

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

RSA-226-2021 (O&M)

Date of decision: 23.04.2021

JAI DAYAL

... Appellant

Versus

MARKET COMMITTEE, LADWA AND OTHERS ... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Shubhankar Baweja, Advocate for the appellant.

ANIL KSHETARPAL, J.

CM No.1525-C of 2021

The delay of one day in filing the regular second appeal is condoned for the reasons stated in the application.

Main Case

1. The appellant-plaintiff has filed this regular second appeal against the judgment passed on 20.09.2019 by the learned District Judge, Kurukshetra. The judgment and decree passed by the learned Trial Court on 03.02.2016 was set aside by the First Appellate Court.

2. Some facts are required to be noticed. The respondent-Market Committee developed a vegetable market in Ladwa, District Kurukshetra. In order to allot the plots, the public auction was held on 16.01.2003. The plaintiff-appellant and Krishan Dayal were jointly declared highest bidders of Rs.6,21,000/- of plot No.56. The allottees deposited a sum of

Rs.1,56,000/- i.e., 25% of the allotment price. The remaining 75% of the price was either payable in six half yearly instalments with 15% interest per annum or without interest within 30 days from the date of issuance of allotment letter which was issued on 03.11.2004. The allottees did not deposit the remaining price as per the schedule. The allottees deposited Rs.75,500/- on 02.06.2005 and thereafter, paid another sum of Rs.3,87,500/- on 31.12.2009. The Market Committee offered to deliver the possession of the plot on 29.06.2006. The allottees raised objection claiming that the basic amenities have not been provided. The Market Committee issued a show cause notice on 23.08.2008 threatening resumption of the plot as the allottee failed to pay the price of the plot. The allottees were granted opportunity of hearing on 22.09.2008. However, the allottees failed to pay the price of the plot. Hence, at the first instance, the allottees were also penalized vide order 16.09.2009. Still the allottees did not pay the balance price. Thereafter, again show cause notice was issued on 01.12.2009. The allottees challenged the aforesaid show cause notice by filing CWP No.20249 of 2009 before the High Court which was dismissed on 04.02.2010. The allottees filed LPA No.1386 of 2011 challenging the judgment passed by the learned Single Judge. The aforesaid LPA alongwith a bunch of LPAs was dismissed on 14.09.2012.

3. The allottees thereafter filed SLP (C) No.31133 of 2013 before the Hon'ble Supreme Court, which was disposed of vide order dated 23.09.2013 by an ex-parte order. The order reads as under:-

Heard the learned counsel for the petitioner and learned counsel appearing for the respondents.

Delay condoned.

The petitioner has a grievance with respect to the interest, penal interest and extension fee that is being charged by the Marketing Committee. His submission is that when facilities were not provided, such interest could not have been charged. He may make his representation to the Marketing Committee. The Marketing Committee is directed to consider the representation of the petitioner and decide the same in accordance with law. The special leave petition is disposed of.

4. Thereafter, the plaintiffs were once again called upon to deposit the unpaid amount. The Market Committee also called upon the plaintiffs to deposit the non-construction charges. However, since the plaintiffs failed to deposit the amount, the allotment authority threatened resumption of the plot. The plaintiffs thereafter filed the civil suit for declaration with a consequential relief of mandatory injunction. In this suit, the plaintiffs sought declaration that the letter dated 29.11.2013 is null and void, inoperative, nonest and not binding upon them.

5. Learned Trial Court decreed the suit whereas the learned District Judge after finding that the basic facilities including roads, water supply and sewerage and electricity stood provided in new vegetable market, Ladwa by 28.06.2006 held that the suit filed by the plaintiffs does not have merit.

6. Heard learned counsel for the appellant at length and with his able assistance perused the paper book.

7. It may be noted here that the High Court at one stage formed an opinion that unless and until basic facilities are provided, the allottees have right to withhold the payment of the balance price. However, this view was reversed by the Hon'ble Supreme Court in **Municipal Corporation, Chandigarh vs. Shantikunj Investment (Pvt. Ltd.) and others, (2006) 4 SCC 109**. Again the same view was reiterated in **Secretary, Bhubaneswar Development Authority vs. Susanta Kumar Mishra, (2009) 4 SCC 684**. Even with regard to the allotments by the Haryana State Agriculture Board through public auction the Market Committee in various districts, the Hon'ble Supreme Court in **Haryana State Agriculture Marketing Board and another vs. Raj Pal, (2011) 13 SCC 504** held that the allottees have no right to withhold payment of balance price. Relevant discussion is in para 17 which reads as under:-

17. In view of the principles laid down in Bahadurgarh Plot Holders' Assn. (Regd.) [(1996) 1 SCC 485] , Shantikunj [(2006) 4 SCC 109] and Amarjeet Singh [(2009) 4 SCC 660 : (2009) 2 SCC (Civ) 273], it is clear that the allottees cannot postpone the payment of instalments merely on the ground that some of the amenities were not ready. If they were not entitled for postponement of the instalments, it follows that they will be liable to pay the normal interest on the delayed instalments up to the date of payment. However, having regard to the fact that the Rules did not contemplate compound interest and penal interest and the Market Committee was yet to complete certain infrastructural work like water, sewerage disposal, as held in Shantikunj [(2006) 4 SCC 109] , the Market Committee will not be entitled to claim any compound interest or penal interest.

8. In any case, the learned District Judge after appreciating the evidence found that the Market Committee provided the basic facilities by 28.06.2006.

9. Learned counsel representing the appellant contends that the Hon'ble Supreme Court in the first round held that the plot allotted to the appellant cannot be resumed. He further contends that the respondents are not entitled to charge interest from the appellant.

10. This Court has considered submission, however, finds no substance therein. As already noticed in the first round, the learned Single Judge as well as the Hon'ble Division Bench rejected the claim of the plaintiffs. However, the Hon'ble Supreme Court permitted the appellant to submit a representation. It was nowhere held that the respondents cannot resume the plot if the plaintiff-appellant still fails to pay the complete price of the plot. Still further, in this case, the auction was held in January, 2003, a period of more than 18 years has elapsed. The Market Committee offered to deliver possession on 29.06.2006 to the plaintiffs. However, the plaintiffs indulged in the repeated litigations. Hon'ble Supreme Court granted another opportunity to the appellant. However, still the appellant failed to avail the same. Still further, in view of various judgments passed by the Hon'ble Supreme Court, the plaintiffs were not justified in withholding the payment of the instalments on account of alleged lack of basic facilities. In any case, the facilities stood provided on 28.06.2006. Thereafter, the plaintiffs have been issued repeated show cause notices in the years 2008, 2009 and even after the order passed by the Hon'ble Supreme Court in the year 2013. Thus, the stand of the appellant is not appreciable. Regarding liability to pay interest on the defaulted amount, the same is being charged in accordance

with the rules.

11. Keeping in view the aforesaid facts, finding no merit, the appeal is dismissed in limine.

23.04.2021

ashok

Whether speaking/reasoned:
Whether reportable:

(ANIL KSHETARPAL)
JUDGE

Yes / No
Yes / No