

2022 LiveLaw SC 184

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

HEMANT GUPTA; V. RAMASUBRAMANIAN, JJ.

CIVIL APPEAL NO. 382 OF 2012; FEBRUARY 15, 2022

NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY

VERSUS

RAVINDRA KUMAR SINGHVI (DEAD) THR. LRS.

Affidavits - Once an affidavit has been filed which is on the face of it false to the knowledge of the executants, no benefit can be claimed on the ground that delivery of possession was given. (para 16)

Affidavits - Therefore, affidavits filed were not mere sheets of paper but a solemn statement made before a person authorized to administer an oath or to accept affirmation. The plaintiff had breached such a solemn statement made on oath. (Para 17)

Fraud vitiates all actions. (Para 17)

For Appellant(s) Mr. Ravindra Kumar, Sr Adv. Mr. Binay Kumar Das, AOR Ms. Priyanka Das, Adv. Ms. Neha Das, Adv.

For Respondent(s) Mr. P.S. Patwalia, Sr. Adv. Mr. Manish K. Bishnoi, AOR Ms. Pallavii Singh, Adv. Ms. Harshika Verma, Adv.

J U D G M E N T

HEMANT GUPTA, J.

1. The present appeal has been filed by the original defendant against the judgment and decree passed by the High Court on 25.02.2010 upholding the findings of the first Appellate Court dated 19.12.1999 whereby the decree of the Trial Court was affirmed.

2. The plaintiff-respondent was allotted a residential plot No. D-49, Sector- 30, Noida [Hereinafter referred to as 'Sector 30 Plot'] as a member of the Defence Services Cooperative Housing Society on 06.10.1981. The possession of the plot was handed over to him on 24.08.1991.

3. However, prior to the allotment of the said plot, plot No. 84, Sector- 15A, Noida [Hereinafter referred to as 'Sector 15A Plot'] was allotted to Smt. Amila Singhvi, wife of the plaintiff on 10.03.1981. As per the pleaded case of the plaintiff, there was an uncertainty on account of litigation between the Society of which he was a member with the appellant authority. Therefore, the plot at Sector 15A was applied for, which

was allotted to the plaintiff's wife on 10.3.1981. It was pleaded that since the plaintiff was interested in Sector 30 plot as member of the Society, therefore, the wife of the plaintiff transferred the Sector 15A plot in favor of one Mrs. Kanta Modi after obtaining permission from the appellant. Later, a transfer deed was executed on 25.10.1990.

4. The plaintiff was served with a notice on 12.06.1996 that the Sector 30 plot had been obtained by him by submitting a false affidavit as Sector 15A plot was already allotted to his wife. The grievance of the plaintiff was that since the Sector 15A plot has been sold after obtaining permission from the appellant, therefore, the Sector 30 plot was the only plot in possession of the plaintiff. With the said claim, the suit for declaration was filed restraining the defendant from re-allocating the Sector 30 plot and from dispossessing the plaintiff from the same. After considering the reply, the plot was cancelled on 18.10.1996.

5. In the written statement filed by the appellant, it was asserted that there was no litigation in respect of the Sector 15A plot and that the plaintiff was aware of the allotment of the Sector 15A plot when Sector 30 plot was allotted. However, the plaintiff intentionally concealed such factum of allotment and filed a false affidavit for the Sector 30 plot. It was also pleaded that the plaintiff was aware of the terms and conditions of allotment that the plaintiff and his wife cannot retain both the plots separately. The Sector 15A plot was sold only to conceal the fact of obtaining double allotment. It was further contended that Sector 15A plot was allotted on 10.03.1981 and the wife of the plaintiff sworn an affidavit on 04.03.1983 that the allottee, her spouse and dependent children have not been allotted residential plot/house/flat in Noida, Delhi or New Delhi. The plaintiff was allotted Sector 30 plot on 06.10.1981. The plaintiff had also filed an affidavit along with his letter dated 1.12.1988 that he, his spouse and dependent children did not own in full or part any residential plot/house/flat in Noida, Delhi and New Delhi. The affidavit filed by the plaintiff reads thus:

“AFFIDAVIT

I, Ravindra Kumar Singhvi S/o Late Shri K.M. Singhvi R/o of E- 227, East of Kailash, New Delhi-110065, aged about 39 years do hereby solemnly affirm and state on oath as under:-

1. That I have attained the age of majority on 26.01.1968.
2. That I am a bonafide and registered member of the Defence Services Cooperative Housing Society (Regd.) in my own name and right on May 1, 1976.
3. That I have deposited Rs.125/- as membership fee of the above cooperative housing society on 18.07.1975.
4. That I, my spouse and dependent children do not own in full or in part on lease hold or free hold basis any residential plot or house in NOIDA and have not been allotted any plot, or house on hire purchase basis in NOIDA complex.”

