Supreme Court of India
Haryana Urban Development ... vs Ranjan Dhamina And Another on 17 December, 1996
Equivalent citations: AIR 1997 SC 1732, JT 1996 (11) SC 191, (1998) 118 PLR 279, 1996 (9) SCALE 437, (1997) 9 SCC 372, 1996 Supp 10 SCR 241, 1997 (1) UJ 223 SC
Author: Pattanaik
Bench: K Ramaswamy, G Pattanaik
ORDER Pattanaik, J.

1. Leave granted.

2. This appeal by special leave is directed against the judgment dated 25.3.1996 of the learned Single Judge of the Punjab and Haryana High Court In R.S.A. No. 288 of 1996 dismissing the defendants' Second Appeal and confirming the judgment and decree of the learned trial Judge as affirmed by the learned Additional District Judge.

3. The plaintiffs filed the suit for a declaration that the notice issued by Defendant No. 1 on 5.4.1990 demanding the additional sum of Rs. 4,66,847 is illegal, invalid and inoperative and as such defendants are not entitled to claim the said amount. The short facts as pleaded in the plaint are that industrial plot No. 42 in Sector 10 in industrial estate, Gurgaon was provisionally allotted to the plaintiffs in the name of M/s. Exotica International Enterprises under letter dated 7.10.1984 (Ex. P. 1). The price fixed for the plot was Rs. 1,54,870 at the rate of Rs. 154.87 per square metre. A part of the amount was required to be paid immediately and accordingly the plaintiffs deposited the demanded amount of Rs. 48,396.90 under Exhibit P. 2 dated 9.10.1985. The possession of the plot was delivered to the plaintiffs on 14.11.1985 and the delivery of possession is indicated under Ex. P. 3. The plaintiffs thereafter started construction on the plot as per approved plan and ultimately requested the defendants by his letters dated 9.5.1989 and 2.6.1989 to finalise the matter on receipt of the entire remaining price. At that point of time the defendants demanded that unless the plaintiff pays at the rate of Rs. 269.92 per square metre the matter cannot be finalised. By that time plaintiff had already spent a huge sum in making construction over the land and, therefore, had no other option than to agree to pay the enhanced price. Consequently, the defendants issued the letter of allotment dated 24.11.1989 (Ex. P. 11) fixing the price of the plot at Rs. 3,78,250 and pursuant to the aforesaid letter the plaintiff paid the balance amount which was acknowledged by the defendants under Receipt No. 13126 dated 24.11.1989 (Ex. P. 7) and Receipt No. 13149 dated 27.11.1989 (Ex. P. 8). When the plaintiff then requested to get the conveyance deed executed Defendant No. 2 issued the impugned letter No. 2108 dated 5.4.1990 (Ex. P. 12) intimating the plaintiff that the rate of the plots has been revised further to the extent of Rs. 560.60 per square metre and, therefore, plaintiffs are required to pay a further sum of Rs. 4,66,847. The plaintiffs' therefore, filed the suit for the relief already stated calling in question the validity of the aforesaid demand of the defendants. The defendants in their written statement challenged the maintainability of the suit and also took the stand that the plaintiffs had not approached the court with clean hands. The defendants admitted of having issued the letter of allotment (Ex. P. 11) dated 24.11.1989 under which the price of the plot of land had been fixed at Rs. 3,79,250 but contended that the said price was tentative and, therefore, the defendants were entitled to a higher sum in accordance with the decision of the authority. On the pleadings of the parties the learned sub-Judge, Gurgaon framed as may as 9 issues and parties

