SUPREME COURT OF INDIA

Fuljit Kaur

Vs.

State of Punjab

C.A.No.5292 of 2004

(Dr. B.S. Chauhan and Swatanter Kumar JJ.)

03.06.2010

JUDGEMENT

Dr.B.S.Chauhan, J.

1. This is a unique case which reveals that an influential person can have allotment of a residential plot in discretionary quota within 48 hours of submission of application and then assert in Court that she has a right to have a land on a throwaway price and not to deposit the sale price for quarter of a century.

2. This appeal has been preferred against a Judgment and Order dated 21.12.1999 in Writ Petition No. 4763 of 1992 of the High Court of Punjab & Haryana at Chandigarh, dismissing the petition against the Demand Notice of additional price for residential plot.

3. Facts and circumstances giving rise to this case are that the appellant made an application on 23.02.1987 for allotment of a residential plot in Urban Estates, SAS Nagar, Punjab. The Administration, vide letter dated 25.02.1987, issued the allotment letter in favour of the appellant in respect of plot No. 702, measuring 400 sq. yards in Sector 70 Urban Estate SAS Nagar, making it clear that as the proper calculation could not be made and tentative price had not been determined, the allottee has to deposit provisional price of Rs. 93000/- in four installments upto 15.10.1989. Subsequently, vide letter dated 25.03.1992, additional demand of Rs. 2,19,000/- was made, however, instead of depositing the said amount, appellant challenged the said Demand Notice by filing Writ Petition No. 4763 of 1992 before the High Court of Punjab & Haryana contending that the additional demand was arbitrary and unreasonable. A large number of similar cases were also pending before the High Court and some had earlier been disposed of. However, the Writ Petition filed by the appellant has been dismissed by the High Court vide impugned Judgment and Order dated 21.12.1999 upholding the demand dated 25.03.1992. Hence this appeal.

4. Sh. Vijay Hansaria, learned senior counsel appearing for the appellant, has submitted that the High Court committed an error in dismissing the said Writ Petition relying upon the

Urban Development Authority & Ors.[1]. In 1993 Pub.&Har. 54, such unreasonable and arbitrary demand had been quashed by the High Court and the State Government was issued direction to re-determine the amount taking into consideration the provisions of the Punjab Urban Estate (Sale of Sites) Rules, 1965 (hereinafter called as, "the Rules") and provisions of Punjab Urban Estates (Development and Regulation) Act, 1964 (hereinafter called as, "the Act").

> "The said Judgment has attained finality as the State had preferred Special Leave Petition against the said Judgment & Order before this Court but later on, it was withdrawn. After re-determining the additional price, no recovery has been made from Sh. D.S. Laungia till date. Therefore, the appeal deserves to be allowed."

5. On the other hand, Ms. Rachna Joshi Issar, learned counsel appearing for the respondent vehemently opposed the appeal contending that the High Court has rightly relied upon the Judgment in Preeta Singh (supra). In D.S. Laungia (supra), the State Government, being aggrieved, had challenged the said Judgment and Order before this Court by filing the Special Leave Petition but it was withdrawn for certain reasons. Therefore, it cannot be held that the Judgment in D.S. Laungia (supra) stood approved by this Court. Calculations had been made strictly in consonance with the Statutory provisions of the Act and the Rules, particularly taking note of Rule 2(aa) and 2(e) of the Rules and it is to be recovered from D.S. Laungia also. The High Court was fully satisfied regarding determination of the additional price and therefore, no fault can be found with impugned Judgment and Order. Hence, the appeal is liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record.

7. The questions do arise as to whether such an order of withdrawal passed by this Court amounts to confirmation/approval of the judgment and order of the High Court and as to whether appellant could be treated differently.