6. The learned Trial Court decreed the suit inter alia on the ground that the lease executed in favour of the plaintiff cannot be determined merely by passing the subject order in terms of Section 111 (g) of the Transfer of Property Act, 1887 as no notice for determination of lease under the said section has been issued. Therefore, all rights in the lease would survive. The first Appellate Court and the High Court affirmed the findings recorded by the Trial Court. The High Court further held that plaintiff and his wife had no ulterior motive to perpetrate fraud on the appellants. It was noted that there was no willful or dishonest intention on the part of the plaintiff and his wife.

7. Learned counsel for the appellant herein argued that the entire basis of the decree passed by the Courts was erroneous and wholly untenable in law. Lease was not cancelled for the reason that there was any violation of the terms and conditions of the lease. The allotment was cancelled as false affidavits were filed by the allottees of both the plots which knocks down the very allotment since it was obtained by concealing material facts. The appellant had a policy that a family would not get more than one plot so as to provide housing to large number of citizens.

8. Learned counsel for the appellant also referred to the letter of allotment of plot to the plaintiff dated 6.10.1981 along with the terms and conditions for the sale of developed leasehold rights of residential plots to the members of the Cooperative Housing Building Societies in New Okhla Industrial Development Area (NOIDA). It was contended that such terms and conditions were applicable to all the Cooperative Housing Building Societies. The relevant conditions read thus:

“1. ELIGIBILITY:

Any person who is competent to contract. A person himself owning or in the case of his/her spouse or dependent children owning a plot or house within municipal corporations of Delhi or New Delhi or Noida Complex will not be eligible for allotment of a plot in NOIDA.

2. NOTE MORE THAN ONE PLOT:

An eligible person will be allotted not more than one residential plot in the New Okhla Industrial Development Authority. Area separately eligible for allotment of plot and for this purpose they shall be treated as a single eligible person.

xxx xxx xxx

15. LEASE DEED AND OTHER CONDITIONS OF LEASE

xxx xxx xxx

(I) If the allotment of lease of the plot is obtained by any misrepresentation misstatement or fraud or if there is any breach of the conditions of the lease, the allotment or as the case may be, the lease may be cancelled and the possession of the plot and the building thereon may be taken over by the Authority and the lessee will not be entitled to any compensation.”

9. Thus, it was averred that the allotment was cancelled for the reason that the wife of the plaintiff was allotted a plot earlier in point of time but still, the plaintiff filed an affidavit not disclosing the allotment of such plot to his spouse. Thus, it was a violation of the terms and conditions of the allotment.

10. On the other hand, Mr. P.S. Patwalia, learned senior counsel for the plaintiff argued that the terms and conditions of the sale of developed leasehold rights have not been produced on record. The plaintiff became the member of the Cooperative Housing Society in the year 1976 but the disputes were pending for a long time. Therefore, the plot at Sector 15A was sought, which was allotted to his wife. Subsequently, after the settlement of the dispute, such plot was allotted to the Society and as a member of the Society, he has been allotted a residential plot.

11. It has been admitted by the plaintiff-respondent that on account of dispute regarding the allotment, no construction has been raised over the said plot.

12. It was further submitted that in terms of Section 14 of the Uttar Pradesh Industrial Development Act, 1976, the Chief Executive Officer can resume the site or building in case of non-payment of consideration or any installment or breach of any condition of such transfer or breach of any rule or regulation made. The judgment of this Court reported as **ITC Limited v. State of Uttar Pradesh & Ors.** (2011) 7 SCC 493 has been relied upon to submit that in case a lessee commits default in paying either the premium or lease amount or commits breach of any term of the lease, the Chief Executive Officer alone can resume the plot. The Authority to resume implies and includes the Authority to unilaterally cancel the lease as well.

13. It was also argued that the finding of fact recorded by the trial court and affirmed by the First Appellate Court was not interfered with by the High Court in the second appeal as no substantial question of law arose for consideration. Learned counsel for the respondent also relied upon judgments of this Court reported as **Teri Oat Estates (P) Ltd. v. U.T., Chandigarh & Ors.** (2004) 2 SCC 130 and **Managing Director, Haryana State Industrial Development Corporation & Ors. v. Hari Om Enterprises & Anr.** (2009) 16 SCC 208 to contend that determination of lease has to be the last resort.

14. We have heard learned counsels for the parties and find that the plaintiff had invoked the jurisdiction of the Civil Court even though he had filed a false affidavit that his spouse or dependent children have not been allotted any plot.

