

SUPREME COURT OF INDIA

State of Punjab

Vs.

Dhanjit Singh Sandhu

C.A.Nos.5698-5699 of 2009

(Dr. B.S. Chauhan and M.Y. Eqbal JJ.)

14.03.2014

JUDGMENT

M.Y. EQBAL, J.:

1. These appeals are directed against the judgment and order dated 8.1.2009 passed by the Punjab & Haryana High Court in C.W.P. No.8864 of 2007 and also order dated 27.3.2009 passed in Review Petition No. 112 of 2009, whereby the writ petition filed by the respondent was allowed and the order dated 23.12.2004 passed by appellant no.3 rejecting the application for refund of the extension fee received by the appellant in excess of the rates mentioned in Rule 13 of the Punjab Regional and Town Planning and Development Act, 1995 (in short '1995 Act') in the light of the judgment passed in C.W.P. No.13648 of 1998 (Tehal Singh vs. State of Punjab & Ors.) along with up-to-date interest has been set aside.

2. The facts of the case lie in a narrow compass.

3. The respondent was allotted a plot of land measuring 400 square yards bearing No.2177 at Durgi Road, Urban Estate Phase-II, Ludhiana vide allotment letter dated 1.4.1986. In terms of allotment, the respondent was required to complete the construction of building within three years from the date of issuance of the allotment letter after getting the plans of the proposed building approved by the competent Authority. The case of the respondent-writ petitioner is that there was no condition in the allotment letter for charging extension fee in the case of failure to complete construction of the building within the aforementioned period of three years nevertheless as per clause 15 of the allotment letter, the allotment was

subject to the provisions of Punjab Estates (Development and Regulation Act), 1964 and the Rules and Policies framed thereunder.

4. It appears that in the year 1995, the State of Punjab came with the legislation known as Punjab Regional and Town Planning and Development Act, 1995 (in short 'PUDA Act'). By the said Act, the Punjab Urban Estate (Development and Regulation) Act 1964 (in short '1964 Act') and Punjab Housing Development Board Act, 1972 were repealed. In exercise of power conferred under the Act, the State Government framed rules called the Punjab Regional and Town Planning and Development (General) Rules 1995 (in short '1995 Rules') which was published vide Notification dated 22nd August, 1995. Rule 13 of the Rules specified the time within which the building is to be constructed. It also provides for extension of time limit subject to payment of prescribed fee mentioned therein.

5. The Punjab Urban Planning and Development Authority (in short 'PUDA') issued a circular dated 15.1.1998 revising the rate of extension fee chargeable for the residential and commercial plots and by the said circular a very high rate of extension fee was proposed to be charged. The respondent from time to time deposited the extension fee so demanded by the appellant. It is alleged that an amount of Rs.1.20 lacs has been in excess charged from the respondent. The appellant's case is that the appellant in an attempt to nullify the effect of the judgment rendered in Tehal Singh's case and to validate the demand of enhanced rate of extension fee purportedly framed the Rules called Punjab Regional and Town Planning and Development (General) Second Amendment Rules, 2001 (in short '2001 Rules') giving retrospective effect.

6. The respondent moved a writ petition being C.W.P. No. 7934 of 2004 praying inter alia for the directions to refund the excess fee charged from the respondent. It was disposed of with the directions to the appellant to reconsider the representation and to dispose of the same in the light of the order passed in C.W.P. No.13648 of 1998 (Tehal Singh's case). In compliance with the aforesaid directions, the respondent's representation was considered and came to be rejected by the appellant vide order dated 23.12.2004 on the ground that in the facts and circumstances of the case the instant case was not similar to Tehal Singh's case.

7. The writ petition was finally heard by the Punjab and Haryana High Court and relying on the ratio decided in Tehal Singh's case (supra) disposed of the writ petition, quashed the notice and directed the appellant to calculate the extension fee

as per Rule 13 of 1995 Rules. For better appreciation, the concluding paragraphs 15 to 17 of the impugned order are quoted hereinbelow:-

“15. When the facts of the present case are examined in the light of the principle laid down by the Division Bench judgment in Tehal Singh’s case (supra), we are left with no doubt that the show cause notices issued to the petitioner on 19.9.2006 (P-4) and 12.12.2006 {P-7} requiring him to pay extension fee of Rs. 1,32,958/- was violative of the provisions of the 1995 Act and Rule 13 of the 1995 Rules, as has already been noticed in the preceding paras. The controversy, in fact, stand settled by the Division Bench judgment in Tehal Singh's case (supra) and the issue does not deserve to be reopened. The respondents have failed to consider the reply filed by the petitioner wherein judgment rendered by the Division Bench in Tehal Singh's case (supra) has been cited and the charging of extension fee at exorbitant rate has been duly answered.

