

State Vs. Surana Enterprises

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Court : Rajasthan

Decided On : Feb-17-2006

Reported in : RLW2006(2)Raj1672

Judge : Harbans Lal, J.

Acts : Companies Act; Urban Improvement Trust Act, 1959 - Sections 75; Code of Civil Procedure (CPC) - Sections 80 and 96; Rajasthan Urban Improvement (Change of Use of Residential Land For Premises For Commercial Purposes) Rules, 1974

Appeal No. : S.B. Civil Regular First Appeal No. 18 of 1993

Appellant : State

Respondent : Surana Enterprises

Advocate for Def. : R.P. Agrawal, Adv. on behalf of; B.P. Agrawal, Sr. Adv.

Advocate for Pet/Ap. : Jagdish Lamba, G.A.

Disposition : Appeal dismissed

Judgement :

Harbans Lal, J.

1. The instant civil regular first appeal under Section 96 C.P.C. is directed against the judgment and decree of the learned District & Sessions Judge, Jaipur City, Jaipur dated 22.9.1982.

2. The relevant facts, in brief, are that the plaintiff- respondent filed a suit against the defendant-appellant for declaration and recovery of Rs. 1,47,400/- with the averments that the respondent-firm as a registered firm. It was granted permission for construction of a cinema hall on a residential plot situated in C-Scheme. The letter was written informing that His Excellency, the Governor had been pleased to grant permission to construct the cinema hall on Plot No. C-16 situated in C-Scheme which was meant for residential use to be used as commercial plot. The said plot was owned by Smt. Jatan Kanwar W/o Mehtab Chand Golecha. The District Magistrate who was earlier licensing authority in this regard has also issued no objection certificate. It transpired that Golecha Properties Pvt. Ltd. went into liquidation. The Rajasthan High Court in exercise of the powers under the Companies Act, appointed Official Liquidator for the disposal of whole of the property of Smt. Golecha, who disposed of the plot in favour of the plaintiff-respondent. The plaintiff-respondent took possession of the said plot vide order dated 26.12.1974 passed by lower court from the official liquidator on 6.2.1975 when the cinema hall was completely constructed but, the plaintiff-respondent applied to the licensing authority for grant of licence to exhibit the movies in the said cinema hall whereupon, it was informed that plot was a residential plot and for its commercial use, Rs. 1 lac will have to be deposited as conversation charges in cash along with an unconditional undertaking that the plaintiff-respondent would pay the land conversion charges settled by the State as per law. The plaintiff-respondent agreed to deposit Rs. 1,00,000/- and furnished unconditional undertaking upon fulfilling the said conditions by the plaintiff-respondent the licensing authority granted permission to exhibit the movies in the said cinema hall. The case of the plaintiff-respondent is that the aforesaid amount was deposited and the required unconditional undertaking was furnished under duress and coercion. The appellant was not authorised to get the said amount deposited nor could demand required undertaking. The plaintiff respondent after serving notice under Section 80 C.P.C. filed a civil suit in this behalf. The defendant-appellant denied all the averments in the plaint and pleaded that the plot in

question was a residential plot and permission for its conversion from residential to commercial use was granted on plaintiff-respondent's voluntarily depositing Rs. 1 lac and unconditional undertaking. On the basis of the pleadings of the parties, following issues were framed: -

(i) Whether the plaintiff is entitled to receive back the amount of Rs. 1,00,000/- deposited by him? (On plaintiff).

(ii) Whether the plaintiff is entitled to interest? If so, how much? (On plaintiff).

(iii) Whether the undertaking given by the plaintiff on 29.5.1976 deserves to be cancelled? (On plaintiff).

(iv) What should be the relief?

3. After examining oral and documentary evidence of the parties and affording an opportunity of hearing to both the sides, the Trial Court disposed of the suit directing the refund of amount of Rs. 1 lac deposited by the plaintiff-respondent and declaring that the appellant-defendant had no legal authority either to get the amount of Rs. 1 lac deposited or to obtain a written unconditional undertaking as envisaged in the letter addressed to the plaintiff-respondent. Accordingly, the suit was decreed and unconditional undertaking obtained from the plaintiff-respondent was also set-aside. Admittedly, the amount of Rs. 1,00,000/- has also been repaid to the plaintiff-respondent.

