

THE ESTATE OFFICER, PUNJAB
URBAN PLANNING & DEVELOPMENT AUTHORITY

v.

JAGTAR SINGH AND ORS.
(Civil Appeal No. 1749 of 2008)

JULY 19, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Contempt jurisdiction – Respondent no.1 challenged the excess rates for allotment of plots – Pursuant to direction of High Court, rates were reduced – Respondent filed writ petition for payment of interest which was disposed of with directions to issue justice demand notice upon the authorities and on service of such notice, authorities to take decision within two months from receipt of certified copy of the order – Authorities did not respond – Respondent-allottee filed contempt petition – Meanwhile, authorities passed order dated 20th January, 2006 declining grant of interest to the respondent-allottee saying that there was no policy to make payment for interest – When matter came up before High Court in the contempt jurisdiction, High Court directed authorities to pay interest @ 15% p.a. – Challenged by Estate officer – Held: Normally in a contempt jurisdiction the Court should not enter upon adjudication of a dispute – In the instant case, no such adjudication was made except to pass an order in equity – This matter needs to be adjudicated regarding the entitlement of interest – Impugned judgment passed by the High Court set aside – Further, liberty granted to the respondent to challenge order dated 20th January, 2006 before the appropriate forum.

Disposing of the appeal, the Court

HELD: Normally in a contempt jurisdiction the Court shall not enter upon adjudication of a dispute. Maybe the applicant in a contempt petition is entitled to some relief but relief has to be granted after proper adjudication of the dispute because only after a proper adjudication, it is clear as to what will be the actual relief, if any and if at all, that has to be granted to the aggrieved person. Apparently, in the instant case, no such adjudication has been

- A made except to pass an order in equity. The situation would have been different had it been a case of mere implementation or execution of an otherwise clear order or direction. In the instant case there is no decree or order on entitlement for interest. The matter needs adjudication regarding the entitlement of interest.
- B The impugned judgment passed by the High Court is set aside. Further, liberty is granted to the respondent to challenge the order dated 20th January, 2006 before the appropriate forum. In case such a challenge is made within a period of one month, the same may not be dismissed on the ground of delay. If such a challenge is made, having regard to the fact that the parties have
- C been in litigation for more than a decade, we request the forum concerned to dispose of the matter expeditiously and preferably within a period of one year from the date of institution. [Paras 7-9] [496-D-F, G-H; 497-A]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1749 of 2008.

From the Judgment and Order dated 07.12.2006 of the High Court of Punjab and Haryana at Chandigarh in Contempt Petition (C.O.C.P.) No.1286 of 2005.

E Ms. Rachana Joshi Issar, Ms. Vandana Mishra, Ms. K. Vaijanthi, Advs. for the Appellant.

Sameer Abhyankar (for M/s. Mitter & Mitter Co.), Karan Bharihoke, Vibhooti Malhotra, Kuldip Singh, Advs. for the Respondents.

F The Judgment of the Court was delivered by

KURIAN, J. 1. The appellant is aggrieved by the impugned order dated 7th December, 2006 passed in C.O.C.P.No.1286 of 2005. It may be necessary to refer to the bare facts.

G 2. The respondent No.1-contempt petitioner/allottee has approached the High Court with a grievance that the appellant-Punjab Urban Planning and Development Authority (for short "PUDA") through its successor Greater Mohali Area Development Authority (for short "GMADA") has charged excess rates for allotment of plots. Pursuant

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to the directions issued by the High Court, the rate was reduced from Rs.3600/- to Rs.1400/- per square yard. Thereafter, the respondent-contempt petitioner/allottee filed Civil Writ Petition No.2851 of 2005 for payment of interest which has been disposed of by judgment dated 21st March, 2005. The judgment reads as follows:-

“We have heard the learned counsel for the petitioner. The petitioner has invoked the jurisdiction of this Court under Article 226/227 of the Constitution of India for issuance of a writ of mandamus directing the respondents to pay the interest upon the amount which has been refunded.

We are afraid that such kind of indulgence cannot be granted unless justice demand notice is served upon the respondents.

Learned counsel for the petitioner further states that the petition be dismissed as withdrawn with liberty to serve justice demand notice upon the respondents. If such a notice is served upon the respondents within 15 days from today, the respondents shall take conscious and cautious decision thereon within two months from the receipt of a certified copy of this order.

Disposed of.”

3. Since there was no response from the PUDA within the time stipulated by the High Court, the respondent-allottee filed Contempt Petition No.1286 of 2005. During the pendency of the Contempt Petition, order dated 20th January,2006 was passed declining to grant interest saying that there was no policy to make payment for interest. The order reads as follows:-

“To
Col.Jagtar Singh (Retd.)
D-89,D Block,
Ranjit Avenue, Amritsar.

No./2006/1677-78 dated 20.01.2006

Subject: Regarding allotment of Plot No.69, Sector-69, Mohali-CWP No.2851 of 2005.

A In connection with the above cited subject it is intimated that PUDA doesn't have any policy according to which interest could be paid. Accordingly, the Justice Demand Notice sent by you has been filed after due consideration.

B Sd/-
Estate Officer,
PUDA, Mohali.”