16. In view of above, the writ petition succeeds. The impugned notice dated 12.12.2006 (P-7) is hereby quashed. The respondents are directed to calculate the extension fee as per Rule 13 of the 1995 Rules. The needful shall be done within a period of two months from the date of receipt of a certified copy of this order. The petitioner shall pay the extension fee within a period of two months from the date of receipt of the calculation given in the fresh notice to be issued by the respondents. The petitioner shall further be entitled to consequential benefit to get the site plans approved. The petitioner is also held entitled to his costs.

17. The other connected writ petitions are also disposed of in the above terms. It is, however, clarified that in cases such as C.W.P. Nos. 8864 and 13765 of 2007, where the petitioners have already paid the extension fee as per the rates demanded by the respondents, which are exorbitant and against the Division Bench judgment of this Court in Tehal Singh's case, the respondents are directed to re-calculate the amount of extension fee as per the provisions of Rule 13 of the Rules and refund the over- payment alongwith interest 10% per annum.”

8. We have heard Mrs. Rachna Joshi Issar, learned counsel appearing for the appellant.

9. As noticed above, the plot in question was allotted to the respondent vide an allotment letter dated 1.4.1986. In terms of the allotment letter, the allottee had to fulfill the terms and conditions enumerated in the said letter. The terms and conditions of the said allotment are extracted hereinbelow:-

“1. Plot No. 2177 Phase-II measuring 400 sq. yds. in Durgri Rd. Urban Estate has been allotted to you. The tentative price of the said plot is Rs. 51,000/-

2. The plot is preferential one and additional price at the rate of 10% of the original normal price is Rs.

3. Total price of the plot (normal) plus preferential is Rs. 51,000/-

4. The above price of the plot is subject to variation with reference to the actual measurement of the site as well as in cost of enhancement of compensation by the court or otherwise and you shall have to pay the additional price of the plot if any, determined by the department, within 30 days of the date of demand of in case of sale by allotment.

5. You shall have to convey your acceptance/refusal unless you refuse to accept the allotment by a registered A/D letter within 30 days of the issue of this allotment order and have to pay 15% of the sale price amounting of Rs. 4750/- or such other amount with together with the amount already paid equal to at least 25% of the sale price of the site. In case of failure to deposit the sale amount the allotment shall be liable to be cancelled and earnest money already paid forfeited.

6. In case you refuse to accept the allotment through acknowledgment due registered letter addressed to the undersigned within 30 days of the date of issue of allotment order. You will be entitled to the refund of the earnest money

7. On payment of 100% of the purchase price of the plot you shall have to execute in deed of conveyance in the prescribed form in such manner as may be directed by the Estate Officer.

8. Balance 7.5% of the purchase price shall be payable either lump-sum within 60 days of the issue of allotment order without any interest or in four

2 six monthly equated instalment alongwith interest at the rate of 7% per annum The first installment shall fall due after the expiry of six months from the date of issue of allotment order and shall be payable on the 10th of the month following in which it falls due.

9. Each remittance shall be remitted to the Estate Officer by means of demand draft payable to him drawn on any Scheduled Bank situated at the nearest place to the Estate Officer. Each such remittance shall be accompanied by a letter showing particulars of the site i.e. plot No. allotment No. and date of issue of allotment order etc. In the absence of these particulars, the amount shall not deem to have been received.

10. You shall have to pay separately for any building material trees, structures and compound wall etc. existing in the plot at the time of allotment for which compensation has been assessed and paid by the Government in x case you want to make use of the same, failing which the government shall have the right remove or dispose of the same even after the delivery of possession.

11. The allotment shall be liable to cancellation in case of the declaration made in the application for the allotment of the plot is established to be incorrect.

12. You shall have to complete the building within three years from the date of issue of allotment order, after getting the plans of the proposed building approved by the competent authority.

13 The Government shall not be responsible for leveling the uneven sites.

14. No allottee under this policy shall dispose of his plot for period of ten years from the date of transfer of the ownership to him. However the transfer of residential plot in the Urban Estate shall be allowed to be made in case of death of the allottee in favour of his heirs.

However, the transfer can be allowed before the expiry of ten years, in exceptional cases, with the prior approval of the Government. In case an allottee contravenes provisions of this para, the plot will be resumed and price paid may be forfeited by the Government.