15. It is an admitted fact that the wife of the plaintiff was allotted Sector 15A plot on 10.3.1981. The wife sworn an affidavit on 4.3.1983 that neither she nor her spouse owned any other plot in Noida. It was on 6.10.1981 that the plaintiff was informed about allotment of residential plot measuring 450 sq. yards in Sector 30. The allotment was said to be subject to terms and conditions as enclosed. The relevant extract from such terms and conditions have been reproduced above. Such terms clearly show that a person himself owning, or in case of his spouse or dependent

children owning a plot within the Municipal Corporation of Delhi or New Delhi or Noida complex, will not be eligible for allotment of a plot in Noida. The affidavit of the wife of the plaintiff was false as the plot measuring 450 sq. yards stood allotted to the plaintiff on 6.10.1981. Therefore, on the date the wife of the plaintiff had sworn the affidavit, the Sector 30 plot was already allotted to the plaintiff. The argument that plot might have been allotted but the possession was not with the wife of the plaintiff is incorrect. The affidavit was to the effect that she has not been allotted any plot either in her name or in the name of her husband. The affidavit was not that the plot has been allotted but possession has not been delivered.

16. On the other hand, the plaintiff had sworn an affidavit, sent to the appellant with his letter dated 1.12.1988 that he, his spouse and dependent children do not own in full or in part on leasehold or freehold basis any residential plot. Even this affidavit is in respect of allotment of a plot not in respect of delivery of possession. It may be stated that when in 1988, the plaintiff had sworn the affidavit, the lease deed dated 31.1.1983 already stood executed in respect of Sector 15A plot. Since the lease was executed, the wife of the plaintiff applied for permission to transfer which was granted and transfer deed was executed on 25.10.1990. The permission was granted by the appellant without having knowledge of the fact that the husband of the allottee has already been allotted a separate plot. Once an affidavit has been filed which is on the face of it false to the knowledge of the executants, no benefit can be claimed on the ground that delivery of possession was given.

17. In **M. Veerabhadra Rao Vs. Tek Chand**, 1984(Supp) SCC 571 this Court was considering an affidavit attested by an Advocate in terms of Section 3(2) of the Oaths Act, 1969. The conduct of appellant to attest an affidavit without oath and the attestation on the representation of the respondent that it bears his signatures, came up for consideration. In these circumstances, this Court held as under:

“17. The expression 'affidavit' has been commonly understood to mean a sworn statement in writing made especially under oath or on affirmation before an authorised Magistrate or officer. Affidavit has been defined in sub-clause (3) of Section 3 of the General Clauses Act, 1897 to include 'affirmation and declaration in the case of person by law allowed to affirm or declare instead of swearing.' The essential ingredients of an affidavit are that the statements or declarations are made by the deponent relevant to the subject matter and in order to add sanctity to it, he swears or affirms the truth of the statements made in the presence of a person who in law is authorised either to administer oath or to accept the affirmation.....”

18. Therefore, affidavits filed were not mere sheet of paper but a solemn statement made before a person authorized to administer oath or to accept affirmation. The plaintiff had breached such solemn statement made on oath.

19. The terms and conditions of allotment conveyed to the plaintiff on 1.12.1988 have a specific clause that if allotment is obtained by any misrepresentation or misstatement or fraud, the lease may be cancelled and the possession of the plot and the building thereon may be taken by the Authority. Therefore, cancellation of

allotment of plot obtained after filing false affidavit is a legitimate ground of cancellation of lease. Fraud vitiates all actions as laid down by this Court in **S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors.**, (1994) 1 SCC 1 wherein it was held as under:

“5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that “there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence”. The principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, taxevaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

20. The argument that the lease was required to be determined by the Chief Executive Officer is not tenable. The determination of lease by the Chief Executive Officer would arise if in case there was any violation of the terms of lease. If the condition precedent for grant of lease itself was fraudulent, the cancellation of lease was not required to be preceded by permission of the Chief Executive Officer. Still further, the Chief Executive Officer has granted permission on 13.9.1998, though the cancellation order was passed on 18.10.1996. Thus, it is a case of irregularity at best which stands removed with the permission of the Chief Executive Officer. The argument that if the statute prescribes a power to do a certain thing in a certain way, such thing must be done in that way and other modes of performance are necessarily forbidden is not applicable in the present case. Firstly, for the reason that admittedly, false affidavits were filed by the plaintiff as well as by his wife. The filing of a false affidavit disentitles the plaintiff for any equitable relief. Secondly, any irregularity in the process of cancellation stands cured with Chief Executive Officer granting permission on 13.9.1998.

21. The judgment in **ITC Limited** as relied upon by the respondent is on altogether different facts. In that case, the allotment made in favour of ITC Limited was subject matter of challenge in Public Interest Litigation in writ petitions filed before the Allahabad High Court. The issue was in respect of cancellation of lease on account of violation of the terms, not based upon fraud in obtaining the lease.

22. The judgments of this Court in **Teri Oat Estates** and **Hari Om Enterprises** are also on different facts wherein the Doctrine of Proportionality was applied.

23. The fact is that the second plot allotted to the plaintiff had been allotted against the express terms of allotment. Therefore, there is neither equity nor any law in favor of the plaintiff. A person who misleads the Authority in obtaining allotment of a plot is not entitled to any relief.

24. Consequently, the appeal is allowed. The judgment and decree of the courts below are set aside and the suit is thus dismissed.

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