2018 INSC 323

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 3020 OF 2018

THE ANDHRA PRADESH INDUSTRIAL INFRASTRUCTURE CORPORATION LIMITED AND OTHERS .....APPELLANT(S)

VERSUS

S.N. RAJ KUMAR AND ANOTHER .....RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 2995 OF 2018

CIVIL APPEAL NO. 2994 OF 2018

CIVIL APPEAL NO. 2996 OF 2018

CIVIL APPEAL NO. 2997 OF 2018

CIVIL APPEAL NOS. 2998-3014 OF 2018

CIVIL APPEAL NOS. 2954-2989 OF 2018

CIVIL APPEAL NO. 3015 OF 2018

CIVIL APPEAL NO. 3016 OF 2018

CIVIL APPEAL NOS. 3018-3019 OF 2018

CIVIL APPEAL NO. 2990 OF 2018

CIVIL APPEAL NO. 3017 OF 2018

CIVIL APPEAL NO. 2991 OF 2018

CIVIL APPEAL NO. 2992 OF 2018

A N D

CIVIL APPEAL NO. 2993 OF 2018

J U D G M E N T

A.K.SIKRI, J.

Appellant No.1, Andhra Pradesh Industrial Infrastructure Corporation Limited, is a public sector undertaking incorporated under the Companies Act, 1956. Appellant Nos. 2 and 3 are its office bearers. The main object of the appellant-Corporation is to develop industrial areas at various places in the State of Andhra Pradesh and allot them to the needy entrepreneurs for the purpose of establishing industries.

2. During 1996-97, the appellant-Corporation allotted industrial plots to the respondents/ entrepreneurs herein at Visakhapatnam and other places in the State of Andhra Pradesh. All the respondents are transport companies with their headquarters all over India and they got allotted the aforesaid plots in Visakhapatnam or other places in the State with the purpose of having branch offices. Intention was to construct transport offices and godowns. The allotment letters vide which allotments were made by the appellant-Corporation contained certain terms and conditions.

One of the conditions, which is the bone of contention in these appeals, was that the respondents were supposed to establish their units within two years from the date of taking possession of their plots allotted to them for industrial purposes. It was also stipulated that contravention of any of the terms and conditions of the allotment would result in cancellation of such allotment. The relevant clauses signifying the aforesaid stipulation are worded as under:

> "10. The allottee should note that the Corporation forfeits all amounts paid by the allottee if any of the terms and conditions stipulated in the allotment letter are not complied with by the allottee.
>
> xx xx xx
>
> 17. You should implement the project envisaged within two years of taking possession of the land/plot/shed. If within two years from the date of final allotment and taking possession for the land/plot/shed the project is not implemented, the allotment will be cancelled.
>
> 18. Registration of the sale deed will be made in your favour only after implementation of the unit in the allotted plot/shed. An undertaking on Rs.100/- NJS Paper to the effect that the allottee will take sale deed for the plot/shed/ land allotted within one month of intimation from the APIIC Limited and to pay the penalties levied by the Corporation in case of failure should be furnished in the proforma enclosed."

3. Though initial allotments were made by issuing allotment letters as above, these were followed by agreements of sale which were entered between the appellant-Corporation and the respondents

on different dates between 1997 and 1999. During this period, sale deeds were also executed by the appellant-Corporation in favour of the respondents, after receiving full consideration of the plots in question, thereby transferring the ownership rights in favour of the respondents herein. Almost six years after the execution of the sale deed, show-cause notices were issued to the respondents for cancellation of the plots on the ground that the respondents had failed to establish their industrial units on the said plots within the stipulated period and had kept them idle which was detrimental to the industrial development. The respondents submitted their separate replies to these show-cause notices wherein, broadly speaking, the position was taken that the appellant-Corporation did not provide basic infrastructure facilities like roads, water, electricity and, therefore, the plots could not be utilised for the purpose of construction of godowns.

