

Neutral Citation No.2023:PHHC:060701

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.2211 of 1995

The Hoshiarpur Improvement Trust,  
Hoshiarpur ... Appellant

Versus

Krishan Devi (mentioned as Krishna Devi  
in the trial Court record) ... Respondent

2. RSA No.2212 of 1995

The Hoshiarpur Improvement Trust,  
Hoshiarpur ... Appellant

Versus

Sh. Madan Singh ... Respondent

Date of Decision: 28.04.2023

Reserved on: 12.04.2023

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Argued by: Mr. Sandeep Khunger, Advocate,  
Ms. Rammneek Kaur, Advocate and  
Mr. Saksham Khunger, Advocate,  
for the appellant.

Mr. Gurdial Singh Jaswal, Advocate,  
for the respondent.

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MANISHA BATRA, J.

1. The aforementioned appeals have been preferred against the judgments and decrees dated 11.05.1995 passed in Civil Appeal No.145 of 1992 and Civil Appeal No.146 of 1992 respectively by learned First Appellate Court who had upheld/confirmed the judgments and decrees both dated 29.07.1992 passed in Civil Suit No.83/92 of 1991 titled as *Krishna*

*Devi v. Hoshiarpur City Improvement Trust Hoshiarpur and another* and Civil Suit No.79/92 of 1991 titled as *Sh. Madan Singh v. Hoshiarpur City Improvement Trust, Hoshiarpur*. At the outset, it may be mentioned that during pendency of these appeals, the record of Civil Suit No.79/92 of 1991 had been burnt on 16.06.1998 in a major fire that had broken out in the record room building of District Courts, Hoshiarpur. The High Court had given direction to the learned District Judge, Hoshiarpur for re-construction of the record and some of the record i.e. copies of pleadings in the form of plaint, written statement, some documents and copy of judgment of trial Court could be got reconstructed. Unfortunately, the evidence recorded in the above civil suit as well as the documents exhibited could not be got reconstructed. However, learned counsel who are representing the parties before this Court in both these appeals are common. During the course of arguments, they had been *ad idem* that both these appeals can conveniently be decided by a common judgment as the facts of both these cases are similar, they relate to the same cause of action and common questions of law have arisen therein. It has also been submitted that the evidence led in both the cases was also the same except that of statements of plaintiffs who were different in both the cases. In view of the submissions so made, arguments had been heard in both these appeals which were same and they are being decided by this common judgment.

2. For the sake of convenience, this Court will discuss the evidence led in Civil Suit No.83/92 of 1991 filed by Krishna Devi who is respondent in RSA No.2211 of 1995. The parties of both the cases shall be referred to

herein in the same order as they were arrayed before the learned trial Court.

3. The common facts of these cases as exposited from the plaints filed by plaintiff-Krishna Devi and Madan Singh are that the plots bearing No.123 and 114 both measuring about 150 sq. yards situated in erstwhile scheme No.11 of Improvement Trust (hereinafter to be referred as “disputed plots”) were allotted to the plaintiffs-Krishna Devi and Madan Singh respectively by defendant No.1 vide allotment letters dated 19.03.1985 on payment of amount of Rs.17,250/- each. The plaintiffs paid the sale consideration amount, got the site plan of the disputed plots approved and raised construction over the same while being in possession thereof. The sale deed in favour of plaintiff-Krishna Devi qua plot No.123 was executed on 21.01.1987 whereas in respect of plot No.114 it was executed in favour of plaintiff-Madan Singh on 29.01.1987. The defendants subsequently issued letters raising demand of enhanced amount of Rs.13,500/- and otherwise threatened to confiscate the disputed plots. The plaintiffs sent replies to the two notices as issued by the defendants calling upon them to explain the criteria on the basis of which the abovesaid amount was demanded but to no avail. The plaintiffs later on came to know that the demand was raised by the defendants on the basis of certain conditions imposed in allotment letter dated 19.03.1985 issued in their favour by the defendant No.1 and as per the terms of agreement to sell which was signed by them before execution of sale deed in their favour. While alleging that the said demand was arbitrary, uncalculated and violative of principles of natural justice, the plaintiffs prayed for restraining

the defendants from recovering the same or from confiscating the disputed plots.

