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IN THE HIGH COURT OF MADHYA PRADESH, BENCH GWALIOR

FIRST APPEAL NO.225/2011

Smt. Rachana Bhargava

Versus

Krishanlal Sahni and others

Shri Deepak Khot, learned counsel for the appellant.
Shri K.S.Tomar, learned Senior Advocate with Shri J.S.Kaurav, counsel for the respondent No.1.

A N D

FIRST APPEAL NO.187/2012

Krishanlal Sahni

Versus

Sushil Chandra Bhargava and others

Shri K.N.Gupta, learned Senior Advocate with Shri R.S.Dhakad, counsel for the appellant.
Shri Deepak Khot, learned counsel for the respondents.

Present : Hon. Mr. Justice Alok Aradhe
Hon. Mr. Justice Rohit Arya

J U D G M E N T
(11.04.2016)

Per Alok Aradhe, J :

In these appeals, under section 96 of the Code of Civil Procedure since common questions of law

and fact arise for consideration, they were heard analogously and are being decided by this common judgment. The plaintiff has filed First Appeal No. 187/2012, being aggrieved by judgment and decree dated 7.4.2011 seeking enhancement of the amount of damages, whereas First Appeal No. 225/2011 has been filed by the legal representatives of the original defendant against the impugned judgment and decree, by which the claim of the plaintiff has been decreed. In order to appreciate the challenge of the plaintiff as well as of the legal representatives of the original defendant to the impugned judgment and decree, few relevant facts need mention, which are stated infra.

2. The plaintiff, who has retired from the post of Major from Indian Army in the year 1987, admittedly purchased two plots, namely, plots bearing No.23 and 25, situate at Rajendra Prasad Colony, Gwalior from the original defendant, namely, Sushil Chandra Bhargava, vide registered sale deeds dated 3.3.1989 (Ex.P/1 and P/2) for a consideration of Rs. 90000/-. After execution of the sale deeds, one Ramvir Singh and others filed a civil suit under Order 1 Rule 8 of the Code of Civil Procedure on 22.6.1989, namely, Civil Suit No. 263A/1994, in which a declaration was sought that the sale deed executed in favour of the plaintiff as well as the gift deed executed

in favour of the society which was arrayed as defendant No.9 in the suit, be declared null and void. The aforesaid civil suit was decreed vide judgment and decree dated 10.4.1997 by the trial court and the aforesaid decree was affirmed in First Appeal vide judgment and decree dated 13.8.2002. It is not in dispute that against the judgment and decree dated 13.8.2002, a Second Appeal, namely, Second Appeal No. 4/2003 was preferred before this Court which was dismissed vide judgment dated 5.1.2005 and the Special Leave Petition, namely, Special Leave Petition No.13998/2005, preferred against the aforesaid judgment passed by this Court, was dismissed by the Supreme Court vide order dated 11.7.2005. It is also not in dispute that the plaintiff was party in the previous round of litigation.

3. Thereafter the plaintiff filed a civil suit on 9.3.2007 claiming damages to the tune of Rs.44,93,000/- on the ground that the sale deeds executed in favour of the plaintiff dated 3.3.1989 were declared null and void. The original defendant filed the written statement in which the claim of the plaintiff was denied and it was inter alia pleaded that the fact that the suit plots are reserved for purposes of school, in the lay out plan was well within the knowledge of the plaintiff. It was further pleaded that the suit plots were sold to the plaintiff after

obtaining permission from the competent authority and no false assurance was given to the plaintiff and, therefore, the original defendant is not liable to pay any damages. During pendency of the suit the original defendant expired. Thereupon, his legal representatives filed an application for amendment of the written statement, which was allowed by the trial court, by which plea was incorporated that the original owner of the suit plots was one Raghuvar Dayal Shiksha Samiti and by a gift deed dated 11.10.1965 the suit plots were gifted to the original defendant.

4. The trial Court in view of the pleadings of the parties framed the issues and recorded the evidence. The trial Court vide judgment and decree dated 7.4.2011 inter alia held that the sale deeds in respect of the suit plots were executed in favour of the plaintiff by original defendant in his personal capacity. It was further held that the plaintiff is entitled to damages which were quantified at Rs.4,40,380/- and the defendants were directed to pay interest on the aforesaid amount @ 6% per annum for a period from 10.4.1997 to 9.3.2007. The defendants were also directed to refund a sum of Rs. 90000/-, i.e., the amount of sale consideration along with interest @ 6% per annum from 10.4.1997 to 9.3.2007.