15. The allotment is subject to the provision of the Punjab Urban Estates (Development & Regulation) Act, 1964 and rules and policy framed thereunder as amended from time to time and you shall have to accept and abide by the provision of the Act/ Rules/ policy. “

10. Further, it is clear that the allotment of the plot was subject to the provisions contained in the 1964 Act. Section 10 of the Act envisages provision for resumption and forfeiture of the land in case of breach of conditions of allotment. Section 10 reads as under:-

“10. Resumption and forfeiture for breach of conditions of transfer.- (i) If any transferee has failed to pay the consideration money or any installment thereof on account of the sale of any site or building, or both, under section 3, or has committed a breach of any other condition of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause why an order of resumption of the site or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof (which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building, or both) should not be made”.

11. In exercise of power conferred by 1964 Act, Rules were framed in the year 1965 i.e. Punjab Urban Estate (Development and Regulation) Rules, 1964. Rule 14 of the said Rules categorically provided that the transferee shall complete the building within three years from the date of issue of the allotment letter. In accordance with the Rules and Regulations of erection of the building, the time limit may be extended by the Estate Officer if he is satisfied that failure to complete the construction of the building within the said period was due to the reasons beyond the control of the allottee.

12. Since the respondent-allottee failed to abide by the terms and conditions and did not raise construction, he was liable to pay non- construction fee/extension fee which was demanded from him in order to enable him to avoid resumption of the plot to the appellant-authority. The aforesaid demand was made by letters dated 6.1.1997 and 27.10.1999. The said letter dated 6.1.1997 is extracted hereinbelow:-
“PUNJAB URBAN, PLANNING DEVELOPMENT AUTHOR, SECTOR -32,
SAMARALA ROAD, PUDA COMPLEX, LUDHIANA REGISTERED

To,

D.S. Sandhu Superintending Engineer (PWD) Office of the Chief Engineer,
PWD B&R, Patna

No. PUDA/E.O./Ludhiana (Endst. No. 2177)96/34478 Dated 06.01.97, Sub:
Regarding payment of balance installment resumption of plot of Urban
Estate D Road, Sector/ Phase-II at Ludhiana, residential/ commercial plot
no. 2177. area 400.

With regard to the above subject.

2. Res. 26712/- the detail of which is given below is recoverable from you as
balance of residential/commercial plot No. 2177, Urban Estate, D road,
Sector/Phase-II, at Ludhiana. Therefore, deposit a bank draft of this amount
alongwith 18%interest per annum which should be in favour of Estate
Officer, PUDA, Ludhiana and may be payable at any scheduled bank upto
31.01.97 in all circumstances and appear before the undersigned on the date
at 11.00 a.m. in case of failure to do so, action would be initiated for
resumption of allotment of plot under the conditions of allotment and under
Punjab Regional and Town Planning and Development Act, 1995 and the
rules made thereunder and no other opportunity would be given to you.

1.....amount of balance installments.

2. amount of enhanced compensation

3. extension fee 26712/-

4. interest

5. penalty

Total 26712

Sd/- Estate Officer In English PUDA,

Ludhiana.”

13. In response to the aforesaid letter dated 6.1.1997, the respondent agreed to pay the extension fee imposed by the Estate Officer of the appellant authority in order to avoid resumption/auction of the plot.

14. Meanwhile, the State of Punjab enacted Punjab Regional and Town Planning and Development Act, 1995. Rules were also framed under the said Act. By Section 183 of 1995 Act, earlier Act of 1964 and Punjab Housing Development Board Act, 1972 were repealed with the saving clause.

15. Subsequent to the aforesaid Act, by Notification dated 30.6.1995, Punjab Urban Development Authority was established w.e.f. 1.7.1995 and the Board stood abolished with effect from that date. Many other Acts were also repealed. By the said Act Authority was empowered to deal with the land and prescribe the fee in case where extension of period for completion of building is set for by the allottee.

16. Since the High Court passed the impugned order following the decision rendered by the Punjab & Haryana High Court in Tehal Singh's case, it would be proper to refer the facts of that case.

