

(1988) 01 P&H CK 0012

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 1837 of 1987

Faqir Singh Nagra

APPELLANT

Vs

Chief Commissioner, Chandigarh
and others

RESPONDENT

Date of Decision: Jan. 8, 1988

Hon'ble Judges: S.S. Kang, J

Bench: Single Bench

Advocate: R.P. Jagga, for the Appellant; Ashok Bhan with Gulshan Sharma, for the Respondent

Judgement

S.S. Kang, J.

The challenge in this writ petition under Articles 226 and 227 of the Constitution is directed against the order dated June 27, 1983 (Copy Annexure P.2) passed by the Estate Officer, Union Territory, Chandigarh (Respondent No. 3) declining the prayer of the petitioner to transfer Plot No. 1161 in Sector 34-C, Chandigarh, in favour of the petitioner and order that the transfer could be allowed in petitioner's favour only on payment of Rs. 54,251/- as difference of 1/3rd of the profit earned by the vendee on the plot It has been filed in the following circumstances:-

The petitioner entered into an agreement for the purchase of plot No. 1161 in Sector (sic), Chandigarh with Major Puran Singh, respondent No. 5 for a sale consideration of Rs. 45,000/- on 20th January, 1980. It was stipulated therein that the sale shall be effected on or before 15th May, 1980. The petitioner paid a sum of Rs. 6,000/- as advance and the balance of Rs. 39,000/- was to be paid at the time of execution of the Sale Deed. Respondent No. 5 applied for permission for the transfer of the plot in favour of the petitioner and he appended with the application the proposed Sale Deed The Estate Officer, Union Territory, Chandigarh (Respondent No. 3) directed that a sum of Rs. 16,962/- as 1/3rd of the unearned increase in the value of the plot, i.e. difference between the price paid by the vendor and the market value of the plot in question prevailing at that time be deposited The

petitioner deposited the said amount on 21.3.1980. The Estate Officer vide his letter dated 28th March, (sic) granted permission to sell the plot in favour of the petitioner with a clear stipulation that the sale deed shall be executed within 14 days from the date of issue of the letter, failing which revised rate shall be charged. The requisite No Objection Certificate as explained above was issued in the name of respondent No. 5, the original owner.

It seems that Respondent No. 5 changed his mind and backed out of the contract. The petitioner got prepared two bank drafts in the sum of Rs. 40,000/- for payment to respondent No. 5, the same being the balance price of the plot. The petitioner's case is that respondent No. 5 refused to execute the sale deed in favour of the petitioner. Consequently, the petitioner had to file a suit for specific performance of the contract. He also prayed for and was granted a temporary injunction restraining respondent No. 5 from alienating the plot in question. Respondent No. 5 contested the suit. Ultimately the suit was decreed on 24th December, 1982 by Sub Judge 1st Class, Chandigarh (Copy Annexure P-1) and a decree for specific performance was passed. Respondent No. 5 was directed to execute the sale deed in favour of the petitioner within two months. In pursuance of the decree of the learned trial Judge, respondent No. 5 executed the sale deed in favour of the petitioner after receiving the total sale consideration.

The petitioner wanted to construct a house on the plot in question and he applied to the Estate Officer for transferring the plot in his favour on the basis of a registered sale deed. The Estate Officer refused to transfer the plot in favour of the petitioner and passed the impugned order, Annexure P-2, asking the petitioner to pay a further sum of Rs. 34,251/- as 1/3rd of the difference of unearned increase in the value of the plot in question prevailing at the time of registration (sic) the sale deed in petitioner's favour. The petitioner filed appeal against this order and the same was dismissed by the Chief Administrator, Chandigarh Administration vide order dated 19th December, 1984 (copy Annexure P-3). The revision petition filed by the petitioner was pending and was not disposed of because at the relevant time no officer had been invested with the powers of the revisional authority. Aggrieved, the petitioner has filed the present writ petition.

2. The respondents have resisted the writ petition. Written statement has been filed on behalf of the respondents through respondent No. 3. It has been averred therein that the value of the plot in dispute was worked out at Rs. 2,20,000/- on the basis of the prevalent market price of such like plots and, as such, share of profit of the Estate Office came to Rs. 57,900/- odd and after deducting the money paid by the petitioner, a sum of Rs. 51,213/- was still recoverable. Permission sought by the petitioner for transfer of the plot in question was, therefore, declined and he was given an opportunity to deposit the difference. The other contentions raised by the petitioner are not denied.