5. Learned counsel for the appellant while taking us through paragraphs 40,44,46,47,55,56,59,61,62,65,66 and 67 of the evidence of the plaintiff (PW.1) submitted that the fact that the land was reserved for the purposes of school was well within the knowledge of the plaintiff and the plots in question were sold to the plaintiff after obtaining permission of the competent authority. It was also pointed out that the plaintiff was aware that the revised lay out in respect of the plots in question, prior to execution of sale deed, has been approved by the Town & Country Planning Department. It is further submitted that the breach of the contract on the part of the original defendant has not been established and the agreement is void on account of mistake of fact by both the parties, essential to the agreement. While referring to section 73 of the Act, it is contended that plaintiff is not entitled to any remote or indirect loss and an amount of Rs.10,000/- could not have been awarded to the plaintiff on account of mental agony. It was also argued that the burden of proof is on the plaintiff to prove the damages. In support of aforesaid submissions, learned counsel for the appellant in First Appeal No.225/2011 has placed reliance on decisions of the Supreme Court, reported in **(1998) 3 SCC 471 (Tarsem Singh Vs. Sukhminder Singh); (2004) 11 SCC 425**

(Draupadi Devi and Anr. Vs. Union of India and Ors); AIR 2006 Calcutta 1 (Jalpaiguri Zilla Parishad and Anr. Vs. Shankar Prasad Halder).

6. On the other hand, learned senior counsel for the respondent in First Appeal No. 225/2011 has submitted that the fact that fraud was played with the plaintiff has been established in the previous round of litigation. In this connection, learned senior counsel has invited attention of this Court to paragraph 25 of the judgment and decree dated 10.4.1997 and has submitted that the aforesaid finding has attained finality and, therefore, the plaintiff is entitled to claim damages from the defendants. It is further submitted that the trial Court on the basis of meticulous appreciation of evidence on record has awarded damages to the plaintiff which does not call for any interference by this Court. In support of his submissions, learned senior counsel for the respondent in First Appeal No.225/2011 has placed reliance on **AIR 1927 Allahabad 693 (Mt. Akhtar Jahan Begam and Ors. Vs. Hazari Lal); AIR 2005 SC 3110 (State of Andhra Pradesh and Anr. Vs. T.Surayachandra Rao); (2000) 3 SCC 581 (United India Insurance Co. Ltd. Vs. Rajendra Singh and Ors.); 2013 (3) JLJ 346 (President, Nagar Panchayat Phoop and Anr. Vs. R.B.Dubey and**

Anr.).

7. Learned senior counsel for the appellant in First Appeal No. 187/2012 has submitted that the trial court in paragraph 25 of the judgment dated 10.4.1997 has found that the plaintiff has been cheated and the aforesaid finding has attained finality, as the Special Leave Petition has been dismissed vide order dated 11.7.2005. It was urged that the forms were filled up by the plaintiff for seeking the permission to sell the property under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 and the facts that the will executed in favour of the society was forged and the plots in question under the lay out plan were reserved for purposes of school were not within the knowledge of the plaintiff. It has further been urged that the market value of the suit plots as on the date of institution of the suit, i.e., 9.3.2007 should be ascertained. In the alternative, it was submitted that the market value of the suit plots on the day when the Special Leave Petition was dismissed, i.e., 11.7.2005, should be ascertained. It is further submitted that in the year 2007 the market value of the suit plots as per the guidelines of the Collector was Rs.3900/- per sq.ft. and, therefore, the market value ought to have been ascertained on the aforesaid basis and interest on the amount of market

value of the suit plots ought to have been awarded from the date of execution of the sale deed, i.e., from 3.3.1989 till 9.3.2007, i.e., date of filing of the suit.

8. It is also argued that since the transaction in question was commercial transaction, therefore, the plaintiff is entitled to higher rate of interest and not the interest @ 6%. It is submitted that the trial court grossly erred in adopting the mean value of the market price between the period from 10.4.1997 to 9.3.2007 and the damages should have been ascertained as per the market value prevalent in the year 2007, as the plaintiff was required to purchase the plot in the year 2007. It is further argued that the trial court grossly erred in discarding the opinion of an expert, namely, Ajay Bansal (PW.2), who is an architect and the report (Ex.P/9) submitted by him. It is also pointed out that no evidence in rebuttal was led by the defendants with regard to the report prepared by the expert, namely, Ajay Bansal (PW.2). In support of aforesaid submissions, learned senior counsel for the appellant in First Appeal No.187/2012 has placed reliance on **1970 MPLJ 465 (Collector Jabalpur and Another Vs. Nawab Ahmad Yar Jahangir Khan); (2000) 6 SCC 113 (Ghaziabad Development Authority Vs. Union of India and Anr.); AIR**

1932 PC 196 (Lord Wright, Sir lancelot Sanderson and Sir Dinshah MullaVs. Maharaja Dhiraj Kameshwar Singh and Another); (2003) 3 SCC 239 (State of U.P. and Anr. Vs. Union of India and Anr.); and, **AIR 1993 Kerala 184 (Mrs. Rosy George Vs. State Bank of India and ors.).**

9. Learned counsel for the respondent in First Appeal No.187/2012 has submitted that as per valuation report, Ex.P/9, value of the land comes to Rs.48/- per sq.ft. whereas the plaintiff had purchased the suit plots @ Rs. 30/- per sq.ft. It is further submitted that the plaintiff never asked for refund of the amount and on the other hand defended his title in the previous round of litigation. Therefore, the plaintiff is not entitled to damages at the enhanced rate as claimed by him. However, in view of indemnity clause contained in the sale deeds with regard to defect in title, learned counsel fairly submitted that plaintiff is entitled to refund of sale consideration along with interest.

