Urban Improvement Co. Pvt. Ltd. Vs. Sardar Ujagar Singh

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Court : Punjab and Haryana

Decided On : Dec-12-1995

Reported in : AIR1996P& H167; (1996)112PLR237

Judge : V.K. Jhanji, J.

Acts : Indian Contract Act, 1872 - Sections 16 and 69; Haryana Development and Regulation of Urban Areas Act, 1975 - Sections 23; Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963; Haryana Restriction (Development and Regulation of Colonies Act, 1971

Appeal No. : Civil Revision No. 3147 of 1994

Appellant : Urban Improvement Co. Pvt. Ltd.

Respondent : Sardar Ujagar Singh

Advocate for Def. : Lakhinder Singh and; Ujagar Singh (in Person), Advs.

Advocate for Pet/Ap. : R.K. Chhibbar, Sr. Adv. and; Anand Chhibbar, Adv.

Judgement :

1. This is defendant's second appeal.

2. The question involved in the appeal is to the entitlement of the defendant-company (appellant herein) namely, M/s. Urban Improvement Company Private Limited, to charge additional cost from the plot-holder, i.e. plaintiff, towards additional cost which the Company had to incur for getting the necessary approval for its colony under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 (here-inafter referred to as the 1975 Act).

3. As set out in the plaint, the case of the plaintiff is that defendant-company advertised for the sale of residential plots in colony known as 'Green Field Colony' in 1962 and the plaintiff agreed to purchase two residential plots measuring 500 sq. yard each at the rate of Rs. 18/- per sq. yard and Rs. 17/- per sq. yard respectively. Vide receipt dated 8-9-1962, the plaintiff deposited earnest money at the rate of 15% of the total consideration. The terms and conditions of the agreement to sell were incorporated in the form given to and accepted by the plaintiff as appearing in the receipt. Plaintiff paid the remaining amount between 10-10-1962 to 30-1-1967. In November, 1978, defendant-company demanded additional cost at the rate of Rs. 6/-per sq. yard and the plaintiff in good faith, vide receipts dated 13-3-1979, deposited Rs. 1000/- each in respect of two plots. However, vide communication dated 16-6-1982, plaintiff was allotted two plots measuring 450 sq. yards each instead of two plots measuring 500 sq. yards each. In this regard, the plaintiff in para 11 of the plaint has averred that plaintiff in order to avoid litigation agreed for plots having area of 450 sq. yards each. It has further been averred that vide notice dated 17-7-1984, defendant-company demanded a sum of Rs. 6743/- as first instalment towards additional development cost in respect of plot No. AA-35 and a sum of Rs. 6695/ - in respect of plot No. AA-34. In the said notice, it was stated that in case the plaintiff failed to pay the said

additional development cost, the allotment/sale of the plots would be cancelled. A general notice was also given in the tribune dated 27-8-1984 whereby it was intimated that in case the plot-holders whose names have been given in the list do not make the payment within one month, the defendant-company would cancel the allotment of plots. This notice led to the filing of suit in which plaintiff has sought decree for declaration to the effect that the defend ant-company has no right to demand additional development cost and the demand raised through notice dated 17-7-1984 and public notice dated 27-8-1984 is illegal, bad in law, beyond the competence of defendant-company andnot binding on the rights of the plaintiff. Plaintiff has also sought decree for injunction for restraining the defendant-company from cancelling the allotment of the plots in question. Against this, the case of the defendant-company is that in 1961-62, the company purchased 440 acres of and for developing residential complex called 'Green Field Colony', in Faridabad. On obtaining 'No Objection', it carved out 3500 plots, most of which were sold on certain terms and conditions. Before the plot-holders could pay the tolal price or the company could develop the colony, the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (Punjab Act No. 41 of 1963) was passed under which, for setting up of the colony, permission was required to be obtained from the Director, Town and Country Planning. When the company applied, the Director gave provisional permission on certain terms and conditions. Under these conditions, external development work was to be carried out by the government authorities and charged to the Development' Account of the Company. The plaintiff and other plot-holders, therefore, were called upon to pay the estimated increase in overall cost of development amounting to Rs. 6/- per sq. yard in three equal instalments. On reorganisation of the States, Faridabad fell to the share of Haryana State. In 1971, the Haryana Government enacted the Haryana Restriction (Development and Regulation of Colonies Act, 1971 under which the defendant-company again was required to obtain permission for developing the colony, However, before the permission could be granted under the 1971 Act, the 1971 Act was struck down by the High Court and new Act, namely, the Haryana Development and Regulation of Urban Areas Act, 1975 (Haryana Act No. 8 of 1975) was enacted and made applicable with effect from 16-11-1971, i.e. the date when the 1971 Act was enforced. Under the 1975 Act, defendant-company was required to seek exemption from obtaining licence. The Government of Haryana on 5-4-1982 granted necessary exemption to the company under Section 23 of the 1975 Act for setting up Green Field Colony in the urbanarea of Faridabad on certain terms and conditions. In compliance with the conditions laid in the said permission letter defendant-company paid a sum of Rs. 65,00,000/- to the Government against the total estimated liability of about Rs. 375 lacs, besides a bank guarantee for an amount of Rs. 15,81,259/-along with an undertaking for due performance of the terms and conditions of the permission. In the revised lay-out plan, changes were carried out by allotting more space for the facilities to be provided for the enjoyment of the plot-holders and, therefore, plots were given new numbers with reduction of area, i.e. 50 sq. yards each, which had been accepted by the plaintiff. Plaintiff was also intimated vide letter dated 16-6-1982 with regard to additional cost which the company was to incur for developing the colony. It has been averred in the written statement that the plaintiff accepted communication dated 16-6-1982 and therefore, defendant-company is within its right and has rightly demanded new development cost which the company is legally bound to incur for the development of the colony as per conditions of exemption granted to the defendant-company for setting up the colony under the 1975 Act.

