

PETITIONER:
SECTOR-6, BAHADURGARH PLOTHOLDERS ASSOCIATION (REGD.) & ORS.

Vs.

RESPONDENT:

DATE OF JUDGMENT 06/12/1995

BENCH:
HANSARIA B.L. (J)
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HANSARIA B.L. (J)
RAMASWAMY, K.
MAJMUDAR S.B. (J)

CITATION:
1996 SCC (1) 485 JT 1995 (9) 167
1995 SCALE (6) 765

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

HANSARIA, J.

Bahadurgarh was declared as an urban estate by the State Government of Haryana in exercise of powers conferred by section 3 of the Punjab Urban Estates (Development & Regulation) Act, 1964 (hereinafter 'the Punjab Act'). The declaration of any area to be 'urban estate', permits the State Government, inter alia, to sell the sites in accordance with the Punjab Urban Estates (Sales of Sites) Rules, 1965 (for short 'the Punjab Rules'). An offer was accordingly made for free hold sale of about 2200 plots on first come first serve basis in Sector No.6 of the estate. Applicants were informed that "all modern amenities like underground sewerage, storm water, drainage, roads, electricity, supply of potable water etc. will be provided". Pursuant to this invitation, a number of persons some of whom are the members of appellant-Association, applied for allotment. Appellant No.2, Jeet Ram, is one such applicant and by memo of even number dated 9.8.1972, the Estate Officer, Faridabad informed Jeet Ram about the allotment of residential Plot No.852 to him on terms and conditions mentioned in the memo. (Similiar is the position qua other allottees). We are concerned with condition Nos.4 and 5 which read as below :

"4. In case, you accept this allotment, you should send the enclosed acceptance in the form given at Annexure A to this letter together with a Bank draft for Rs.750/- in order to make 29 per cent of the price of the above mentioned plot within 30 days from the date of issue of this also tement order, the payment shall be made by a Bank draft payable to the Estate Officer, Faridabad, and drawn

on the State Bank of India, Faridabad. In case of failure to deposit the said amount within the above sepecified period, the allotment shall be cancelled and the deposit of 10 per cent Earnest money paid with the application shall be forfeited against which you will have no claim.

5. The balance of 80 per cent tentative price can be paid lumpsum without interest within 60 days from date of issue of this allotment letter or in the annual equated instalments with 7 per cent interest as laid down in Rule No.12 framed under section 23(2) (b) (3) of the Punjab Urban Estates (Development and Regulation) Act, 1964. The first instalment shall fall due after the expiry of one year from the date of issue of this allotment order".

2. As per condition No.5 aforesaid, the first instalment became due on 9.8.1973, that is, after expiry of one year from the date of issue of the allotment order. On the instalment not having been paid, respondent No.2, the Estate Officer, sent notices to the members of the appellant-Association to pay the instalments including 7% interest on the total price of the plot. Failing which, it was stated, that action under section 10 of the Punjab Act would be taken which visualises resumption and forfeiture. The members of the Association acted as required by the notices but without actually taking possession of the plots. It was so because the plots had not been developed as visualised by the advertisement seeking applications. Various representations were made to respondent No.2 for early development and for delivering the possession of the plots. It was also represented that the members of the Association were being charged interest without actual delivery of possession of the plots which according to the members was not permissible.

3. Despite the aforesaid representations, as the plots were not developed, appellant No.2 approached the High Court of Punjab & Haryana by invoking its jurisdiction under Article 226 of the Constitution. The High Court has held in the impugned order that interest was chargeable. As regards possession, the following observation was made in para 4 :

"4. As regards possession, it may be noticed that the stand of the respondents was that development is still taking place and as soon as the development is completed, possession of the plot would be offered to petitioner No.1. It was further stated at the bar that in case the petitioner is interested in taking possession of the undeveloped plot, they are prepared. Counsel for the petitioner was not prepared to accept this offer."

Feeling aggrieved at the view taken by the High Court this appeal has been preferred under Article 136.

4. Shri Bhandare, learned senior counsel for the appellants, has strenuously contended that what was offered for allotment was developed plots and not undeveloped ones. The follow up submission is that as the plots are yet to be developed fully, the respondents could not have charged interest because possession of developed plots is yet to be

given. The stand of the respondents on the other hand is that charging of interest is not co-related to the delivery of possession, as is in case of allotments under the provisions of Haryana Urban Development Authority Act, 1977 in view of what has been mentioned in Rule 5(7) of the Haryana Urban Development Authority (Disposal of Land and Buildings) Regulations, 1978, (brevi mani Haryana Regulations) provision in which would not apply to the case at hand in as much as the same is not the requirement of the Punjab Rules. Ms. Nisha, appearing for the respondents, submitted that as per Rule 12(2) of the Punjab Rules, interest accrues from the date of the issue of the allotment order as has been mentioned in the aforesaid condition No.5. 5. The allotment in the present case being under the Punjab Rules, we are satisfied that the provisions of the Haryana Regulations cannot be called in aid and it is because of this that terms and conditions mentioned in the allotment order of other persons, an instance of which is the allotment to one Surat Singh by memo No.23 dated 28.2.1979, can be of no assistance to the appellants. Shri Bhandare's alternative submission is that in any case as possession of developed plots has yet not been given, interest cannot be demanded, even as per the scheme visualised by the Punjab Rules. A perusal of the Rules shows that after applications are made for allotment and the same are accepted, possession of the site is required to be delivered to the transferee, as mentioned in Rule 7, after he has paid 25% of the price. Another provision of the Rules which is required to be noted is that the transferee is required to complete the building within three years from the date of issue of allotment order as per Rule 14, though this time limit may be extended by the Estate Officer, if he is satisfied that the failure to complete the building within the period of three years was due to causes beyond the control of the transferee.