4. Interestingly, the aforesaid facilities were provided in the year 2006 only, i.e. after the issuance of show-cause notices and replies thereto by the respondents. In these circumstances, the respondents applied for permission to construct the godowns. Vide letter dated January 20, 2006, the appellant-Corporation approved the building plans, in pursuance whereof the respondents commenced construction. However, thereafter, the

appellant-Corporation passed orders dated March 28, 2006 stating therein that there was no justification for not establishing industrial/business units within the time specified in the allotment letters and passed orders cancelling the allotments made to the respondents. Challenging these cancellation orders, batch of writ petitions came to be filed by the respondents. In these writ petitions, one of the primary contentions of the respondents was that once sale deeds had been executed by the appellant-Corporation resulting in conferring upon the respondents absolute ownership of the plots in question, the appellant-Corporation had no power to cancel the allotments.

5. While these writ petitions were pending, there was a change of heart, to a little extent, insofar as the appellant-Corporation is concerned. It revised its decision of cancelling the allotments and instead decided to give one more opportunity to the respondents herein, subject to certain conditions. One of the conditions was that the respondents pay 50% of the prevailing market value for condoning the delay in raising the construction. Challenging this position, fresh writ petitions came to be filed.

6. In the aforesaid scenario, it becomes clear that the issue before the High Court was as to whether the appellant-Corporation can

demand 50% of the prevailing market value as a condition for giving extension/another opportunity to the respondents to raise construction on the plots sold to them.

7. The challenge of the respondents to the aforesaid condition was predicated on the same ground, namely, after the execution of the sale deed, the appellant-Corporation had no power to cancel the allotment or demand payment of 50% of the prevailing market value. The appellant-Corporation, on the other hand, took up the plea that the allotments were subject to certain terms and conditions made therein and any contravention thereof was liable to be cancelled. Therefore, mere execution of the sale deeds did not absolve the respondents from compliance with the terms and conditions of the allotment.

8. The matters were heard by the learned Single Judge who allowed the writ petitions vide common judgment dated July 16, 2010 accepting the plea of the respondents, namely, once the sale deeds were executed, the appellant-Corporation was denuded of any power to cancel the allotments or to make demand of 50% amount of the prevailing market value of the plots. The appellant-Corporation, feeling aggrieved by the said judgment, preferred writ appeals before the Division Bench, which have also been

dismissed vide the impugned judgment, thereby affirming the judgment of the learned Single Judge. Not satisfied with this outcome, the present appeals are preferred.

9. In nutshell, reasoning of the High Court is that the allotment was made to the respondents followed by agreements of sale and thereafter sale deeds were also executed by the appellant-Corporation conveying right, title and interest absolutely, to the respondents. When the contract is concluded and regular sale deed is executed between the vendor and vendee in respect of an immovable property, it cannot be said that the dispute arises in the realm of a statutory contract or non-statutory contract. The dispute is not with regard to the contract. It is in effect the question of title which is sought to be nullified by the appellant-Corporation unilaterally based on conditions of allotment and the same is not permissible in law.

10. It was further held that the appellant-Corporation offered industrial plots and the respondents/entrepreneurs gave counter offer which was accepted by it. At that stage, the conditions of offer, counter offer and acceptance found expression in the allotment letter (acceptance of offer subject to conditions) and in the agreement of sale (contract of sale) in terms of Section 54 of the

Transfer of Property Act, 1882 (hereinafter referred to as the Act). This ultimately resulted in the conclusion of contract by way of execution of the sale deed by vendor in favour of the vendee. Once the contract is concluded, the allotment conditions or covenants of agreement of sale ordinarily cannot be enforced having regard to the various provisions of the Transfer of Property Act, Indian Contract Act, 1872, the Registration Act, 1908 and the Specific Relief Act, 1963, which constitute the Civil Code of India and govern the transfer of immovable property from one person to another. The allotment letter or the sale agreement does not survive once the contract is concluded on execution of the registered sale deed resulting in alienation, conveyance, assignment and transfer of title.