8. There is no dispute to the settled proposition of law that dismissal of the Special Leave Petition in limine by this Court does not mean that the reasoning of the judgment of the High Court against which the Special Leave Petition has been filed before this Court stands affirmed or the judgment and order impugned merges with such order of this Court on dismissal of the petition. It simply means that this Court did not consider the case worth examining for the reason, which may be other than merit of the case. Nor such an order of this Court operates as res judicata. An order rejecting the Special Leave Petition at the threshold without detailed reasons therefore does not constitute any declaration of law or a binding precedent. [Vide The *Workmen of Cochin Port Trust*[2]; *Ahmedabad Manufacturing & Calico*[3]; *Supreme Court Employees' Welfare Singh & Ors.*[4]; *V.M. Salgaocar & Bros. (P) Mandal Revenue Officer, Andhra Pradesh*[5]].

9. This Court considered a case wherein against the judgment and order of the High Court, special leave petition was not filed but when other matters were disposed of by the High Court in terms of its earlier judgment, the Authorities approached this Court challenging the correctness of the same. It was submitted in that case that if the State Authorities had accepted the earlier judgment and given effect to it, it was not permissible for the Authority to challenge the subsequent judgments/orders passed in terms of the earlier judgment which had attained finality. This Court repealed the contention observing that the circumstances for non-filing the appeals in some other or similar matters or rejection of the SLP against such Judgment in limine by this Court, in some other similar matters by itself, would not preclude the State Authorities to challenge the other orders for the reason that non-filing of such SLP and pursuing them may seriously jeopardize the interest of the State or public interest.

10. In *Kunhayammed & Ors. v. State of Kerala & Anr.*[6], this Court reconsidered the issue and some of the above referred judgments and came to the conclusion that dismissal of special leave petition in limine by a non-speaking order may not be a bar for further reconsideration of the case for the reason that this Court might not have been inclined to exercise its discretion under Article 136 of the Constitution.

> "The declaration of law will be governed by Article 141 where the matter has been decided on merit by a speaking judgment as in that case doctrine of merger would come into play. This Court laid down the following principles:- "(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.
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> (ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.
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> (iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties."

11. The Court came to the conclusion that where the matter has been decided by a non-speaking order in limine the party may approach the Court for reconsideration of the case in exceptional circumstances.

12. In view of the above, in the fact-situation of the case in D.S. Laungia (supra), question of application of doctrine of merger did not arise and even by no stretch of imagination it can be held that this Court has approved the judgment in D.S. Laungia (supra), rather a different view is required to be taken in view of the fact that this Court had expressed doubts about the correctness of the impugned Judgment by making the following observations :- "In the instant matter as also in the matters enumerated in the letter of Mr. G.K. Bansal, Advocate for the petitioners dated January 25, 1994, seeking withdrawal of all these matters, we are constrained to remark that no reasons have been assigned as to why the State of Punjab is submitting to the impugned orders of the High Court which prima facie appear to us to be unsustainable. The direct result of the withdrawal would not only be compounding to an illegality but would otherwise cause tremendous loss to the State exchequer. We, therefore, direct that the reasons which impelled the State to seek withdrawal of these matters be placed before us in the form of an affidavit by the Chief Secretary, Punjab or the Secretary of the Department concerned justifying the step for seeking withdrawal." (Emphasis added)

13. The respondent cannot claim parity with D.S. Laungia (supra) in view of the settled legal proposition that Article 14 of the Constitution of India does not envisages for negative equality. Article 14 is not meant to perpetuate illegality or fraud. Article 14 of the Constitution has a positive concept.

> "Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial Forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise Art.14 cannot be stretched too far otherwise it would make function of the administration impossible. [vide of *India & Ors.*[7]]."

14. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the of *U.P. & Ors.*[8],; *Jalandhar Improvement International Trading Company & Anr.*[9],; *Jammu & Kashmir & Ors.*[10]).

15. In view of the above, the submissions made by Shri Hansaria, Amicus Curiae in this regard are preposterous and not worth consideration.

16. In the instant case, the High Court has taken into consideration all statutory provisions and calculations made by the respondents as under what circumstances the "tentative- price" had been fixed and reached the conclusion that the demand was justified. The Court also rejected the submissions made on behalf of the allottees that judgment in D.S. Laungia (supra) was an authority on the issue.

