants were at fault in not complying with the terms and conditions of the allotment of the plot.

13. The First Appellate Court found that defendants have not led any evidence to show that after allotment of the plot, its possession was ever offered to the allottees and they failed to comply with the conditions of allotment. The trial Court was justified in directing the defendants to offer possession of plot to the plaintiff.

14. Further, it is held that plaintiff is not liable to pay any interest or penalty for the period during which possession was not handed over to him.

15. Having heard learned counsel for the parties and having perused the judgments of the Courts below, this Court is of the view that the trial Court decree has been correctly passed and it has been rightly upheld by the First Appellate Court. The decree has been rightly modified inasmuch as observing/directing that the appellant-HUDA would not be liable to pay interest on the

amount of plot deposited with them by the plaintiff.

16. The Lower Appellate Court relied upon the ratio of “**Punjab Urban Planning and Development Authority Vs. Gurmail Singh and others 2008(2) ACJ 654**” wherein it was held by the Hon’ble Apex Court that when possession was not handed over to the allottee, then he is not liable to pay interest or penalty for the period during which the possession was not handed over to him. No law to the contrary has been shown or cited at the bar.

17. 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.

18. 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.

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

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

(ARUN MONGA)
JUDGE

09.01.2020
vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No