4. Aggrieved by the aforesaid judgment & decree, the State of Rajasthan has preferred this appeal inter-alia on the ground that the judgment & decree passed by the learned court below are against the facts of the case as well as settled law. The Trial Court has committed grave error in deciding Issues No. 1 and 3 in favour of the plaintiff-respondent. The court has committed further error on coming to the conclusion that the above plot had been converted by the Government of Rajasthan from residential to commercial use and that too without charging the charges. It was therefore, prayed that the judgment and decree of the learned court below may be quashed and set-aside and the amount refunded to the plaintiff-respondent be got re-deposited along with interest.

5. In the cross objection filed by the plaintiff-respondent, he has claimed interest on the amount remained deposited with the defendant-appellant for the period during which it had continued to be deposited with the State Government.

6. I have considered the rival submissions made at the bar and have perused the entire record as well as the impugned judgment.

7. So far as the findings of the learned Trial Court with regard to Issues No. 1 and 3 are concerned, no fault can be found that in view of the evidence on record. It is not in dispute that the plot in question was initially a residential plot which was converted for commercial use for the construction of cinema hall. Pursuant to the letter addressed to the plaintiff-respondent. At the time when the conversion order was passed and conveyed to the plaintiff-respondent, there was no provision in the Urban Improvement Trust Act, 1959 (in short, the 'Act of 1959') or any other law or rules that the same could be done by any other authority than the State Government and that too after charging the conversion charges. The provisions of Section 75 were inserted in the Act of 1959 w.e.f. 24.7.1959, The Rajasthan Urban Improvement (Change of Use of Residential Land For Premises For Commercial Purposes) Rules, 1974 (in short, 'the Rules of 1974') came into force w.e.f. October 10, 1974 i.e., long after the conversion of land use order/permission was passed in this case.

8. Learned Govt. Advocate representing the appellant-State has not been able to point out any provision in any enactment or rules whereunder the conversion of land use could be made by any authority of the State Government. He was also not able to point out any provision under which the conversion charges could be recovered from the owner of me plot seeking conversion of land use from residential to commercial. He also could not show that at what rate the conversion of the land from residential to commercial use could be made at the relevant time.

9. Learned court below has dealt with all these aspects of the matter and after a detailed, well considered and proper appreciation of the evidence on record come to a conclusion that conversion of land from residential to commercial use was made by the State Government which was the competent authority and there was no provision in the Act of 1959 under which the conversion charge could be

recovered from the plaintiff-respondent. Accordingly, the learned Trial Court has rightly directed refund of the amount deposited for conversion charges along with setting aside the unconditional written undertaking.

10. Having thus carefully considered the entire facts and circumstances of the case, I find no infirmity or illegality in the impugned judgment and decree and this appeal being absolutely devoid of merit and substance deserves to be dismissed.

11. So far as the cross objections of the plaintiff-respondent with regard to not awarding interest on the deposited amount for the period it remained deposited with the defendant-appellant is concerned, no case seems to be made out in view of the fact that the plaintiff-respondent did not dispute the demand at the relevant time nor challenged it in a competent court and rather came forward voluntarily to deposit it and to furnish written unconditional undertaking as was required by the licensing authority. The plaintiff-respondent therefore, cannot be permitted to approbate and reprobate or to blow hot and cold in the same breathe and if he felt aggrieved of the demand, that should have been challenged at the appropriate time. Once, after having got benefited by using the plot for commercial purpose, the plaintiff-respondent now cannot be permitted to take benefit of its own acts. He is rather estopped from making any such claim for interest by its own conduct. In this view of the matter, therefore, the cross-objections are also completely devoid of merit and substance and deserve to be dismissed.

12. In the result, both, the appeal and cross-objections are hereby dismissed. The parties shall bear their own costs.