4. Trial Court decreed the suit and in appeal filed by the company, judgment and decree of the trial Court has been affirmed by the first appellate Court, and this is how the Company has come in this appeal.

5. Learned counsel for the defendant-company has contended that the Courts below have erred in assuming that the lay-out plan of the colony had already been approved. Counsel contended that the Courts have further erred in holding that the colony was already in existence at the time of promulgation of the 1975 Act and, therefore, fresh approval was not required by virtue of Section 16 of the Act. His precise submission was that under the 1963 Act, only provisional permission had been granted by the Director, Town and Country Planning, Haryana, but before the terms and conditions of the permission could be complied with or the colony could be developed, 1971 Act was enacted and on quashing of the said Act, 1975 Act cameinto existence and, therefore, the company being legally bound to perform the terms and conditions on the basis

of which permission had been granted, is entitled to charge additional development cost which the Company in turn has already paid to the Government. In answer to these submissions, learned counsel for the plaintiff submitted that in the terms and conditions originally settled, there was no condition empowering the defendant-company to claim any enhanced price of the plots. He submitted that since the plaintiff has paid, in instalments, the 95 per cent of the original price, the contract has come to an end and there being no privity or subsisting contract between the parties, the defendant-company cannot demand additional cost.

6. Record perused and learned counsel for the parties have been heard at length.

7. Both the Courts below have held that the defendant-company is not legally entitled to pass on the additional development cost in respect of plots in question because permission had already been taken by the defendant-company to set up colony under the 1963 Act which was to be governed by the terms and conditions contained therein and therefore, defendant-company was not required to obtain fresh licence under the [975 Act. For coming to this conclusion, reliance has been placed upon Section 16 of the 1975 Act which reads as under :--

'Notwithstanding anything contained in this Act, any permission already granted to set up a colony under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, and the rules made thereunder, shall remain valid and be governed by the terms and conditions contained therein. No person shall be required to obtain a licence if he had obtained permission under the said Act and the same still subsists.'

