IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212

RSA-3014-2013 (O&M)
Date of decision : 16.07.2025

Haryana Urban Development Authority ...... Appellant

versus

The Swagreha Coop. Group Housing Society ...... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Pritam Singh Saini, Advocate
for the appellant.

Mr. Gobind Dhanda, Advocate
for the respondent.

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PANKAJ JAIN, J. (Oral)

1. Defendant is in second appeal aggrieved of the judgment and decree passed by both the Courts below.

2. Plaintiffs is a Group Housing Society which was allotted land by the appellant measuring 2000 sq. meters @ Rs.1206/- per sq. meter. The society was served with the show cause notice bearing No. 10227 dated 08.07.2005 issued under Section 17(1) of the HUDA Act, 1977 along with demand notice bearing No.17098 of 30.09.2002 issued under Section 17(2) of HUDA Act 1977, whereby enhanced price was demanded on the ground that the compensation payable to the land owners stands enhanced in appeal by High Court from Rs.25 per ft. sq. meter to Rs.135 per sq. meter. Liability of HUDA to pay land owners on account of enhancement is Rs.13.76 crores and the society was required to pay additional cost of Rs.811.85 per sq. meter in the light of

condition No.6 of the allotment letter.

3. Plaintiff-society claimed that the land was allotted by HUDA under a policy, whereby the land was offered on ‘no profit no loss basis’ and the price of allotment already charged and paid by the society is enough to take care of enhancement of the cost of compensation.

4. Suit was contested by the defendant-appellant. Reliance was placed upon condition No.6 of the allotment letter, as per mandate of which the price charged from the plaintiff-allottee was said to be tentative and was subject to enhancement in case of enhancement in the cost of acquisition of the land. Defendants thus justified the demand raised and further claimed that the same was bad, not only by the statutory contract in form of allotment letter between allottee and the defendant, but also is covered under Regulation 2B of Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978.

5. Suit filed by the plaintiff was put to trial by the Court of the First Instance framing following issues:-

> *“1. Whether the plaintiff is entitled to the relief of permanent injunction and mandatory injunction as prayed for? OPP.*
> *2. Whether the suit is not maintainable in the present form? OPD.*
> *3. Whether no Cause of action has arisen in favour of the plaintiff society and against the defendants? OPD.*
> *4. Whether the plaintiff has no locus-standi to file the present suit? OPD.*
> *5. Whether the Civil Court has got no jurisdiction to try and entertain the present suit? OPD.*
> *6. Relief.”*

6. On issue No.1, the Court of the First Instance held that since the calculation given by the plaintiffs in their plaint has not been

disputed by the defendants and no evidence has been led to prove justification of the demand raised, coupled with the admitted fact that the land was allotted to the plaintiff-society on 'no profit no loss' basis, defendants are not entitled to claim any additional amount from the plaintiff-society. Suit filed by the society was accordingly decreed. The aforesaid findings stand affirmed by the Lower Appellate Court.

7. Mr. Saini counsel for the appellant submits that enhancement ordered by the High Court, is matter of record. After the compensation payable by HUDA on account of acquisition was enhanced and additional liability of Rs.13.76 crores accrued, HUDA (now called as HSVP) was well within its right to demand enhanced allotment price in terms of condition No.6 of the allotment letter. He further submits that the Courts below have not given any calculation as to how they came to the conclusion that the amount already paid by the allottee is enough to cover the enhanced cost of acquisition. Mr. Saini further submits that it being an issue relating to allotment price, jurisdiction of Civil Court was explicitly barred under Section 50 of the 1977 Act.

8. *Per contra*, counsel for the respondent-plaintiff has drawn attention of this Court to para 4 to 6 of the judgment passed by the Trial Court to submit that proper calculation has been recorded in the impugned judgment which evidently shows that cost of acquisition though arose from Rs.25 per ft. sq. meter to Rs.135 per sq. meter., but the society was allotted land @ Rs.1206 per sq. meter. Rs.16.31 acres was paid by HUDA for land of Rs.254.75 meters and 91.07 acres thereof was allotted to the society for allotment price of Rs.73.85

crores. The allotment being under policy, wherein HUDA undertook to allot the land on ‘no profit no loss’ basis, Courts below rightly held that the show cause notice and the demand notice raised by the HUDA claiming enhanced price of allotment were null and void and illegal.

9. I have heard counsel for the parties and have carefully gone through the records of the case.

10. The two issues raised by Mr. Saini in his arguments are:-

> *(i) The jurisdiction of the Civil Court being barred under Section 50 of the 1977 Act.*
>
> *(ii) The invocation of condition No.6 of the allotment letter.*

11. In view of the ratio of law laid down by Constitution Bench in ***Dhulabhai And Others vs The State Of Madhya Pradesh and Another*** reported as ***1968(3) SCR 662***, the jurisdiction of the Civil Court can be held to be barred where the action of the authority is found to be justified on the basis of statute.

12. In the present case, the plaintiff in the plaint pleaded as under:-

> 7. That the HUDA has acquired this land from the land owners at the rate of Rs.25/- per Sq.Mtrs and charged from the Societies Rs.1206 per Sq.Mtrs which is 48 times of the amount paid to the land owners. The HUDA has paid near about 2.55 Crores approx. to the land owners for 254.75 Acres of land whereas they charged from the Society @ Rs.1206 per Sq.Mtrs and collected an amount of Rs.43.93 Croers against allotment of only 91.07 acres of land out of 254.75 acres of land.
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> 8. That now the Hon'ble Court has enhanced the compensation in favour of the land owners at the rate of Rs.135 per Sq.Mtrs and on this account, the HUDA has to pay to the land owners an amount of Rs.13.76 Crores approx. and in view of the above mentioned enhancement, the HUDA has issued alleged notice under challenge to the Society for

payment of additional cost at the rate Rs.811.85 per Sq.Mtre in this way, the total amount payable by the Societies alone is Rs.29.92 Crores approx. for 91.07 acres of land.