17. Rules 2(aa), 2(e), 4 and 5 of the Rules which have direct bearing on the questions raised in this appeal read as under:

> "2(aa)- `Additional Price' means such sum of money as may be determined by the State Government, in respect of the sale of a site by allotment, having regard to the amount of compensation by which the compensation awarded by the Collector for the land acquired by the State Government of which the site sold forms a part, is enhanced by the Court on a reference made under Section 18 of the Land Acquisition Act, 1894, and the amount of cost incurred by the State Government in respect of such reference.
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> 2(e)- `tentative price' means such sum of money as may be determined by the State Government from time to time, in respect of the sale of a site by allotment, having regard among other matters, to the amount of compensation awarded by the Collector under Land Acquisition Act, 1894 for the land acquired by the State Government of which the site sold forms a part.
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> 4. Sale Price:- In the case of sale of a site by allotment the sale price shall be:

(a) where such site forms part of the land acquired by the State Government under the Land Acquisition Act, 1894; and (i) no reference under Section 18 thereof is made against the award of the Collector of such reference having been made has failed, the tentative price.

(ii) On a reference made under Section 18 thereof the compensation awarded by the Collector is enhanced by the Court. The aggregate of the tentative price and the additional price;

(b) in any other case, such final price as may be determined by the State Government from time to time.

(2) In case of sale of site by auction the sale price shall be such reserve price as may be recommended by the State Government from time to time or any higher price determined as a result of bidding in an open auction.

5-A: Liability to pay additional price.

(1) In the case of sale of site by allotment the transferee shall be liable to pay to the State Government in addition to the tentative price, the additional price, if any determined in respect thereto under these rules.

(2) The additional price shall be payable by the transferee within a period of thirty days of the date of demand made in this behalf by the Estate Officer.

Provided that the Chief Administrator may in a particular case, and for reasons to be recorded in writing allow the applicant to make payment of the said amount within a further period not exceeding thirty days."

18. A perusal of the above quoted rules shows that the "tentative price" means the price determined by the State Government from time to time in respect of a sale of site by allotment and while doing so, the Government has to take into consideration various factors including the amount paid as compensation.

19. The phrase `additional price' has been defined as the price determined by the State Government having regard to the enhanced compensation payable to the land owners in pursuance of the award passed by the court on a reference made under Section 18 or further appeal under the Act 1894.

"The sale price is the price payable in respect of an allotment of site. If the site sold by the competent authority forms part of the land acquired by the State Government under the Act 1894 and no reference under Section 18 thereof is made against the award of the Collector or such reference having been made has failed, the sale price is the tentative price as defined in Rule 2(e) of the Rules but if the compensation

awarded by the Collector is enhanced by the court on a reference made under Section 18 of the Act 1894, then the sale price means the aggregate of the tentative price and the additional price. If the site allotted by the competent authority does not form part of the land acquired by the State Government under the Act 1894, then the sale price would mean such final price as may be determined by the State Government. However, there is nothing in the scheme of the Act 1964 and the rules from which it can be inferred that tentative price is synonymous with the provisional price, and that a person, to whom the plot has been allotted on provisional price, cannot be asked to pay the tentative price determined by the government. There is a difference between the "provisional price" and the "tentative price" and it may take a long time for the State to determine the tentative price."

20. In the instant case, the calculations had been furnished by the respondents as on what basis tentative price had been determined.

