2023 INSC 1055

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2023
(Arising out of S.L.P.(C) No.23655-56 of 2018)

M/s GREATER ASHOKA AND LAND DEVELOPMENT COMPANY ... Appellant(s)

VERSUS

KANTI PRASAD JAIN (DECEASED) THROUGH LRs ... Respondent(s)

J U D G M E N T

RAJESH BINDAL, J.

Leave granted.

2. The order[1] passed by the High Court[2] in Second Appeal[3], *vide* which the judgment[4] of the lower Appellate Court[5] was reversed and that of the Trial Court[6] was restored, is impugned in the present appeal.

Signature Not Verified
Digitally signed by SONIA BHASIN
Date: 2023.12.07 11:34:51 IST
Reason:

[1] Order dated 02.05.2018.
[2] Punjab & Haryana High Court at Chandigarh
[3] Regular Second Appeal No. 2956 of 1998
[4] Order dated 07.08.1988
[5] Additional District Judge (I), Faridabad
[6] Order dated 29.03.1966 passed by Additional Civil Judge (Senior Division), Faridabad

3. The suit[7] filed by the predecessor-in-interest of the respondents (hereinafter described as 'the respondent') for specific performance of contract was decreed by the Trial Court. In appeal, the lower Appellate Court reversed the judgment and decree of the Trial Court directing execution of the sale deed, however, granted the relief of refund of earnest money given by the respondent as part sale consideration along with interest. The High Court finally upheld the judgment and decree of the Trial Court after setting aside the judgment of the lower Appellate Court.

4. Learned senior counsel for the appellant submitted that lay out plan of Ashoka Enclave Extension, Part-III, situated at Faridabad, developed by the appellant was approved in the year 1961. In 1963, an advertisement was issued by the appellant inviting applications from the public for sale of plots at the cost of ₹25/- per square yard. The respondent paid ₹500/- and ₹950/- towards provisional booking of plot No. 103, for which the receipts were issued on 01.11.1963 and 09.11.1963, respectively. As per the conditions of sale, 25% of the cost was to be paid as earnest money, however, the same was not paid. Even the subsequent payments which were spread over, commensurate with the development of the project were also not made

[7] Case No, 342 of 1986

by the respondent. On 22.11.1963, the 1963 Act[8] was enacted. The area, on which the colony was being developed, was declared as part of the controlled area. The appellant got relevant permission from the competent authority under the 1963 Act with the approval of the new lay out plan on 11.04.1969. After six years of booking the plot, two further payments of ₹1165/- each were made by the respondent. While the appellant was in the process of complying with the conditions laid down in the permission granted under the 1963 Act, new 1971 Act[9] was notified, in terms of which again the appellant was required to obtain permission for development of a colony. While the appellant was in the process, the respondent vide letter dated 27.01.1975 requested the appellant to refund the earnest money paid by him along with interest @12% per annum. The request was followed by another letter dated 01.01.1976 with similar prayer.

5. *Vide* letter dated 13.12.1982, the appellant offered a new plot to the respondent as the booking for the earlier plot was frustrated with the passage of time due to various developments, which took place after the booking was made. It was offered to the respondent @ ₹135/- per square yard. In addition, external development charges payable to the State Government, were to be paid. The consent was to

[8] Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963
[9] Haryana Restriction of Development and Regulation of Colonies Act, 1971

be given by the respondent within ten days. The aforesaid letter was replied to by the respondent vide letter dated 27.12.1982 not giving the consent for purchase of plot on revised terms. Rather, he asked for certain details which could not be furnished as on date, namely, the amount to be paid to the State Government for external development. This was followed by a legal notice dated 04.01.1983 calling upon the appellant to get the sale deed registered at the same rate at which the plot was initially allotted, @ ₹25/- per square yard. Thereafter, the respondent remained silent. A Civil Suit was filed after more than three years since the issuance of legal notice and more than two decades after the plot was booked. The alternative prayer made in the suit was for grant of refund of earnest money along with interest @ 18% per annum. Once an alternative relief has been claimed in the suit filed for specific performance, the plaintiff is entitled to only that relief. The appellant does not have any objection to the grant of that relief as it is ready and willing to refund the amount of earnest money deposited by the respondent along with interest, as claimed. The appellant is even ready to pay interest to the respondent even at higher rate of 36% per annum also.

