

CASE NO.:
Appeal (civil) 4611 of 1999

PETITIONER:
Sanjay Gera

RESPONDENT:
Haryana Urban Development Authority & Anr.

DATE OF JUDGMENT: 22/02/2005

BENCH:
ASHOK BHAN & A.K. MATHUR

JUDGMENT:
J U D G M E N T

A.K. MATHUR, J.

This appeal is directed against the judgment of the learned Single Judge of the Punjab & Haryana High Court whereby the learned Single Judge by his order dated October 29, 1998 has dismissed the Second Appeal. Aggrieved against this order the present Special Leave Petition was filed and leave was granted by this Court. Pending appeal, the operation of the order of the learned Single Judge was stayed, thereby the additional amount claimed by the respondents was stayed.

Brief facts which are necessary for disposal of this appeal are that the plaintiff-appellant herein was allotted Plot No.940 vide allotment letter bearing No.21548 dated August 20, 1986 and he deposited an amount of Rs.18,600 in compliance of the conditions of the allotment and sent the required documents. The defendant-respondents demanded the annual instalment on account of the said plot and the plaintiff-appellant deposited the same vide receipt dated August 21, 1987. After deposit of the total amount demanded by the defendant-respondents, again a demand was raised by the defendant-respondents by sending letter No.1300 dated January 15, 1993 to the plaintiff-appellant demanding a sum of Rs. 38,400/- to be paid within a period of thirty days from the date of issue of the letter in respect of the above said plot. The plaintiff-appellant challenged this letter dated January 15, 1993 as illegal, void and against the principles of natural justice and on various other counts. The grievance of the plaintiff-appellant was that the demand raised by the defendant-respondents is not valid as the said demand is not on account of any award given by any competent authority under the Land Acquisition Act and the defendant-respondents cannot revoke the allotment made in his favour. The plaintiff-appellant made a request to the defendant-respondents to revoke the letter dated January 15, 1993 but the defendant-respondents refused to do so. Therefore, the plaintiff-appellant was compelled to file the present suit with prayer for a declaration to the effect that the letter dated January 15, 1993 in respect of Plot No.940, Sector 14, Part, Hisar issued by defendant No.2 is illegal, void and liable to be set aside and he also prayed for consequential relief for permanent injunction restraining the defendants from revoking, reviewing or cancelling the allotment letter issued by the defendants vide Memo No.21548 dated August

20,1986 and from taking any action on the basis of the aforesaid letter. The plaintiff- appellant also sought for temporary injunction directing the defendant- respondents to deliver the possession of the plot.

The defendant-respondents appeared and filed the written statement and raised number of preliminary objections as to the jurisdiction, maintainability and non-joinder of necessary parties. However, on merits, the defendant- respondents admitted that the allotment in favour of the appellant and also admitted issue of letter dated January 15,1993. It was alleged that the plaintiff-appellant was bound by the terms and conditions of the allotment letter as in the said letter the price of the plot was tentative and the defendants were fully entitled to demand additional amount, the plaintiff was under obligation to pay the same. On the basis of these pleadings, six issues were framed by the trial court which read as under :

" 1. Whether the letter No.1300 dated 15.1.1993 issued by defendant No.2 in respect of plot No.940 is illegal, null and void on the grounds mentioned in the plaint?

2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ?

3. Whether the civil court has got no jurisdiction to try the present suit?

4. Whether the suit is not maintainable in the present form ?

5. Whether the suit is bad for mis-joinder of necessary parties?

6. Relief."

Both the parties were allowed to lead evidence. The plaintiff in support of his case examined one Krishan Kumar as P.W.1 and the defendants examined one Rajpal as D.W.1. The trial court examined the matter in the light of the issues framed and evidence led therein. It was found that as per the condition No.9 of the allotment letter the price is tentative to the extent that any enhancement in the cost of the land awarded by the competent authority under the Land Acquisition Act shall be payable proportionately, as determined by the authority. The additional price determined shall be paid within thirty days of its demand. It was also not disputed that the enhanced demand presently sought by the defendants has not been ordered by any authority under the Land Acquisition Act. D.W.1- Rajpal admitted this fact in his cross-examination and as per D.W.1 the present demand is in pursuance of the order issued by the Government directing the defendant No.1 to pay higher amount of compensation to the Animal Husbandry Department. It was pointed out that this letter dated January 15,1993 was issued under bona fide belief that Defendant No.1 would be getting land from the Animal Husbandry Department at the rate of Rs.1,21,000/- per acre but the Government has refused to deliver possession of the land to Defendant No.1 unless the price of the land at the rate of Rs.3 lacs per acre is paid by

the Haryana Urban Development Authority. Therefore, there is escalation of the price from Rs.1,21,000/- to Rs.3 lacs per acre which is proposed to be paid by Haryana Urban Development Authority to the Animal Husbandry Department and therefore, it was sought to be justified that as per Condition No.9 the defendants were demanding the extra amount.