"A. Cost of land

1. Cost of land per acre of Sector 70 SAS Nagar Rs.90,000/-

2. Solatium charges @30% Rs.27,000/-

3. Interest charges from the date of Notification till the date of Award @12% from 1980 to 1984 for 4 Years Rs.43,000/-

4. Interest charges 15% from 1984 to 1990 for 6 years on the cost of land Rs.1,44,180/- _____ Rs.3,04,380/- B. Cost of Internal and External Development

1. Water Supply @ Rs.1.35 lacs. Rs.1,35,000/-

2. Sewerage @ Rs.59,000/- Rs. 59,000/-

3. Sterm Water @ Rs.1,32,000/- Rs. 1,32,000/-

4. Roads @ Rs.55,000/- per acre Rs. 55,000/-

5. Bridges & Others @Rs.11,000/-per acre Rs. 11,000/-

6. Horticulture @ Rs.36,000/- per acre Rs. 36,000/-

7. Street lightening @Rs.15,000/-per acre Rs. 15,000/-

8. Electrification @Rs.15,000/-per acre Rs. 15,000/-

9. Conservancy charges @Rs.9,000/-per acre Rs. 9,000/-

10. Utility services @Rs.20,000/-per acre Rs. 20,000/-

11. Maintenance & Re-surfacing of roads for 5 years @ Rs.63,000/- per acre Rs. 63,000/-

12. Maintenance of Public Health service @ Rs.39,000/- per acre Rs. 39,000/-

13. Maintenance & Re-surfacing of roads Beyond 5 years @Rs.45,000/- per acre Rs. 45,000/-

14. Division of H.T. Line@ Rs.7,000/- per acre Rs. 7,000/-

15. Earth Filling @Rs.10,000/- per acre Rs. 10,000/- _____ Rs.6,51,000/- C.(Establishment charges@14% + 3% on the cost of land. Rs. 51,745/- (ii) Interest charges @1% for plotable area(55%)Rs. 2,662/- (iii) Interest charges for 3 years @10% each Year on development charges Rs.1,51,200/- (iv) Unforeseen charges as well as escalation Charges @10% Rs.1,16,098/- _____ Total expenditure per acre Rs.12,77,064/- Total Expenditure of 306.59 acres of land Acquired for Sector 70 SAS Nagar Rs.39,15,34,824/- Saleable area 6,74,233 Sq.yds. Rate per sq.yd. 39,15,34,824 = Rs.580/- 6,74,233"

21. The plots measuring 100 sq.yds. were to be allotted at tentative price calculated at subsidized rate of 10% less than the reserve price while plots measuring 150, 200 and 250 sq.yds. were to be allotted at tentative price equal to the reserve price. The plots 300 and 400 sq.yds. area are to be allotted at tentative price equal to 1-1/2 times of the reserve price and plots measuring 500 sq.yds. were to be allotted at tentative price equal to double the reserve price. Taking the overall position into account, the Government fixed the reserve price at Rs.520/- per sq.yd. for calculating the tentative prices, in the above manner, for plots of various sizes.

22. There is nothing on record to show that the tentative price determined by the State could be unreasonable or arbitrary and it is not the case of the allottee that the market value of the land has not been enhanced while deciding the reference under the Act 1894.

23. While deciding this case, the High Court placed heavy reliance upon the judgment of this Court in Preeta Singh (supra) wherein after taking note of various statutory provisions of Act 1964 and Rules 1965, particularly, Rule 2(aa) and sale price as determined in Rule 4, this Court came to the following conclusion:

"7. A conjoint reading of the above Rules would clearly indicate that the allottee is liable to pay a sale price including the additional price and the cost incurred and also the cost of improvement of the sites. It is to be remembered that the respondent

HUDA is only a statutory body for catering to the housing requirement of the persons eligible to claim for allotment. They acquire the land, develop it and construct buildings and allot the buildings or the sites, as the case may be.

Under these circumstances, the entire expenditure incurred in connection with the acquisition of the land and development thereon is required to be borne by the allottees when the sites or the buildings sold after the development are offered on the date of the sale in accordance with the regulations and also conditions of sale. It is seen that in the notice dated 9-8-1990, the total area, net area, the payable amount for the gross acreage, the acreage left for the developmental purpose, balance recoverable from the plot-holders, plot-table area have been given for each of the areas and recovery rate also has been mentioned under the said notice.
Under these circumstances, there is no ambiguity left in the calculations. If, at all, the appellants had got any doubt, they would have approached the authority and sought for further information. It is not the case that they had sought the information and the same was withheld. Under these circumstances, we do not find any illegality in the action taken by the respondents. The High Court, therefore, was right in refusing to interfere with the order."