3. The respondents claim the recovery of the enhanced amount under rule 8-C of the Chandigarh (Sale of Sites and Buildings) Rules, 1960. Rule 8-C was enacted on 9th February, 1979 and it reads as under:-

8-C. Notwithstanding anything contained, the letter of allotment/conveyance deed imposing a (sic) on the transfer of a site/building, as the case may be, or any right, title or interest therein before the stipulated period, the Estate Officer may grant permission to the transfer by way of sale, gift, mortgage or otherwise of the site/building or any right, title or interest therein after transferee has paid full price of the site/building or interest therein and if in the opinion of the Estate Officer, special circumstances exist for the grant of such permission. This will be applicable to all the categories of sites/buildings and by allotment/hire-purchase, or on concessional rates. In the case of transfer by way of sale/gift/mortgage or otherwise of the sites of any right, title or interest therein, 1/3rd of the unearned increase in the value, i. e the difference between the price paid and the market value of the site/building at the time of permission of transfer shall be paid to the Government, before registering such sale or transfer. The market value of the property for his purpose shall be assessed by the Estate Officer, or such other authority as may be prescribed by the Chief Administrator and the transferee shall be entitled to produce his evidence and of being heard.

Provided that 1/3rd of the unearned increase in the value will not be charged if mortgage or charge of a site/building is created with the previous consent in writing of the Estate Officer, in favour of the Central Government/State Government, Chandigarh Administration, Life Insurance Corporation of India or any Scheduled Bank for securing a loan to be advanced by them for constructing the building on the site.

Provided further that in the event of sale or foreclosure of the mortgaged or charged property, the Government shall be entitled to claim and recover 1/3rd of the unearned increase in the value of plot as aforesaid and the amount of the Government's share of the said unearned increase shall be first charge having priority over the said mortgage or charge.

Provided further that the Government shall have the (sic) right to purchase the mortgaged or charged property after deduction of 1/3rd of the unearned increase as aforesaid.

That when a site or building is sought to be transferred by way of sale, gift, mortgage, etc., 1/3rd of the unearned increase in the value of such site or building, i.e., the difference between the price paid and the market value of the site/building at the time of permission of transfer, was required to be paid to the Government before registering such sale or transfer. It is the admitted case of the parties that a sum of Rs. (sic)/- representing 1/3rd of the unearned increase in the value of the plot in dispute, i.e. difference between the price paid and the market value prevailing at

that time, as assessed and demanded by the Estate officer was paid by the petitioner on 21st March, 1980 and that the permission for executing the sale deed had been granted by the Estate Officer. It is another matter that the permission had to ensure for a period of 15 days only. So, the Estate Officer had accepted that the market value of the site in dispute at the material time was Rs. 45,000/- and the 1/3rd share of unearned increase in the value of plot in question had already been deposited by the petitioner in the Government Treasury. The fortuitous circumstance that the sale deed could not be registered for about two years because of the intransigence of respondent No 5 cannot be used by the respondents to require the petitioner to pay more money on the plea that the market value of the plot in dispute had arisen during the pendency of the suit.

4. It is evident from the pleadings of the parties and the material on the record and in fairness to the learned counsel for the respondents, though the delay in the execution of the sale deed was not due to the inaction or fault of the petitioner, the petitioner was enjoined to get the sale deed executed. It was respondent No. 5 who was not co-operating and ultimately the petitioner had been able to get the sale deed executed by filing a civil suit and obtaining a decree for specific performance. In the facts and circumstances of the present case, the crucial date for determining the unearned increase in the value of the site in dispute, i.e., the difference in the price paid by the vendor and the market value of the site in question at the time of permission of transfer, was 28th March, 1980, when the Estate Officer accepted the 1/3rd share of the unearned increase in the value of the site in dispute, from the petitioner and granted permission for transfer of the plot in favour of the petitioner. The subsequent delay and the consequential increase in the market value of the site in dispute cannot burden the petitioner with an additional liability to pay Government's share in the unearned increase in the value of the site. So, in the peculiar circumstances of the case, the order of the Estate Officer (Annexure P-2) and that of the Chief Administrator dated 18.12.84 (Annexure P-3) rejecting the application of the petitioner without payment of additional increase in the profits cannot be sustained and the same is quashed. It is, however, made clear that this order has been passed on the peculiar facts of the present case and it is not the considered construction of rule 8-C *ibid*. Respondent No 3 is directed to sanction the transfer of the plot in question from the name of Major Puran Singh, respondent No. 5, to the name of the petitioner, within a period of one month. No costs.