The learned trial court found that as per condition No.9 of the allotment letter the plaintiff could only be called upon to pay the enhanced amount as per the order of the competent authority under the Land Acquisition Act. But there is no such order or award given by the Land Acquisition Officer to raise this amount. Therefore, the learned trial court held that as per condition No.9 of the allotment letter on account of any enhancement in the cost of the land awarded by the competent authority under the Land Acquisition Act the price can be enhanced but there is no such letter issued by the Land Acquisition Officer demanding such enhanced amount. The trial court after examining the evidence on record found that there is no evidence led as alleged by the defendants in the written statement that the amount is sought to be raised on account of refusal of the Government to grant possession of the land. Learned trial court examined the statement of D.W.1- Rajpal, Assistant Estate Officer, Haryana Urban Development Authority, Hisar. D.W.1 only admitted issue of Ext.P-3 and the condition No.9 of the allotment letter for enhancement and demand raised by the defendants. It was also deposed by him that the price was tentative but he admitted that for enhancement of the price there is no order or award of the competent authority under the Land Acquisition Act on the basis of which the price has been enhanced. In cross-examination he has deposed that the Deputy Commissioner had officially forwarded the D.C.rates but he has not brought any original D.C.rates. He did not produce any file or letter or notice showing as to why this enhancement was necessitated. Therefore, on the basis of the evidence adduced by the defendants, the trial court found that the defendants have failed to substantiate their allegation and accordingly, decided the issue No.1 against them. Likewise on the basis of the finding on issue No.1 he decided all other issues against the defendants and issued injunction directing the defendants not to revoke or review or cancel the allotment and permanently enjoined them from claiming the aforesaid amount. Aggrieved against this order the defendant-respondents preferred an appeal before the Additional District Judge, Hisar. Learned Additional District Judge reversed the finding of the trial court and held that it is true that there is no order under the Land Acquisition Act regarding enhancement of the cost but this price was to be paid by the plaintiff-appellant on account of the fact that the respondents i.e. Haryana Urban Development Authority had to pay the Department of Animal Husbandry the amount at the higher rates and this is being sought to be recovered from the plaintiff-appellant. In support of this a reference was made to a decision of the Punjab & Haryana High Court. But unfortunately the appellate court ignored the evidence on record and proceeded to decide the matter on the basis of the judgment of the Punjab & Haryana High Court without referring to the fact whether the defendant-respondents had led necessary evidence to substantiate the allegation or not. Against the order of the appellate court a second appeal was preferred by the plaintiff-appellant before the High Court. Learned Single Judge of the High Court affirmed the finding

of the appellate court i.e. Additional District Judge, Hisar. Aggrieved against the said order the present special leave petition was filed by the plaintiff-appellant.

We have heard learned counsel for the parties and perused the records. There is no gainsaying that as per condition No.9 of the allotment order the price in question was only tentative. But the condition is qualified that in case any award is given by the Land Acquisition Officer the price can be enhanced. Condition No.9 reads as under:

" The above price is tentative to the extent that any enhancement in the cost of land awarded by the competent authority under the Land Acquisition Act shall be payable proportionately as determined by the authority. The additional price determined shall be paid within thirty days of its demand."

As per this condition enhancement could be made on the cost of the land as per the award by the competent authority under the Land Acquisition Act. But no such award was given by the Land Acquisition authority. In a suit a duty is cast on the defendants to lead evidence to show that increase on the cost of the land is necessitated because of enhancement of paying higher rate of compensation to the Animal Husbandry Department. But no such evidence was led in the suit. D.W.1 nowhere stated that this enhancement was warranted because Animal husbandry Department had to be paid compensation at higher rate for acquisition of this land. It may be that because of decision given by the Punjab & Haryana High Court, it enabled the defendants to claim higher price for allotted plot. In a civil suit all facts have to be pleaded and proved. But in the present case there is no evidence to substantiate the allegation. It was incumbent on the part of the Haryana Urban Development Authority to substantiate the same by leading proper evidence that the enhancement was effected on account of increase in the price of acquisition of land. But the statement of D.W.1, the only evidence which has been led by the defendant-respondents is significantly silent on this issue. In civil matters, the rights of the parties cannot be determined just on the basis of any other judgment on questions of fact. It is the duty of the defendants to specifically plead and prove their case by leading proper evidence in the matter. As per the evidence led by the defendant-respondent i.e. the documentary evidence as well as the oral evidence, the allegations made by the defendants are not substantiated. So far as condition No.9 of the allotment letter is concerned, there is no dispute that the defendants can demand additional price as the price at the time of allotment was tentative. But in order to justify the enhancement of the price as per condition No.9 of the allotment letter, the defendants had to lead proper evidence to substantiate the allegation. There is no such evidence produced by the defendants. Therefore, the trial court has rightly approached in the matter and this is a case of total misreading of the evidence by the learned Additional District Judge as well as by learned Single Judge of the High Court.

In the result of our above discussion, we are of the opinion that the order passed by the trial court is justified and the view taken by the Additional District Judge as well as

learned Single Judge of the High Court in the facts and circumstances of this case does not appear to be justified. Hence, we allow this appeal and set aside the order passed by the learned Single Judge of the High Court as well as the order passed by the Additional District Judge, Hisar and confirm the order dated March 27, 1996 passed by the trial court. No order as to costs.

JUDIS