On perusal of various provisions of 1963 Act and 1975 Act and also the documents which have been proved on record, I am of the view that the Courts below erroneously assumed that the colony or its lay-out plan had already been approved under the 1963 Act and there-fore, question of getting fresh approval under the 1975 Act did not arise. Record has shown that permission which had been granted to the defendant-company under 1963 Act was only provisional and before the terms and conditions, on the basis of which permission under 1963 Act had been granted, could be fully complied with, the 1975 Act came into force under which permission was again required to be obtained. It may be noted that on purchase of the site for setting-up colony, initial permission was obtained from the State of Punjab, i.e. District Board, Gurgaon. About 3500 plots were carved out and most of them were sold soon thereafter. In 1967, the company applied for grant of permission to develop the colony under 1963 Act which was so granted in 1969 by the present State of Haryana after it came into existence w.e.f. 1-11-1966. In 1971, the 1971 Act was enacted and the defendant-company sought permission for development of the colony under the said Act which was so granted in 1973. However, the 1971 Act was later on struck down by the High Court which necessitated the enactment of 1973 (1975?) Act. Under the 1975 Act, the defendant-company was required to seek exemption from obtaining licence in terms of Sections 9 and 23 of the said Act. This application of the company for grant of exemption was still pending when on 23-6-1976 the Company Law Board of the Government of India, Ministry of Law and Justice (Department of Company Affairs) in exercise of powers conferred by sub-section (1) of Section 408 of the Companies Act, 1956 nominated five Directors. One of them was Lt. Col. R. N. Batra, President of Plot-holders Association. The other Directors included an Additional Director, Urban Estate, Government of Haryana and two Advocates of the Supreme Court. The defendant-company was to be managed by these Directors appointed by the Company Law Board of Government of India, Ministry of Law and Justice (Department of Company Affairs) on 'no profit no loss' basis. The Government of Haryana granted necessary exemption to the Company on 5-4-1982 under Section 23 of the 1975 Act for setting up residential colony in the urban area of Faridabad on certain termsand conditions. Defendant-company was required to execute an undertaking regarding furnishing of bank guarantee towards cost of development work and payment for external water supply etc. The zoning and other service plans submitted by the Company were also accepted by the State Government being found technically in order. The Company deposited a sum of Rs. 65,00,000/- towards the service charges and water charges by way of first instalment along with furnishing of bank guarantee to the tune of Rs. 15 lacs. Since the defendant-company was to recommence the development work, the plot-holders vide communication dated 16-6-1982 were requested to make additional payment

towards development cost at the rate of Rs. 65/- per sq. yard. Intimation was also given to the plot-holders regarding the revised estimate for completion of development works to be carried out in pursuance of exemption granted under the 1975 Act and also the details of the demand made by the Haryana Government towards the external work. These were :--

Sr. No.

Details

Cost in lacs of Rs.

a.

Survey and demarcation

1.00

b.

Levelling, Earthwork, Rock cutting

60.00

c.

Roads and Culverts

64.50

d.

Tubewells, Water tanks, Water distribution etc.

104.00

e.

Storm Water drains

45.00

f.

Sewerage

60.00

g.

Street Lighting

26.00

h.

Community Centre

7.50

i.

Site Office

0.50

j.

Arboriculture and Parks

5.00

k.

Establishment Charges (3-5 = 8 years)

24.00

1.

Maintenance of Colony for 5 years after completion

40.00

m.

Publicity

5.00

n.

To Haryana Government (details below)

400.00

o.

TOTAL

842.50

p.

Less funds in hands and under old scheme

87.50

q.

Balance of funds required to complete the Colony

755.00

r.

Therefore extra required per sq. yard of plottedarea (11.9) lakhs sq. yards)

63.45

Say Rs. 65.00 per sq. yard.

DEMANDMADE BY HARYANA GOVERNMENT AS EXTERNAL WORKS (GREENFIELDS SHARE)

Sl. No.

Details

by 5-6-1982

by 5-12-1982

by 5-6-1983

by 5-12-1983

by 5-4-1984

Total

1.

Service Charges

6.0

6.0

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12.00

2.

Water Supply @ Rs. 25.00 per sq. metre of plottedarea

62.5

62.5

62.5

62.5

--

250.00

3.

Water Supply

7.5

7.5

7.5

7.5

--

30.00

4.

Centralized Sewerage and drainage

--

27.0

27.0

27.0

27.0

108.00

TOTAL:

76.0

103.0

97.0

97.0

27.0

400.00 lakhs

On 20-4-1988, the Government demanded unconditional undertaking from the defendant-company to pay the revised external development cost. The State Government further intimated that the zoning and service plans would be approved only after the payment of the revised external development cost was made. When repeated representations made by the Company for approval of the zoning and other service plans did not yield any result, the company approached this Court by filing Civil Writ Petition No. 2555 of 1991. The writ petition was allowed and the communications of the Government by which the Company was required to execute fresh undertaking, furnish bank-guarantee and deposit fresh amount by way of instalments, were quashed and a writ of Mandamus was issued to the Government to sanction zoning and other service plans submitted by the company. The State being not satisfied with the decision of this Court preferred Special Leave Petition before the Apex Court. In the Special Leave Petition, the plot-holders as also the plaintiff got themselves impleaded asparty-respondents. The Apex Court passed the following order :--

'The respondent No. 1 M/s. Urban Improvement Co. Pvt. Ltd. shall pay to the petitioner-State Rs. 5.16 crores which amount includes the principal amount payable towards BCD dues till 6th January, 1994 plus interest thereon calculated till that day. The said amount to be paid by the 1 st respondent on or before 30th April, 1994. The petitioner-State will give the details of the principal amount and the interest to the first respondent, within one week from today.