6. He further submitted that at present the agreement of contract is frustrated on account of developments which have taken

place in the last sixty years as no plot is available. Even in his cross-examination, the respondent stated that he was not ready and willing to take the plot @ ₹135/- per square yard. It was only a matter of gesture that the appellant had offered a plot to the respondent after taking licences/permissions under the 1963 Act and 1971 Act, which intervened after the plot was booked by the respondent. Once the respondent had failed to accept the offer within the time permitted, the earnest money deposited by him stood forfeited. In support of the argument, reliance was placed upon the judgment of this Court in **Kanshi Ram v. Om Prakash Jawal and others**[10]. He further referred to an order dated 21.08.2003 passed by the High Court in **M/s Ashoka Enclave Plot-holders Association v. M/s Greater Ashoka Land & Development Co.**[11], wherein the appeal filed by the Association of Plot-holders of the same colony seeking same relief was dismissed, while upholding the judgment of the Trial Court. The aforesaid litigation being in representative capacity, even the respondent would be bound by the result thereof.

7. On the other hand, learned counsel for the respondent submitted that the argument raised by learned counsel for the appellant that the contract for allotment of plot to the respondent had

[10] (1996) 4 SCC 593.
[11] Regular Second Appeal No. 293 of 2003

been frustrated with the passage of time is fallacious. The appellant itself had offered the plot to the respondent on 13.12.1982. It is wrong to allege that the respondent refused to accept the offer. In fact, the respondent had paid a sum of ₹4,945/- as earnest money at the time of booking of the plot and subsequently. All that the respondent had asked for from the appellant was as to how that money already paid and the interest thereon will be dealt with as the delay in allotment of plot was attributable to it. The details of the amount to be paid to the State Government was also asked for. The respondent was entitled to get that details before accepting the offer in order to avoid any dispute in future. There was no refusal to accept the offer. The amount asked for by the appellant included the amount already paid to the State Government, the details thereof was sought. The information was asked for by the respondent as in the letter of offer dated 13.12.1982, the appellant had asked for payment of certain amounts which as compared to the rate at which the plot was initially allotted was exorbitant. He further submitted that there is no error in the order passed by the High Court as the lower Appellate Court had reversed the well-reasoned judgment and decree of the Trial Court on erroneous appreciation of evidence produced on record. The respondent has been waiting for the plot after depositing the amount

way back in 1960s for the last six decades. The fault lies with the appellant. Interim stay was granted by the High Court, hence, to state that the plot is not available now will be contemptuous.

8. Heard learned counsel for the parties and perused the paper book.

9. The facts of the case to the extent that the respondent had applied for allotment of plot measuring 233 square yards at the rate of ₹25/- per square yard, which was allotted to him on 19.11.1963, are not in dispute. Total sale consideration was ₹5825/-. As noticed by the High Court in the impugned order, the respondent had paid total sum of ₹4,945/-. The colony was not developed, as the stand taken by the appellant is that two new enactments by the State, namely, 1963 Act and 1971 Act intervened, in terms of which number of permissions were required to be taken. The appellant, after taking those permissions, offered to the respondent an alternative plot vide letter dated 13.12.1982 @ ₹135/- per square yard which, as per the letter, included the cost of the land and internal development charges. The amount already paid or payable to the Haryana Government on account of external development will be additionally payable by the allottee. The offer was to be accepted within ten days. Twenty five percent of the total amount was payable immediately. Twenty percent of the total

amount was to be deposited within 30 days. The balance 55% was to be deposited in phased manner corresponding with the development of the colony. From paragraph 6 of the aforesaid letter, it is evident that beyond 100% of the cost of the plot, which was sought to be offered @ ₹135/-per square yard, ₹20/- per square yard was asked for as part payment to be deposited with the State Government for development work. The fact remains that the size of the plot was not mentioned in the letter.