17. In Tehal Singh vs. State of Punjab and Ors. (C.W.P. No.13648 of 1998), the petitioner filed the writ petition seeking a writ for quashing certain letters demanding extension fee and striking down condition No.19 of allotment letter, insofar as it relates to the charging of separate extension fee for non completion of construction of building. Further mandamus was sought for directing the respondents to charge extension fee from the petitioner under the provisions of Rule 13 of 1995 Rules. The High Court after referring various provisions of 1995 Acts and Rules made thereunder observed as under:-

“A conjoint reading of the various provisions of the 1995 Act and the 1995 Rules shows that the transfer of land under sub-section (1) of Section 43 is not only subject to the directions which may be given by the State Government under the 1995 Act but also the conditions which may be prescribed with regard to completion of building of part thereof and with regard to extension of period for such completion and payment of fee for such extension. A perusal of rule 13 of the 1995 Rules along with Section 180 (2) (i) and Section 2 (zc) of the 1995 Act shows that the time within which the building is to be completed and other related matters are governed by the 1995 Rules. Therefore, with the coming into force of these Rules, the rates of extension fee prescribed by the Board stood superseded and in terms

of sub-rule (2) of Rule 13 of the 1995 Rules, the petitioners became eligible to seek extension of the specified time limit subject to payment of the fee prescribed under sub- rule (3) of Rule 13.”

18. The Court further came to the following conclusions:-

“We have thoughtfully considered the respective submissions. In our opinion, Shri Malhotra’s contention on the issue of applicability of the 1995 Act to the plots allotted to the petitioners is clearly wide of the margin. A bare reading of the plain language of sub-section (4)of Section 183 of the 1995 Act makes it clear that the allotment of Section 183 of the 1995 Act makes it clear that the allotment made by the erstwhile Board will be deemed to have been made under the 1995 Act. Therefore, the construction of the building will have to be regulated by the conditions of allotment read with Rule 13 of the 1995 Rules. As a logical corollary, the extension of the time limit specified in the letter of allotment will also be governed by the provisions of the 1995 Rules and the petitioners are entitled to seek extension of the time limit by paying the fee prescribed under Rule 13”.

19. Consequently the Court declared the notices demanding enhanced extension fee as illegal and ultra vires to the provisions of 1995 Act under the Rules made thereunder.

20. It is worth to mention here that the aforesaid judgment rendered in Tehal Singh’s case was challenged before the Supreme Court in S.L.P. No.18500-18501 of 1999 and was dismissed on 10.11.2000, but the said order of dismissal was modified by the Supreme Court by order dated 12.2.2001 in the following terms.

“In the facts and circumstances of the case the order does not warrant in any interference of this Court. The appeals are accordingly dismissed.”

21. As noticed above, the facts are quite different from the facts in Tehal Singh’s case. In the instant case, the respondents-allottees accepted the terms and conditions of the allotment letter and possession were taken but they did not raise any construction upto 2000. There was a specific condition that non-construction of building would lead to the resumption of the said plot under the provisions of the Acts and the Rules. As noticed above, when the allottees did not raise construction on the plot, the demand was raised for payment of non-construction fee/extension fee in order to avoid resumption of the plot by the Authority, allottee

paid the extension fee. After availing the benefit of extension on payment of extension fee, the allottee sent a letter to the Estate Officer demanding refund of the extension fee on the basis of amended Rule 13 of 1995 Rules. The said demand was rejected by the Estate Officer by passing the reasoned order in compliance of the directions of the High Court. In the facts of the instant case, we have no doubt in our mind in holding that the ratio decided in Tehal Singh's case will not apply in the instant case. In our considered opinion defaulting allottees of valuable plots cannot be allowed to approbate and reprobate by first agreeing to abide by terms and conditions of allotment and later seeking to deny their liability as per the agreed terms.

22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (vide *C.I.T. vs. Mr. P. Firm Maur*, AIR 1965 SC 1216).

It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (Vide *Maharashtra State Road Transport Corporation vs. Balwant Regular Motor Service, Amravati & Ors.*, AIR 1969 SC 329). In *R.N. Gosain vs. Yashpal Dhir*, AIR 1993 SC 352, this Court has observed as under:—

“Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that “a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage.”

23. This Court in *Sri Babu Ram Alias Durga Prasad vs. Sri Indra Pal Singh (Dead) by Lrs.*, AIR 1998 SC 3021, and *P.R. Deshpande vs. Maruti Balram Haibatti*, AIR 1998 SC 2979, the Supreme Court has observed that the doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had.

24. The Supreme Court in *The Rajasthan State Industrial Development and Investment Corporation and Anr. vs. Diamond and Gem Development Corporation Ltd. and Anr.*, AIR 2013 SC 1241, made an observation that a party cannot be permitted to “blow hot and cold”, “fast and loose” or “approve and reprobate”. Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

25. It is evident that the doctrine of election is based on the rule of estoppel the principle that one cannot approve and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had.

26. Be that as it may, so far as the instant case is concerned, the High Court has totally overlooked the facts of the present case and allowed the writ petition. The impugned order, therefore, cannot be sustained in law and is hereby set aside. The appeals are accordingly allowed. However, in the facts of the case, there shall be no order as to costs.