

Chander Mani v. Haryana Urban Development Authority,
Kurukshetra and another (S. S. Sodhi, J.)

striking off the defence of the husband for non-payment of maintenance under Section 24 of the Hindu Marriage Act. It is quite patent that the provisions under Order 11 Rule 21 of the Code of Civil Procedure which allows defence of a party to be struck off, or, inherent power of a civil Court in this regard, would not be applicable to the cases for grant, or, recovery of maintenance under Section 125 of the Code. Legally speaking, it would not be permissible for a Criminal Court while acting under Section 125 of the Code to strike off the defence of a party for non-payment of interim maintenance. None of the authorities cited on behalf of the respondent-wife relate to under Section 125 of the Code. Thus all the aforesaid authorities would not be applicable to the facts and circumstances of the present case and the same are clearly distinguishable.

(8) For the foregoing reasons, the impugned orders Annexures P-2 and P-4 passed by the Courts below for striking off defence of the husband on the ground of non-payment of interim maintenance are hereby set aside. The respondents, if so advised, may have recourse to proper procedure under Section 125(a) of the Code for realising the interim maintenance. This petition is accordingly allowed.

P.C.G.

Before S. S. Sodhi, M. R. Agnihotri, and J. B. Garg, JJ.

CHANDER MANI,—Petitioner.

versus

HARYANA URBAN DEVELOPMENT AUTHORITY, KURUKSHETRA AND ANOTHER,—Respondents.

Civil Writ Petition No. 13026 of 1989.

9th March, 1990.

Constitution of India, 1950—Art. 226—Haryana Urban Development Authority Act, 1977—S. 17—Haryana Urban Development (Disposal of land and plots) Regulations, 1978—Rgl. 12—Cl. 9 of allotment letter—Compensation for land acquisition enhanced by Court—Payment of enhanced compensation—Petitioners liable to pay the same—Demand notice of HUDA calling upon allottees to pay enhanced price within 30 days of notice on pain of penalty and

resumption—Rigour of demand notice harsh—Challenge laid to mode and manner of recovery—HUDA agreeing to permit enhanced payment in instalments on fresh terms submitted to Court—Matter settled on fresh terms being just and unreasonable—Challenge to mode and manner of recovery no longer survives.

Held, that the petitioners are liable to pay the enhanced price demanded from them but they shall be at liberty to pay it within 30 days of the date of this order or in instalments as per the mode agreed to and accepted by the Haryana Urban Development Authority.

(Para 9)

Petition under Article 226/227 of the Constitution of India praying that a Writ in the nature of Certiorari or Mandamus or any other appropriate Writ, order or Direction may kindly be issued:—

- (a) *Quashing the impugned Regulations 2(b) and 10 of the Haryana Urban Development (Disposal of land and Building) Regulation 1978.*
- (b) *Quashing demand notice Annexure P-2 and the imposition of additional price thereunder;*
- (c) *Declaring the condition No. 9 of the allotment letter as null and void and not binding on petitioner;*
- (d) *Directing the respondents not to charge any interest till the possession of the plot is delivered to the petitioner;*
- (e) *Directing the respondents to produce entire record;*
- (f) *Commanding the respondents to produce detailed calculation on the basis of which figure of Rs. 55 has been worked out;*
- (g) *Dispensing with the filing of the certified copies of Annexure P-1 and P-2;*
- (h) *Dispensing with the issuance of prior notice to the respondents.*
- (i) *Awarding any other relief in addition to or in the alternative which this Hon'ble Court may deem fit and proper in the circumstances of the case, to the petitioner.*
- (k) *Staying the operation of the impugned demand notice and recovery of the amount demanded thereby till the decision of this writ petition.*

V. K. Bali, Senior Advocate, (Anil Kheterpal, Advocate with him), for the Petitioner.

S. C. Mohanta, A.G., Haryana, (Ashutosh Mohanta, Advocate with him), for the Respondents.

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JUDGMENT

S. S. Sodhi, J.

(1) The controversy here is with regard to the enhanced price claimed by the Haryana Urban Development Authority (hereinafter referred to as 'HUDA') from persons to whom it had allotted residential sites in the urban estate Kurukshetra. According to the terms and conditions on which the allotment was made (as set out in the letters of allotment similar in terms and content to annexure P/1) 10 per cent of the price was payable with the application for allotment and another 15 per cent thereof within 30 days of the issue of the letter of allotment, the balance being payable either in lump sum within 60 days of the allotment or in six half-yearly/annual instalments, but with interest thereon at the rate of 10 per cent per annum. Interest, however, accruing only from the date of offer of possession of the plot. The first instalment being payable on the expiry of six months/one year of the issue of the letter of allotment.

(2) In the context of the issue raised, clause-9 of the Letter of Allotment (annexure P/1) deserves pointed attention. This reads as under :—

“9. The above price is tentative to the extent that any enhancement in the cost of land awarded by the competent authority under the Land Acquisition Act shall also be payable proportionately, as determined by the Authority. The additional price determined shall be paid within 30 days of its demand.”