9.1 The aforesaid letter was served upon the respondent on 18.12.1982. Within ten days thereof, the respondent requested the appellant to supply the lay out plan so as to enable him to know the number and size of the plot for which the payment was to be made as there was completely a new lay out plan. He also asked for the manner in which the amount already paid by him along with interest is to be adjusted as the letter of offer did not mention anything about the same. Request was also made to inform about the amount to be paid to the State Government towards external development charges as in the letter of offer dated 13.12.1982, ₹20/- per square yard as part payment towards development charges was required to be deposited. It is not a matter of dispute that the aforesaid letter of the respondent was not replied to by the appellant. Immediately thereafter, the respondent got

a legal notice issued to the appellant mentioning all the details and calling upon the appellant to allot the plot measuring 233 square yards @ ₹25/- per square yard, failing which suit for specific performance may be filed. The appellant did not respond even to the aforesaid legal notice. What can be inferred therefrom is that the appellant was not ready and willing to furnish the basic information sought by the respondent. The civil suit for specific performance was filed on 02.01.1986 within the period of limitation. It was decreed by the Trial Court. The judgment and decree of the Trial Court was reversed by the lower Appellate Court. However, the High Court set aside the judgment and decree of the lower Appellate Court and restored that of the Trial Court, directing for registration of the sale deed.

10. We find that allotment of plot was made way back on 19.11.1963. Six decades have passed thereafter. No doubt, there were certain developments in the meantime. With the enactment of 1963 Act and 1971 Act, certain permissions were required to be taken by the appellant for development of the land as a colony. Those were taken. Even the plot was offered to the respondent. However, when the cost of the plot was demanded at a higher rate, even on the asking of the respondent, details were not furnished. The amount demanded was @ ₹135/- per square yard as against ₹25/- per square yard at which

initially the allotment was made. The stand taken by the appellant is that at present all the plots have been sold out. We are not going into that aspect as the appellant agreed to pay damages to the respondent as, according to it, alternative relief for damages in the form of refund of earnest money along with interest has been claimed. Though the claim, as per the appellant, is for refund of the money along with interest @ 18% per annum, however, the appellant is even ready to pay interest at a higher rate.

11. A perusal of the prayer made in the suit shows that in the alternative, only refund of earnest money along with interest has not been claimed, rather the respondent/plaintiff had claimed adequate damages, which may include refund of the earnest money along with interest. Merely refunding the earnest money paid, after sixty years will be unreasonable as the respondent, after booking the plot, has been waiting all along as even in the litigation since 1986. The price of the land in the area has increased manifold for the last sixty years.

12. The order passed by the High Court in **M/s Ashoka Enclave Plot-holders Association's** case (supra) does not come to the rescue of the appellant for the reason that in the aforesaid case, the civil suit was filed by the appellants therein on 14.06.1991, nine years after the offer was made to them for allotment of alternative plot. The same

was held to be beyond limitation. The argument of the appellant that the respondent had requested for refund of the earnest money paid by him *vide* letters dated 27.01.1975 and 1.01.1976 also deserves to be rejected as it was not responded to by the appellant.

13. Considering the aforesaid totality of the facts, in our view, the interest of justice will meet in case the impugned judgment and decree of the High Court is modified to the extent that instead of getting the sale deed of the plot registered @ ₹25/- per square yard, in the alternative, the appellant pays a total amount of ₹50,00,000/- to the respondent as full and final settlement of claim in the suit. The amount is to be paid within a period of three months.

14. The present appeals are disposed of accordingly.

.....J
(VIKRAM NATH)

.....J
(RAJESH BINDAL)

New Delhi
December 6, 2023.