The amount of interest that the 1st respondent is required to pay will be subject to the first respondent's right

to challenge its correctness and validity. The 1st respondent may challenge it in such forum as it may be advised.

The petitioner shall adhere to the time table for providing basic services covered under EDC to make the colony functional which time table is handed over to the court and will form part of this order.

It is made clear that since the amount of Rs. 5.16 crores is to be paid by 30th April, 1994, the amount will have to be paid with interest on the same, from 7th January, 1994 till the date of payment. The interest to be paid at the rate of 18 per cent per annum.

The petitioner State will clear the zonal plan within one week from the payment of the entire said amount of Rs. 5.16 crores with interest, if any.

The respondent No. 3 is permitted to submit his written arguments,

The matter to be on Board on 9th May, 1994.'

In pursuance of the order of the Apex Court, the Company has made some payments to the Director, Town and Country Planning, Haryana. The amount so paid with effect from 13-10-1992 to 30-11-1995 comes to Rs. 23,30,24,365/-. Another sum of Rupees 80,00,000/ - is yet to be paid by the Company. It is thus, apparent that as a consequence of exemption dated 5-4-1982 and to meet thedevelopment cost as demanded by the Director, Town and Country Planning, Har-yana, the Company asked its plot-holders to pay additional development cost at the rate of Rs. 65/- per sq. yard. In the event of nonpayment of additional cost towards internal and external development works, exemption granted to the defendant-company under Section 23 of the Act was not only liable to be cancelled, but under the provisions of the Act the Directors were also liable to be prosecuted. One of the terms originally settled between the plaintiff and defendant-company in 1962 was that the company will pass a clear title free from all sorts of encumbrances on completion of sale. This could be done by the Company only if compliance had been made to the terms and conditions imposed by the Government of Haryana under the 1975 Act. It is thus, erroneous to contend that since payment of 95 per cent of the amount has been made between 1962 to 1967, no privity of contract is subsisting between the parties. No completed contract came into existence on payment of earnest money or 95 per cent of the amount because the sale was subject to certain terms and conditions, and one of the conditions was that the Company would pass a clean and clear title, free from all encumbrances. Clean and clear title could be passed only after the Company had made compliance of directions and requirements of the Government specifically laid down in permission letter dated 5-4-1982. For this, the company had to incur heavy amount of expenditure and as such, the demand of the defendant-company being in the interest of the plot-holders is justified. At this stage, it may also be noticed that on 8-9-1962 when the plaintiff booked two plots, the same was on certain terms and conditions. The first condition was that the plaintiff would pay :--

(a) 15% of the total sale price on account of earnest money at the time of booking.

(b) 20% of the total sale price on account of additional earnest money within one month after the date of booking the plot.

(c) 20% of the total sale price on provision of any of the following services, irrespective of the serial order given below :--

(i) Metalled road touching the plot;

(ii) Water mains along the road touching. the plot; and

(iii) Sewerage line along the road touching the plot.

(d) Further 5% on completion of arrangements for street lighting.'

25 per cent of the payment mentioned in Clauses (c) & (d) was to coincide and was dependent on providing of services mentioned therein. The expenditure which the Company was to incur for providing these services was only tentative. If increase in expenditure has occurred because of providing of additional services on account of permission granted by the Town and Country Planning, Company is well within its rights in charging the same from the plot-holders. The services to be provided for which payment has been made to the Government are mentioned in the Schedule forming part of the order of Apex Court and are as under :--

Major components:

1.

Roads

All major roadsadjoining the colony are already constructed and the colony approachable fromthe two major entries from Delhi, i.e. Delhi-Mathura Road andSurajkund-Batkal Road and a connection between the two.

2.

Street Lights

On Delhi Mathura Roadand Surajkund Batkal Road already stands provided street lights for the linkroad between the two i.e. dividing Sectors 27B and C and 42 and 43 will becompleted in next 8 months.

3.

Sewerage

The system has been partlylaid and coverage connection can be relvated within 8 months.

4.

Storm water drainage.

A natural system alreadyexisted which is enough to fulfil the prudent need of the area. However,remodelling of the channel would be taken up at a later stage.

5.

Water Supply

The part meter watersupply scheme is under process which would be completed. Water from theexternal source would be made available to the colony within 15-18 monthstime.'

The facilities contemplated by exemption dated 5-4-1982 were not originally envisaged in 1962-63 when the plots were originally sold by the Company. It was for this reason that 25 per cent of the cost was fixed towards amenities/services to be provided by the Company. It is thus, clear that demand made by the Company is not beyond the terms and conditions of sale.