(3) Further, there is provision for the imposition of penalty and resumption of the plot under Section 17 of the Haryana Urban Development Authority Act, 1977 and regulation 12 of the Haryana Urban Development (Disposal of land and plots) Regulations 1978, for non-payment of instalments within the stipulated time.

(4) The compensation payable for the land acquired by it for the urban estate concerned, having been enhanced by the Court, HUDA in turn now seeks to pass on this burden to the persons to whom plots had been allotted by it, by claiming enhanced price from them in terms of clause-9 of the letter of allotment, annexure

P-1. The Demand Notice annexure P/2 issued in this behalf calls upon the petitioners to pay the enhanced price within 30 days of the issue of the notice failing which 15 per cent. interest per annum would be chargeable thereon, besides action being initiated under Section 17 of the Haryana Urban Development Authority Act, 1977 and Regulations-12 of the Haryana Urban Development (Disposal of Land and Plots) Regulations 1978.

(5) Counsel for the petitioner—Mr V. K. Bali, did not doubt HUDA's right and authority to demand enhanced price, but the rigor of the Demand Notice, namely, the amount being payable within 30 days and the threatened consequences flowing from its non-payment within the period fixed is what invited serious challenge, particularly, on the ground that, whereas the original price could be paid in instalments spread over a period of three or six years as the case may be, here the entire amount of the enhanced price is payable within just 30 days. Counsel, in this context, adverted to the not uncommon instances of the price enhanced by the courts being considerably higher than that originally offered for the land acquired by the Land Acquisition Collector. Further, it was pointed out that whereas in terms of the letters of allotment, interest on the price mentioned therein became payable only from the date of the offer of possession of the plot, interest on this enhanced price, on the other hand, becomes payable immediately on the expiry of 30 days of the demand notice, regardless of the offer of delivery of possession of the plot.

(6) The Advocate-General, Haryana very fairly took up the matter with the authority concerned and as a result thereof, HUDA has now agreed to permit payment of the enhanced price in instalments in the following manner :—

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| (a) Where the enhancement is 10 per cent of the original price of the plots. | Payment in lump-sum within 30 days of the issue of demand notice. |
| (b) Where the enhancement is more than 10 per cent but less than 30 per cent of the price of the plot. | (i) First 10 per cent within 30 days of the issue of demand notice.

(ii) Second 10 per cent or part thereof within 6 months of the issue of notice. |

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Payment may be made as follows;

- (c) Where the enhancement is more than 30 per cent but less than 60 per cent.
- (i) First 12 per cent within 30 days of the issue of notice.
 - (ii) Second 12 per cent within 6 months of the issue of notice.
 - (iii) Third 12 per cent within one year of the issue of notice.
 - (iv) Fourth 12 per cent within one and half year of the issue of the notice.
 - (v) Fifth 12 per cent or part thereof within two years of the issue of notice.

Payment may be made as follows :—

- (d) Where the enhancement is more than 60 per cent of the original cost of the plot.
- (i) First 15 per cent within 30 days of the issue of notice.
 - (ii) Second 15 per cent within 6 months of the issue of notice.
 - (iii) Third 15 per cent within one year of the issue of notice.
 - (iv) Fourth 15 per cent within 1½ years of the issue of notice.
 - (v) Fifth 15 per cent within two years of the issue of notice.
 - (vi) Sixth 15 per cent within 2½ years of the issue of notice.
 - (vii) Seventh 15 per cent within three years of the issue of notice.

Interest at the rate of 15 per cent per annum may be charged on the balance amount in view of the fact that HUDA is paying interest @ 15 per cent on enhanced compensation as per new land Acquisition Act.”

(7) The facility extended to the petitioner to pay the enhanced price demanded in this manner is obviously just and reasonable and no ground therefore, survives to challenge the mode and manner of the recovery of it.

(8) Mr. Ram Lal Gupta, counsel for the petitioner in C.W.P. 11036 and 11571 of 1988 on his part sought to question the enhanced price demanded on the ground that it comprised not only the enhanced compensation for the land acquired that HUDA had been called upon to pay, but also development charges thereon. This, the Advocate-General, Haryana, after obtaining instructions from the authority concerned, has categorically denied. It clearly stated by him that development charges did not constitute component of the enhanced price demanded from the petitioner.

(9) It follows therefore, that the petitioners are liable to pay the enhanced price demanded from them, but they shall be at liberty to pay it within 30 days of the date of this order or in instalments as per the mode accepted and agreed to by HUDA. This bunch of writ petition is disposed of accordingly. In the circumstances, there will be no order as to costs.

R.N.R.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME-TAX, AMRITSAR,—*Applicant.*

versus

M/S. AMRITSAR SWADESHI WOOLEN MILLS. AMRITSAR,—*Respondent.*

Income Tax Reference No. 23 of 1983.

12th April, 1989.

Income Tax Act, 1961—S. 35B, 143, 144-B and 256(1)—Service of Draft Assessment on assessee—Objections made by assessee—Assessee claiming weighted deductions at later stage—Such claim—Validity of.