4. In the written statements filed in both the suits, the defendants raised preliminary objections as to locus standi, maintainability and estoppel. While admitting that the disputed plots were allotted in favour of the plaintiffs respectively on payment of Rs.17,250/- each, it was asserted that the plaintiffs had executed agreements and had accepted the terms of the allotment letter dated 19.03.1985 containing stipulation that the price of the disputed plots was subject to variation with reference to actual measurement of the plot as well as in case of enhancement of compensation by the Land Acquisition Collector or any Court and it was not full and final payment. It was alleged that due to enhancement of compensation of land of scheme No.11 which was acquired for the purpose of defendant No.1-Trust and which included the disputed plots, and being bound by the terms and conditions of the allotment letter and agreement, the plaintiffs were liable to pay the enhanced amount of compensation which came to be Rs.13,500/- each and the defendants were entitled to recover the same. While controverting the remaining averments, dismissal of the suit had been prayed for.

5. The plaintiffs filed replications in both the suits controverting the pleas as taken in the written statement and re-asserting those of the plaintiff. Similar issues were culled out by learned trial Court in both the suits which are as follows:-

1. Whether the defendant-trust cannot recover the amount

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of Rs.13,500/- as enhanced price? OPP.

2. Whether plaintiff is entitled to injunction prayed for on the allegations made in the plaint? OPP.

3. Whether the plaintiff is estopped by his act and conduct from filing this suit? OPD.

4. Whether the suit is false, frivolous and vexatious? If so, its effect? OPD.

5. Whether the defendant-trust is entitled to recovery as per condition of allotment and that of agreement? OPD.

6. Relief.

6. The parties adduced evidence in respect of their respective assertions. The plaintiff (respondent in RSA No.2211 of 1995) Krishna Devi examined herself as PW-2 and produced PW-1 Sansar Singh, Draftsman. In documentary evidence, she placed on record Ex.PW1/A site plan of the plot allotted in her favour. Ex.P-1 copy of allotment letter dated 19.03.1985, Ex.P-2 copy of sale deed dated 21.01.1987, Ex.P-3 copy of notice dated 02.12.1988, Ex.P-4 and Ex.P-6 copies of replies to notices issued by defendant No.1, Ex.P-5 copy of notice issued by defendant on 09.04.1990 and Ex.P-7 copy of agreement dated 06.05.1985, Ex.P-8 copy of notice dated 21.03.1991. During cross-examination, she identified her signatures on Ex.D-1 application dated 04.11.1986 and affidavit Ex.D-3. She admitted that this affidavit was sworn and signed by her.

7. The defendants, on the other hand, examined DW-1 Ved Vias, Section Officer of defendant-Trust who proved Ex.D-4 copy of resolution

dated 21.10.1985 enhancing rates of residential and commercial plots of the Trust and DW-2 Surta Singh, Patwari, Improvement Trust who proved Ex.D-5 to Ex.D-13 which are copies of award No.2 of 1982 issued by Land Acquisition Collector, Improvement Trust, Hoshiarpur in Land Acquisition Case No.1 of 1980, the proceedings conducted in that case as well as orders passed therein. DW-3 deposed that agreement Ex.P-7/Ex.D-14 was scribed by him and had been signed by the plaintiff-Krishna Devi after accepting the contents of the same.

8. The learned trial Court on consideration of evidence adduced before it, proceeded to conclude that the plaintiffs were not liable to make payment of the amount as demanded by the defendants and decreed both the suits thereby restraining the defendants from recovering the demanded amount or from confiscating the disputed plots.

9. Feeling dissatisfied, the instant appeals had been preferred by defendant No.1-appellant.

10. While assailing the findings as given by learned First Appellate Court in both the cases, it was strenuously argued by learned counsel for the appellant that it was well proved on record that the respondents-plaintiffs in both the cases had admitted the issuance of allotment letters dated 19.03.1985, execution of agreement Ex.P-7 (in case of respondent-plaintiff Smt. Krishna Devi) and Ex.P-4 (in case of respondent-plaintiff Madan Singh as reflected from the trial Court judgment) in favour of the appellant. The acceptance of terms and conditions of the allotment letters/agreements to sell amounted to an undertaking being given by the respondents that they

would make the payment of enhanced amount of compensation, if any. The sale deeds in favour of the respondents were executed and registered only after issuance/execution of allotment letter/agreement to sell by the respondents. It was not that any new condition was sought to be enforced by the appellant against the respondents by issuing notices raising demand of enhanced amount of compensation. The learned trial Court had erred in observing that no new undertaking or clause could be enforced against the respondents. The learned First Appellate Court had also not appreciated the evidence produced on record in a proper perspective and had wrongly held that the rights and liabilities of the parties to the sale deed were to be governed by the provisions of the sale deed after execution thereof and no new clause could be enforced. He stressed that the contract between the parties had been concluded on execution of sale deed but the terms and conditions laid down in the agreement and allotment letter were part of the same and could not be stated to be at variance or violative of principles of natural justice. The Courts below had also erred in holding that the terms of agreement executed by the respondents were binding upon the respondents only till the date when the agreements were finally converted into sale deed. With these broad submissions, it was stressed that the findings as given by learned First Appellate Court thereby upholding the judgments and decrees as passed by learned trial Court in both the cases, were based on misinterpretation of evidence, were not sustainable in the eyes of law and hence were liable to be set aside. While concluding, it was urged that the appeals deserved to be accepted.