Bank[11], this Court, while considering a similar issue, laid down large number of principles including the following : - "Where the plot/flat/house has been allotted at a tentative or provisional price, subject to final determination of price on completion of the project (that is acquisition proceedings and development activities), the development authority will be entitled to revise or increase the price. But where the allotment is at a fixed price, and a higher price or extra payments are illegally or unjustifiably demanded and collected, the allottee will be entitled to refund of such excess with such interest, as may be determined with reference to the facts of the case."

24. *Apartments Owners' Welfare Association*[12], while deciding the similar issue, this Court held as under :- "So far as price is concerned, in 1991, when the names of applicants were registered, it was clarified that the price indicated was 'tentative price' and it was subject to 'final price' being fixed by the Board. In any case when the scheme was altered from seven types to fifteen types flats, it was stated that the amount shown was merely tentative selling price. The intending purchasers, therefore, were aware of the fact that the final price was to be fixed by the Board.

"In fact an agreement to that effect was executed by all prospective allottees wherein they agreed that they would pay the amount which would be finally fixed by the Board.....In the circumstances, it cannot be said that the allottees were not aware of the above condition and they were compelled to make payment and thus were treated unfairly or unreasonably by the Board."

25. The instant case is squarely covered by the aforesaid Judgments of this Court and particularly, Preeta Singh (supra) and in view thereof, the appeal is liable to be dismissed.

26. Before parting with the case, it may be pertinent to mention here that the allotment had been made to the appellant within 48 hours of submission of her application though in ordinary cases, it takes about a year. Appellant had further been favoured to pay the aforesaid provisional price of Rs. 93,000/- in four installments in two years, as is evident from the letter dated 8.4.1987. Making the allotment in such a hasty manner itself is arbitrary and unreasonable and is hit by Article 14 of the Constitution. This Court has consistently held that "when a thing is done in a post-haste manner, malafide would be presumed." Anything done in undue haste can also be termed as "arbitrary and cannot be condoned in *Ors.*[13]; *Madhya Pradesh Hasta Shilpa Vikas Kamalia & Ors.*[14]; and Zenit Mataplast P. Thus, such an allotment in favour of the appellant is liable to be declared to have been made in arbitrary and unreasonable manner. However, we are not inclined to take such drastic steps as the appellant has developed the land subsequent to allotment.

27. We further find no force in submission made by Sh. Vijay Hansaria, Sr. Advocate, that in spite of making recalculation in view of the directions issued by the High Court in the case of D.S. Laungia (supra), State could not make any recovery from Sh. Laungia. This Court, vide order dated 20.05.2010, asked the respondents to explain this aspect and file an affidavit of the Administrator of the Authority. In response thereto, an Affidavit had been filed by the Chief Administrator, Greater Mohali Development Authority, explaining the entire position in respect of the allotment and recovery of dues furnishing all details and according to this Affidavit, the money is being recovered from all defaulters including Shri D.S. Laungia along with interest.

28. In view of the above, we find no force in the appeal, it lacks merit and is, accordingly, dismissed. No order as to costs.

[1]*(1996) 8 SCC 756* [2]*AIR 1978 SC 1283*
[3]*AIR 1986 SC 1780* [4]*AIR 1997 SC 1796*
[5]*(2009) 9 SCC 447* [6]*AIR 2000 SC 2587*
[7]*(2009) 15 SCC 705* [8]*AIR 1996 SC 540*
[9]*AIR 2003 SC 3983* [10]*(2008) 9 SCC 24*
[11]*(2007) 6 SCC 711* [12]*(2008) 3 SCC 21*
[13]*AIR 1981 SC 2181* [14]*AIR 2004 SC 1159*