8. Although the demand of the defendant-company is not outside the terms and conditions originally settled, but assuming, if it is so, even then the defendant-company is entitled to make such demand because in certain transactions, independently of the volition of the parties, the law annexes consequences similar to those which result from a sale, which pre-supposes a contract, express or implied. Such transactions may be called 'quasi-contracts of sale'. Simpson has defined 'quasi contract' as :

'Quasi contract or contract implied in law is, as the name implies the implication of a promise for the promise of imposing a legal obligation and affording a remedy without which injustice would result, under circum-

stances in which it is clear no promise was ever made or intended.'

9. Explaining the above the learned author says : 'The common law at an early date recognised an obligation on the part of a person who had been unjustly enriched at the expense of another to make restitution in the amount of such enrichment. Since the remedy lay in a form of action traditionally recognised as contractual, it was necessary to imply a promise to restore the benefit although no such promise was in fact ever made. In other words, to bring about a just result the law supplied both the promise and the resultant legal remedy for its supposed 'breach'. Fromthe form of action in which the right was enforced combined with the source of implication of the non-existent promise, came the term 'Contract implied in law'.

'It is clear that the remedy in quasi contract is usually available where there is no contract at all and is the only remedy to prevent unjust enrichment as where money is paid or received for the use of another, overpayment by mistake, tort cases etc., and in contract cases, where the defendant's performance is excused by impossibility or because of plaintiff's material breach, so that the defendant is not in default, yet he has been enriched by the plaintiffs part performance.'

In the instant case, approximately a sum of Rs. 18,625/- has been paid by the plaintiff besides Rs. 1000/- each on 13-3-1979 for these plots towards additional development cost. As submitted by the counsel, the prevailing price in the area is nearly Rs. 5,000/- per sq. yard, meaning thereby that the plaintiff would benefit from the external/internal development work which to agreat extent has since been carried out. In these circumstances, plaintiff cannot be permitted to enrich himself at the expense of defendant-company but is required to make restitution of benefits received. Unjust enrichment arise not only where an expenditure by one person adds to the property of another, but also where the expenditure saves the other from expense or loss. In this context, reference may also be made to Section 69 of the Contract Act which provides that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. To invoke the aid of Section 69, there need be no contract or even privity of Contract between a person who actually pays the amount and the one bound by law to pay. In Thomas Abraham v. The National Tyre & Rubber Co. of India Ltd., AIR 1974 SC 602, the Apex Court has held that it is an established principle of common law that an action for money had and received is a practical and useful instrument to prevent unjust enrichment. Law implies an obligation to repay the money which is an unjust benefit.

10. It may also be mentioned at this stage that in Special Leave Petition before the Apex Court, the plot-holders Association and also the plaintiff got themselves impleaded as party-respondents and are party to the order vide which the company has been directed to pay to the State the dues towards external development cost plus interest accrued therein. It was to the knowledge of plaintiff that cost paid by the Company which works on 'no profit no loss' basis would ultimately be passed on to the plot-holders. He being a party to the decision, is estopped from questioning the entitlement of the Company to charge additional cost. Accordingly, it has to be held that the defendant-company is well within its right to demand additional development cost from the plot-holders including the plaintiff.

11. Before concluding, it is worth-mentioning that on 8-9-1995, i.e. at the time of motion hearing of the appeal, when it was brought to my notice by the counsel that possession of the plots is yet to be delivered to the plaintiff, the defendant-company was directed to deliver possession of the plots before the appeal could be heard on merits. The question with regard to entitlement to recover external/internal cost which the defendant-company had to pay to the Government, was left open. In compliance with the directions, the company has delivered possession to the plaintiff. Mr. R. K. Chhibbar, Sr. Advocate, on instructions from his clients, i.e. Company, has given a concession to the plaintiff, i.e. he has left to the discretion of this Court to waive off the amount, may be towards principal or interest which has become payable by now. According to the counsel, amount with interest comes to Rs. 2.48 lacs each for two plots. Thus, having regard to the fact that both the Courts below have decided in favour of the plaintiff and interest has accrued during the pendency of the suit, I am of the view that it would meet the ends of justice if the plaintiff is asked to pay only

the principal amount, i.e. Rs. 1.32 lac each for two plots within a period of three months from today. It is ordered accordingly. However, in case of default, the defendant-company would be well-within itsright to resume the plots and enter into possession which was delivered to the plaintiff under the directions of this Court.

12. For the reasons recorded above, this appeal is allowed, judgment and decrees of the Courts below are set aside and in consequence thereof, suit of the plaintiff is dismissed with no order as to costs.

13. Appeal allowed.