11. Per contra, it was argued by learned counsel for the respondents that the concurrent findings of fact as given by learned Courts below were well reasoned and did not warrant any interference. Therefore, it was urged that the appeals being devoid of any merit were liable to be dismissed.

12. In view of the contentions of both the parties, in the opinion of this Court, the following substantial question of law arises in the instant appeals:-

“If original allotment letters issued in favour of the respondents and agreements executed between the parties enabled the appellant to claim enhanced amount of compensation then whether the learned Courts below were justified in declining the same to it?

13. On perusal of the record, it emerges that there has been no dispute between the parties about the fact that the disputed plots had been allotted in favour of the respondents on payment of price of Rs.17,250/- each and agreements Ex.P-7/Ex.D-14 had been executed by the respondent-Krishna Devi whereas the respondent-Madan Singh had executed agreement Ex.P-4 (as reflected from the judgment of learned trial Court as passed in Civil Suit No.79/92 of 1991). It is also common case of both the parties that sale deed Ex.P-2 was executed in favour of the respondent-Smt. Krishna Devi and sale deed Ex.P-3 (as mentioned in the judgment of trial Court in Civil Suit No.79/92 of 1991) was executed in favour of the respondent-Madan Singh. The parties were also in consensus on the point that there was no stipulation in the sale deeds that the respondents would be liable to pay any enhanced

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amount of compensation. However, it is also revealed from the record that there were stipulations in the allotment letter and agreement to sell as executed by the respondents that the price of the plots so allotted was subject to variance with reference to actual measurement of the same at site and that if at any time, the compensation of the land of erstwhile scheme No.11 which included the plots allotted in favour of the respondents was increased by the Land Acquisition Tribunal or by any Court, then the buyers will have to pay the difference in price of the plot to the appellant. These terms and conditions were never challenged by the respondents. The documents produced on record by DW-2 Surta Singh, Patwari have proved that the rates of plots of scheme No.11 were enhanced by the Land Acquisition Collector and, therefore, the appellant-Improvement Trust was obviously required to pay enhanced amount of compensation to the original land owners. Rather, it is also revealed that the payment of enhanced compensation had been made to several original land owners by the appellant during the proceedings conducted before the Land Acquisition Tribunal. The appellant is not a charitable Trust. It was also bound to pay the enhanced amount of compensation to the original owner of the acquired land and the said amount could be arranged by them only by recovering the same from the allottees of the plots of the scheme No.11. It was not that the terms and conditions stipulated in the allotment letters and agreements admittedly executed by the respondents were not within their knowledge. The respondent-Krishna Devi even admitted submitting affidavit Ex.D-3 before the appellant whereby she agreed to pay the enhanced amount of

compensation in case of increase. It was not the case of the respondents that they had been misled or misinformed about the terms and conditions as stipulated in these documents in any manner whatsoever. The terms and conditions of the allotment letter and agreement as executed and accepted by the respondents were the very basis of execution and registration of sale deeds in respect of the disputed plots in their favour and by no stretch of imagination, they can be stated to be at variance. These terms and conditions could not be stated to be contrary to public policy at all. By voluntarily accepting the conditions imposed by the appellant while issuing allotment letter and by signing agreements, the respondents-plaintiffs had entered into the realm of a concluded contract pure and simple with the appellant and were bound by the terms of the same. It was not that the appellant-Trust wanted to usurp the amount demanded for difference and it was only additional cost of the land of disputed plots that was sought to be recovered by it. The said action cannot at all be stated to be contrary to public policy. The demand as made by the appellant-Trust as of enhanced price of the plots allotted/sold by it to the respondents, cannot but be held to suffer from any illegality or infirmity. It follows, therefore, that there would be no legal or constitutional bar upon the appellant demanding enhanced price for the plots sold/allotted by it consequent upon increase in the compensation awarded to the owners of the acquired land, if according to the terms and conditions of the allotment or any agreement executed by the respondents, the appellant was empowered to do so as in the present case.

14. Resultantly, the findings as given by the Courts below thereby

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restraining the appellant from demanding the enhanced price of the disputed plots cannot be sustained. The same are accordingly reversed. The impugned judgments as passed by learned First Appellate Court are set aside. The appeals are allowed. There is no order as to costs.

15. Miscellaneous application(s), if any, also stand disposed of.

28.04.2023  
manju

(MANISHA BATRA)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No