6. We are thus satisfied that if the Rules are read as a whole, possession of the allotted plot is required to be given within reasonable time after payment of 25% of the price. Rule 14 itself would indicate that possession has to be delivered soon after the allotment order to enable the transferee to complete the building within three years from the date of issue of allotment order. The submission of Ms. Nisha is that Rule 14 having visualised extension of the time limit, this Rule would not require delivery of possession soon after the payment of the 25% of the price. According to us, this submission cannot be accepted because the power of extension given to the Estate Officer is really meant to be exercised when the transferee, after receipt of possession of the land, is not in a position to complete the building. We, therefore, hold that interest cannot be demanded till offer of possession is made. There is no dispute that appellant No.2 had paid the required amount. It is also not in dispute that the possession of the plot was not delivered within reasonable time thereafter.

7. Shri Bhandare has taken pains to persuade us to hold that it is incumbent on the part of the Estate Officer to deliver possession of developed plots and as even by 1985 such plots had not been offered for delivery, as would appear from the order passed by this Court itself on 14.1.1985, there can be no justification in demanding payment of interest. As per the learned counsel, full development is yet to take place in as much as the statements made by the respondents in their application for vacation of stay, which was registered as I.A. No.2 of 1992, were as below :

"1. that the Sector-6, Bahadurgarh is almost fully developed.

2) That 150 houses are constructed for which the completion certificates have been issued.

3) That near about 250 houses are under construction.

4) That water supply work is completed.

5) That road works in the sector is also completed.

6) That the internal sewerage line S.W.D. (Storm Water drainage) have been laid down and temporary disposal has been completed."

Ms. Nisha, however, states that this position was in 1992; by now, she has instruction to stay that plots have been fully developed.

8. To decide the aforesaid submission of Shri Bhandare we would really be required to find out as to whether the offer was of developed plots or undeveloped plots. As the offer had stated that modern amenities noted above "will be provided", it cannot be held that till the amenities as mentioned have become fully functional, the offer is incomplete. It is for this reason that the fact that full development has not yet taken place, even if that be the position as contended by Shri Bhandare, cannot be a ground to hold that interest has not become payable. It is true that the applicants were given to understand that the amenities noted above would become available (and within reasonable time), the fact that the same did not become available to the desired extent could not be a ground not to accept delivery of possession. From the order of the High Court which we have quoted above, we find that the offer of possession of the undeveloped plot was not accepted by the counsel of the appellant. That order being of 17th October, 1980, we are of the view that interest did become payable from that date. The fact that plot has not yet been fully developed, as is the case of the appellant, has, therefore, no significance in so far as charging of interest is concerned. We are not in a position to accept the submission of Shri Bhandare that equity would not demand charging of interest, even though the plots are yet to be fully developed. When parties enter into contract, they are to abide by the terms and conditions of the same, unless the same be inequitable. In the present case, question of equity does not really arise in as much as the condition relating to interest is founded on a statutory rule, vires of which has not been challenged. The provision in a cognate rule cannot alter the consequence which has to follow from the rule which holds the field. In the present case it being the Punjab Rules under which the allotment was made, we are not in a position to agree with Shri Bhandare, despite his forceful submission, that the appellants may not be asked to pay interest, despite their having been no offer of delivery of possession of fully developed plots.

9. We, therefore, hold that the interest in the present and similar cases had become due from 17th October, 1980. We understand from Shri Bhandare that most of the members of the appellant-Association had paid the instalments with interest as per the notice of the respondent No.2. According to us, as interest became chargeable from 17th October, 1980, it would be open to the members of the Association to claim refund if they had paid interest, as claimed in the notices issued by the respondent No.2.

10. We do not propose to leave the matter at this. The

allotments having been made about two decades ago, there can be no justification in not fully developing the plots even by 1992. The statement in I.A. No.2 of 1992 that the sector is "almost fully developed" and that "temporary disposal has been completed" do speak about lack of proper interest and attention on the part of the respondents. In this connection we would state that a statement had been made on behalf of the respondents before this Court on 14.1.1985 that possession of the developed plots would be given to the appellants within a period of six months, and so such a direction was given. Shri Bhandare states that direction is yet to be complied with in letter and spirit. It is this complaint which has given rise to Contempt Petition No.22 of 1989. On the facts and circumstances of the case, we do not propose to pursue the contempt application and would direct the respondents once again to develop the sector fully, and not, "almost fully". This would be done within a period of six months, failing which the respondents would not only be liable for contempt but the allottees would be exonerated from the liability to pay any interest whatsoever.

11. The appeal is disposed of accordingly, without any order as to costs.