11. The High Court has referred to Sections 5, 6, 8, 10 and 11 of the Act as well as Section 23 of the Indian Contract Act, 1872 in cementing the aforesaid conclusion. The High Court also relied upon Sections 4 and 55 of the Act. Support of the judgment of this Court in the case of ***State of Kerala*** v. ***Cochin Chemical Refineries Ltd.***[1] and two judgments of its own High Court was also taken. The matter was looked into by the High Court from another angle as well. It noted that in these cases, after the

1 (1968) 3 SCR 556

allotment was made, all the respondents paid entire sale considerations. The appellant-Corporation entered into agreements and long thereafter executed registered sale deeds. A decade thereafter, when the respondents applied for building permission, as a statutory authority, accorded such sanction. In this background, the question posed was whether the harsh action of cancelling allotment is proportionate to the situation. It gave the answer in the negative, applying the doctrine of proportionality as was applied in ***Teri Oat Estates (P) Ltd.*** v. ***U.T., Chandigarh & Ors.***[2]

12. Another dimension which has been highlighted by the High Court is that though initially the decision was taken to cancel the allotment, the appellant-Corporation on its own came forward and decided to compound the alleged contravention by a novel method and decided to condone the so-called default on the part of the respondents by demanding 50% of the prevailing market value in lump sum towards the costs of the plots. In the opinion of the High Court, once the sale deed is registered, the seller has no such enforceable right to demand more money and this demand was not backed by any law. We may also point out that the appellant-Corporation had relied upon the judgment of this

2 (2004) 2 SCC 130

Court in ***Indu Kakkar*** v. ***Haryana State Industrial Development Corporation Ltd. & Anr.***[3] The High Court, however, took the view that the aforesaid judgment had no application to the facts of these cases at hand.

13. Before us, arguments of Mr. Basava Prabhu Patil, learned senior counsel appearing for the appellant-Corporation, remained the same which were advanced before the High Court. It was contended that even if there was a sale in favour of the respondents by execution of the sale deed, the seller (appellant-Corporation) could impose a condition in the said sale deed, which the buyer was under obligation to fulfill as sale was coupled with the said condition. It was argued that judgment of this Court in ***Indu Kakkar's*** case had decided the same question, which was in favour of the appellant, and the High Court has distinguished the said judgment on erroneous grounds. It was also argued that the judgment of this Court in ***Teri Oat Estates (P) Ltd.***, on the doctrine of proportionality, was wrongly applied by the High Court as the doctrine of proportionality was not at all applicable in these cases. He also submitted that one of the conditions contained in the sale deed itself was that the purchaser shall use the land for the purpose specified therein, i.e.

3 (1999) 2 SCC 37

for putting up a factory or factories duly permitted by the competent authority and for no other purpose and shall also not put any structure or buildings other than a factory building or buildings and some of the respondents had violated this condition as the land was not used for putting up a factory.

14. We do not find any merit in any of the aforesaid arguments. In the first instance, it needs to be emphasised that there is no such condition of completion of construction within a period of two years in the sale deed. Such a condition was only in the allotment letter. However, after the said allotment, the appellant-Corporation not only received entire consideration but executed the sale deeds as well. In the sale deeds no such condition was stipulated. Therefore, the High Court is right in holding that after the sale of the property by the appellant-Corporation to the respondents, whereby the respondents acquired absolute marketable title to the property, the appellant-Corporation had no right to insist on the conditions mentioned in the allotment letter, which cease to have any effect after the execution of the sale deed.

15. Section 5 of the Act defines *'transfer'* as conveyance of property from one living person to one or more living persons. Sections 8,

10 and 11 thereof attach sanctity and solemnity to a transfer of immovable property. These provisions read as under:

> **8. <u>Operation of transfer</u>** – Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.
>
> Such incidents include, when the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;
>
> and, where the property is machinery attached to the earth, the movable parts thereof; and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;
>
> and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;
>
> and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.
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> **10. <u>Condition restraining alienation</u> –** Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:
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> PROVIDED that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same for her beneficial interest therein.

> **11. <u>Restriction repugnant to interest created</u> –** Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.
>
> Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

16. Section 55 of the Act deals with rights and liabilities of buyer and seller. As per this provision, when the buyer discharges obligations and seller passes/conveys the ownership of the property, the contract is concluded. Thereafter, the liabilities, obligations and rights, if any, between the buyer and seller would be governed by other provisions of the Contract Act and the Specific Relief Act, on the execution of the sale deed. The seller cannot unilaterally cancel the conveyance or sale.