4. It appears that the High Court directed the PUDA to file an affidavit on the following terms. The order reads as follows:-

C “As requested by learned counsel for the respondents, adjourned to 25.09.2006.

D Meanwhile, the affidavit, if any, be filed explaining:-[i] what was the rate of interest charged from the petitioner;[ii] whether the said interest has been included in the refund made to the petitioner in terms of the order passed by this Court; and [iii] why the respondents are not liable to pay interest on the refund amount.

Affidavit, if any, be filed within one week from today.”

E Accordingly, the Estate Officer, PUDA filed an affidavit. The affidavit reads as follows:-

“I, the deponent above named do hereby solemnly affirm and state as under:-

F 1. That the case mentioned supra had come up for hearing on 1.8.2016, on which date, a direction for filing an affidavit on the issues mentioned therein, was made. Subsequently, by means of another order dated 9.10.2006, the matter was adjourned to 7.12.2006 and the requisite affidavit was directed to be filed.

G 2. That it is clarified that interest @ 15% p.a. was charged from the petitioner in consonance with the provisions of the Allotment letter. No interest has been paid on the refunded amount. The respondents are not liable to pay any interest on the refunded amount because no policy exists in PUDA for paying interest on the refund amount.

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3. That it is pertinent to mention here that in consonance with the orders dated 21.3.2005 passed by this Hon'ble Court in CWP No.2851 of 2005, a letter dated 20.1.2006 was sent to the petitioner, wherein the decision of the Justice Demand Notice was conveyed to him. A copy of the same is appended herewith as Annexure CR-1. A

4. That it is not out of place to mention here that the decision to reduce the amount payable by the petitioner, from Rs.3600/- to Rs.1400/- was made by the authorities themselves on 24.4.2003, on a representation having been made by the petitioner on 15.03.2002 for being considered similarly as Subedar Anokh Singh in CWP No.11871 of 1997. The petitioner did not have to go through any protracted litigation on that account. Accordingly, the amount of Rs.14,28,713/- was immediately refunded to the petitioner on 20.06.2003 by means of Cheque No.057376. As such, PUDA is not liable to pay any interest on the same, more so in view of the fact that PUDA does not have any policy of paying interest on any refund amount as also the fact that no such clause for paying interest on refund amount exists in the Allotment letter." B C D

5. When the matter came up before the High Court in the contempt jurisdiction, based on the affidavit, the following order was passed: E

"The facts are hardly in dispute. It is admitted that the petitioner was charged interest @ 15% per annum but no interest has been paid on the refund amount "because no policy exists in PUDA for paying interest on the refund amount".

The plea taken by the respondents that the interest is not payable because there exists no policy, can neither be sustained in law nor in equity. Once, this Court found that the rate of Rs.3600/- fixed by PUDA for the plots in question was excessive and it could not have been more than Rs.1400/- per sq.yard, there can be no exception but to hold that the petitioner was unauthorizedly charged at a higher rate. Admittedly, he paid interest @ 15% per annum. The respondents cannot take advantage of their own wrongs. The petitioner, therefore, is entitled for the refund of the excess amount at the same rate of interest which he had paid to the respondents. F G

A At the same time, there being a serious dispute with regard to the interpretation of the orders passed by this Court, respondents cannot be said to be guilty of willful and deliberate breach of such orders.

B Consequently, this petition is disposed of with a clarificatory direction that on the excess amount, which has already been refunded to the petitioner, he shall be paid interest @ 15% per annum, within a period of three months from the date of receipt of a certified copy of this order.

Rule discharged.”

C 6. Aggrieved the Estate Officer, Greater Mohali Area Development Authority has filed this appeal.

D 7. Having heard learned counsel appearing on both sides, we do not think it necessary to refer to the contentions or to the legal position except to reiterate the settled position that normally in a contempt jurisdiction the Court shall not enter upon adjudication of a dispute. Maybe the applicant in a contempt petition is entitled to some relief but relief has to be granted after proper adjudication of the dispute because only after a proper adjudication, it will be clear as to what will be the actual relief, if any and if at all, that has to be granted to the aggrieved person.

E Apparently, in the instant case, no such adjudication has been made except to pass an order in equity. The situation would have been different had it been a case of mere implementation or execution of an otherwise clear order or direction. In the instant case there is no decree or order on entitlement for interest.

F 8. Having regard to the submissions made by the learned counsel appearing for the appellant, we are of the view that this matter needs adjudication regarding the entitlement of interest. Therefore, without expressing any opinion on the various submissions made by the counsel on both sides, we set aside the impugned judgment passed by the High Court.

G 9. Further, liberty is granted to the respondent to challenge the order dated 20th January, 2006 before the appropriate forum. We, therefore, make it clear that in case such a challenge is made within a period of one month from today, the same may not be dismissed on the ground of delay. If such a challenge is made, having regard to the fact

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that the parties have been in litigation for more than a decade, we request the forum concerned to dispose of the matter expeditiously and preferably within a period of one year from the date of institution. Needless also to say that it will be open to the parties to raise all contentions which are available to them as per law. A

10. The civil appeal is disposed of in the above terms. B

Devika Gujral

Appeal disposed of.