9. That it is clear from the above calculation that the HUDA has paid to the land owners only an amount Rs.16.31 Crores for 254.75 acres of land and being charged Rs.73.85/- Crores from societies for Rs.91.07/- acres of land.

10. That the HUDA has resumed the land for the following utilities out of 254.75 Acres of land.

1	Area for reserved for HUDA	24.20
2	Area for Mandi	20.00
3	Area under plot	91.07
4	Commercials area	22.00
5	Public Building	8.25
6	Creche	12.20
7	Religious site	0.20
8	Area for Health Centre	2.35
9	Area under Community Centre	2.00
10	Area under electrical sub-station	0.80
11	Area under w/work/HUDA Quarter	6.25
12	Area under open area space	65.43

13. The same was responded by the appellant-defendant in the following terms:-

"7. That as per condition No. 6 of the allotment letter it is specifically mentioned that "The above price is tentative to the extent that any enhancement in cost of land awarded by the competent authority under the Land Acquisition Act shall also be payable proportionately as determined by the authority. The additional price determine shall be paid in thirty days of its demand." It is also mentioned in the regulation 2 (b) of Haryana Urban Development (Disposal of land & Building) Regulations 1978.

The contents of the regulation are mentioned below:

"Additional Price" and "Additional Premium"

means such sum of money as may be determined by the Chief Administrator in respect of the same or lease of land or building by allotment, which may become payable by the transferee or lease with respect to land or building sold or leased to him in a sector on account of the enhancement of compensation of any land or building in the same sector by the Court on a reference made under Section 18 the Land Acquisition Act, 1894 and the amount of cost incurred in respect of such reference.

Explanation.- For the purpose of regulation, the expression "the Court means the Court as defined in clause (d) of section 3 of the Land Acquisition Act, 1894, and where an appeal is filed, the "Appellate Court".

AND it is also mentioned in Regulation 10 of Haryana Urban Development (Disposal of Land & Building) Regulations 1978. The contents the regulation are mentioned below:

Liability to pay additional price/premium. -

(1) In the case of sale/lease of land/building by allotment the transferee or lessee shall be liable to pay to the authority, in addition to tentative price/premium, the additional price/premium, if any, determined in respect thereto under these regulations.

(2) The additional price/premium shall be payable by the transferee of lessee within a period of thirty days of the date of demand made in this behalf by the Estate Officer without interest or in such number of installments with interest as may be determined by the Chief Administrator.

It was held by the Hon’ble Supreme Court of India in Preeta Singh etc. Vs Harvana Urban Development Authority reported in JT 1996(5) S.C. 634., that the respondents are given the right to enhance the price, once the plot has been allotted on the tentative/provisional price as is the case in hand. The case can be fixed by the authority and approved by the State Government. It is a contractual obligations between the parties on which allottee has been allotted the plot.

8. That the plaintiff Society has not filed an application under order 1 rule B of CPC for filing suit in representative capacity on behalf of the members of the Society and hence the suit of the plaintiff Society is liable to be dismissed on this ground

> alone.
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> 9. That the secretary of the above said Society also filed a writ Petition in the Hon'ble high Court of Punjab and Haryana i.e. C.W.P. No.8563 of 2006 against the defendant no.1 as well as the Special Secretary Corporation, Haryana, Additional Registrar (Marketing), District Town and Country Planner, Panchkula wherein the plaintiff Society admitted that the enhancement has not been paid by the society, hence the plaintiff Society be estopped to file the present suit due to his act and conduct."

14. It is in these circumstances that the Courts below held that the calculation provided by the plaintiff in the plaint has been admitted by the defendant. Condition No.6 of the allotment letter reads as under:-

> "6. The existing practice is also being changed and now the draft calculation of additional price shall be done after holding discussions with Resident Welfare Association/allottees/ petitioners at the zonal level by committee under the Chairmanship of Zonal Administrator, comprising of the following:-
>
> i. Estate Officer of the concerned Urban Estate.
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> ii. Land Acquisition Officer of the concerned zone.
>
> iii. District Town Planner of the Urban Estate."

15. There is no dispute with respect to the authority vested with HUDA to seek enhanced allotment price in case of enhancement in the compensation payable to the land owners. However, the enhanced price demanded cannot be arbitrary and has to be justified by providing calculation. Once, the defendant admits to the calculation provided by the plaintiff in the plaint and it is admitted that the land was allotted under the policy of 'no profit no loss' basis, this Court finds that the action of the defendant can neither be justified in terms of condition No.6 of the allotment letter nor under Regulation 2B of the 1978

Regulations.

16. Once the action of the defendant has been held to be arbitrary and not in consonance with the provisions of the regulations or with the covenants contained in the contract of allotment, this Court finds that in view of the ratio of law laid down in ***Dhulabhai's* case (supra)**, Section 50 cannot be invoked to oust the jurisdiction of this Court.

17. Finding no merits in the present appeal, the same is ordered to be dismissed.

18. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

16.07.2025
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Whether speaking/reasoned : Yes

Whether Reportable : No