17. Insofar as the judgment in ***Indu Kakkar's*** case is concerned, the High Court has rightly held that that would not apply to the facts of this case. On the facts of that case, the Court, in the first instance, came to the conclusion that clause 7 of the agreement, which was entered into between the parties, was binding. As per clause 7, construction of the building for setting up the industry, in

respect of which land was given to the appellant in that case, was to start within a period of six months and the construction had to be completed with two years from the date of issue of the allotment letters. Since the appellant had failed to commence or build the construction within the stipulated time, show-cause notice has been issued as to why the plot be not resumed as per clause 7 of the agreement. In this backdrop, the appellant had challenged the enforceability of clause 7 of the agreement taking aid of Section 11 of the Act. This contention was repelled in the following manner:

> "16. However, the allottee has contended before the trial court that clause 7 of the agreement is unenforceable in view of Section 11 of the TP Act. But that contention was repelled, according to us, rightly because the deed of conveyance had not created any absolute interest in favour of the allottee in respect of the plot conveyed. For a transferee to deal with interest in the property transferred "as if there were no such direction" regarding the particular manner of enjoyment of the property, the instrument of transfer should evidence that an absolute interest in favour of the transferee has been created. This is clearly discernible from Section 11 of the TP Act. The section rests on a principle that any condition which is repugnant to the interest created is void and when property is transferred absolutely, it must be done with all its legal incidents. That apart, Section 31 of the TP Act is enough to meet the aforesaid contention. The section provides that
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> > "on a transfer of property an interest therein may be created with the condition super-added that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen".

Illustration (b) to the section makes the position clear, and it reads:

> "(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases."

17. All that Section 32 of the Transfer of Property Act provides is that "in order that a condition that an interest shall cease to exist may be valid, it is necessary, that the event to which it relates be one which could legally constitute the condition of the creation of an interest". If the condition is invalid, it cannot be set up as a condition precedent for crystallization of the interest created. The condition that the industrial unit shall be established within a specified period failing which the interest shall cease, is a valid condition. Clause 7 of the agreement between the parties is, therefore, valid and is binding on the parties thereto."

18. This legal position is not disputed. However, in the instant case, there was no such stipulation in the agreement to sell or the sale deed. It was in the allotment letter. On the contrary, insofar as clause 7 of the sale deeds executed is concerned, the only condition imposed is that the purchaser shall use the land for the purpose of putting up a factory or factories duly permitted by the competent authority and for no other purpose. This makes all the difference between the two cases. Here, the undisputed fact is that the agreements/sale deeds entered into between the appellant-Corporation and the respondents do not contain any clause which can be construed as *'condition super-added'*.

19. We do not agree with the contention of the appellant-Corporation that the doctrine of proportionality is not applicable in these cases. In the realm of Administrative Law *'proportionality'* is a principle where the Court is concerned with the process, method or manner in which the decision-maker has ordered his priorities and reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise – the elaboration of a rule of permissible priorities[4]. *De Smith*[5] also states that *'proportionality'* involves *'balancing test'* and *'necessity test'*. The *'balancing test'* permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations.

20. Insofar as the argument that the land is not used for putting a factory building but was used for some other purpose is concerned, no such case was pleaded by the appellant-Corporation in the High Court or even in these appeals. This was not the reason for initially cancelling the allotment or demanding payment of 50% of the prevailing market value. Therefore, this

4 *Union of India* v. *G. Ganayutham*, (1997) 7 SCC 463
5 *Judicial Review of Administrative Action* (1995) para 13.085, 601-605; see also, Wade, *Administrative Law* (2009) 157-158, 306-308

oral argument advanced at the time of hearing cannot be accepted without any material on record and when it was not the basis of cancellation/demand of payment. This Court in the case of ***Mohinder Singh Gill & Anr.*** v. ***The Chief Election Commissioner, New Delhi & Ors.***[6] held as under:

> "8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji* (Commissioner of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16):
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> > "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."
>
> Orders are not like old wine becoming better as they grow older."

21. In view of the above, it is not necessary to deal with the argument as to whether doctrine of proportionality is applicable in the instant case or not. It is to be borne in mind, as rightly held by the High Court, that the appellant-Corporation had withdrawn the action of cancellation of the plots. Instead, it demanded 50% of

6 (1978) 1 SCC 405

the prevailing market value in lump sum towards the cost of the plots. There is no legal basis for such a demand, more so, after the registration of the sale deeds in favour of the respondents thereby transferring the ownership in these plots in their favour.

22. As a result, all these appeals are dismissed with costs.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI;
APRIL 10, 2018.