laid evidence on the suit. On discussion of the entire evidence on record the learned Judge on Issue Nos. 1 and 2 came to the finding that the increase in the rate of plot from Rs. 154.87 to Rs. 269.92 per square metre was not illegal or void as the revised rate was taken by the defendants due to default of the plaintiffs. On Issue No. 3 which is most crucial issue the learned trial Judge came to hold that under condition No. 9 of Ex. P. 11 enhancement can be claimed only when the cost of land gets enhanced on account of award of the competent authority under the Land Acquisition Act and the absence of any material to indicate that the cost of the land was increased on account of award of compensation by competent court under the Land Acquisition Act the defendants were not entitled to raise the additional amount of Rs. 4,66,847 under their letter dated 5.4.1990, Ex. P. 12 and as such the said demand is illegal, void and ultravires. On Issue No. 4 the learned Judge came to hold that the area of plot was 1250 square metre. On the question of jurisdiction of the Court under Issue No. 5 it was held the Civil Court have the jurisdiction to entertain and decide the controversy. Issue Nos. 6, 7 and 8 were not pressed by the counsel appearing for the defendants and as such they are held against the defendants. On these findings the suit was decreed and it was held that the defendants are not entitled to claim the additional amount as per their letter dated 5.4.1990 (Ex. P. 12). Against the judgment and decree of the learned trial Judge the defendants carried the matter in appeal. The Additional District Judge, Gurgaon disposed of the Civil Appeal No. 41 of 1994 by his judgment dated 26th to April, 1995 and on reconsideration of the material on record confirmed the findings of the trial Judge and dismissed the appeal. While dismissing the appeal the learned Additional Judge observed that the counsel for the appellant failed to indicate on what account the rates of the land were further enhanced from Rs. 269.92 per square metre to Rs. 560.60 per square metre. The Appellate Court also came to the conclusion that defendants are not entitled to go beyond the condition laid down in Clause (9) of the letter of allotment (Ex. P. 11) and since there was no enhancement of the compensation by any court in the land acquisition proceedings the additional demand letter dated 5.4.1990 (Ex. P. 12) is without any basis and thus liable to be set aside. Against the dismissal of the appeal by the learned Additional District Judge, Gurgaon, defendants preferred the second appeal which was registered as R.S.A. No. 288 of 1996. The learned Counsel appearing for the defendants - appellants himself stated before the High Court that in spite of making efforts the appellants have not been able to satisfy as to how defendants are entitled to claim to enhance price. The learned Counsel could not indicate any error in the Judgment and decree of the courts below and, therefore, the second appeal was dismissed by the impugned judgment dated 25.3.1996. Hence this appeal by special leave.

4. The learned Counsel for the appellants contended with emphasis that the price indicated in the letter of allotment (Ex. P. 11) was tentative as is apparent from Clause (9) of the letter of allotment and, therefore, when Clause (9) of the letter of allotment itself postulates enhancement of the cost of the land the authorities were justified in raising additional demand. We do not find any force in the contentions of the learned Counsel for the appellants since Clause (9) enables the competent authority to ask for additional amount only when there has been enhancement in the cost of land on account of any award by the competent authority determining compensation under the Land Acquisition Act. Clause (9) is extracted hereinbelow in extenso:

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 also be payable proportionately as

determined by the authority. The additional price determined shall be paid within thirty days of its demand.

5. The aforesaid clause unequivocally indicates that if there has been any enhancement in the cost of the land on account of award by the competent authority under the land Acquisition Act then the said enhancement would be payable proportionately as determined by the authorities. The aforesaid clause does not authorise the alloting authority to raise additional demand on account of any other escalation. It is well settled that the competent authority is entitled to demand the price as on the date of final letter of allotment, Ex. P. 11 has been found to be the letter of allotment which has not been assailed before us. Even though the appeal arises out of a civil suit and parties had laid evidence in the forums below and no evidence was laid indicating the enhancement of cost of land on account of any development work. Yet the appellant being a public authority, this Court had directed by order dated 23.9.1996 to place materials to indicate any development effected to the plaintiffs plot from the date of possession given to the plaintiffs and the resultant enhancement of the price. It was also indicated that the defendants-appellants should also indicate how many more cases of this type are pending. Pursuant to the aforesaid order a letter dated 16.1.1990 from the Chief Administrator, Haryana Development Authority to the Estate Officer, HUDA, Gurgaon has been filed whereunder the Chief Administrator had directed the Estate Officer to charge at the current rate of Rs. 560.60 per square metre while issuing the final allotment letter. The appellants have also produced a copy of the Resolution of the authority enhancing the price of the land to Rs. 560.60 per square metre. But these documents are of no assistance to the appellants inasmuch as the final letter of allotment (Ex. P. 11) was dated 24.11.1989 much prior to the issuance of letter from the Chief Administrator to the Estate Officer dated 16.1.1990. That apart by order of this Court dated 23.9.1996 the appellants were called upon to place materials to indicate if any further development to the plaintiffs' land has been made from the date of possession given to them but no such materials have been placed before us. The so-called Resolution alleged to have been passed by the authority enhancing the price of the land will not be applicable to the plaintiffs' plot in whose case the final letter of allotment had been issued on 24.11.1989 as per Ex. P. 11. In the aforesaid circumstances we find no justification for our interference with the impugned judgment of the High Court affirming the decision of the learned Additional District Judge. This appeal is accordingly dismissed but in the circumstances there will be no order as to costs.