10. We have considered the rival submissions made on both sides and have perused the record. Before proceeding further it is apposite to notice relevant statutory provisions, namely, Sections 20 and Section 73 of the Indian Contract Act, 1872 (hereinafter, referred to as the "Act"), which read as under:-

> ***"Section 20.*** *Agreement void where both parties are under mistake as to matter of fact- Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void.*
>
> *Explanation- An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact.*
>
> ***Section 73.*** *Compensation for loss or damage caused by breach of contract- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.*
>
> *Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.*
>
> *Compensation for failure to discharge obligation resembling those created by contract- When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.*
>
> *Explanation - In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account."*

From careful scrutiny of Section 20 of the Act it is axiomatic that in order to render a contract void on the ground of mistake, three grounds should coexist, namely, both the parties to the contract must be in a mistake, mistake should be one of fact and not of law, and mistake should be essential to the agreement.

Section 73 of the Act deals with one of the remedies available for the breach of contract, namely, damages where a party sustains a loss on account of breach of contract. In order to attract applicability of Section 73 of the Act, it is *sine qua non* that the defendant is guilty of breach of contract. Section 73 provides for damages which naturally arose in the usual course of things from the breach and which the parties knew when they made the contract, to be likely to result from that breach. In first eventuality usual losses may be claimed whereas in the second eventuality additional losses as well, may be claimed.

11. At this stage, we advert to the well settled legal position with regard to scope of section 73 of the Act in cases of breach of contract for sale of immoveable properties and principles laid down with regard to ascertainment of damages, as both the parties have relied up on section 73 of the Act. In the case of **Nagar Das vs. Ahmed Khan (1895) 21 BOM 175,** it was held that the legislature while enacting Section 73 of the Act has not prescribed a different measure of damages in the case of contracts dealing with the land from that laid down in the case of contracts relating to commodities. Similar view was taken in the case of **Harilal Dalsukhram**

vs. Mulchand, AIR 1928 BOM 427 and it was held that "as Section 73 imposes no exception on the ordinary law as to damages, whatever the subject matter of the contract, in cases of breach of contract for sale of immoveable property through inability on the vendor's part to make good the title, the damages must be assessed in the usual way, unless it can be shown that the parties to the contract expressly or impliedly contracted that this should not render the vendor liable to damages. The Supreme Court in the case of **Jagdish Singh vs. Natthu Singh (1992) 1 SCC 647,** referred to the decision in the case of **Nagar Das (supra)** and approved the ratio laid down therein that the legislature has not prescribed a different measure of damages in the contracts dealing with land from that laid down in the case of contracts relating to commodities.

12. It is well settled legal proposition that damages for a breach of contract must be based on the market price prevalent on the date of the breach. See **Murlidhar Chiranjilal vs. Harishchandra Dwarkadas (1962) 1 SCR 653,** and, **Kailash Nath Associates vs. Delhi Development Authority and another (2015) 4 SCC 136.** It is equally well settled legal proposition that if a contracting party has suffered damage through breach of contract by another

contracting party, it is his duty to minimise the damage and if he has failed to do so when it was in his power, he cannot recover in respect of the damage which he could have avoided. See, **M. Lachia Setty & Sons Ltd. vs. Coffee Board (1980) 4 SCC 636.**. The Supreme Court in the case of **Gaziabad Development Authority vs. Union of India (AIR 2000 SC 2003)** has held that in case of breach of a commercial contract, damages for anguish and vexation caused by breach of contract cannot be awarded. It is well settled in law that when the parties enter into a contract under a mutual mistake or misapprehension as to a matter of fact essential to the agreement, the very foundation thereof, there is no contract between them, or in order words such a contract is void under Section 20 of the Act. See **Tarsem Singh vs. Sukhminder Singh (1998) 3 SCC 471**.

13. In the back drop of aforesaid well settled legal position, we may now refer to the evidence on record. The plaintiff (PW.1) has examined himself and Ajay Bansal as PW.2, whereas defendants have examined Ravi Kumar Gupta (DW.1), Smt. Madhu Bhargava (DW.2) and Bharat Bhargava (DW.3). PW.1 (plaintiff) in paras 40, 44, 46 and 47 of his cross-examination has stated that layout plan from Town & Country Planning was approved

on 9.1.1989 and plot was sold to him after obtaining permission from competent authority under Urban Land (Ceiling and Regulation) Act, 1976 and for obtaining such permission he had filled up the forms, which were submitted before the competent authority. In paras 55 and 56 of the cross-examination, plaintiff has admitted that he had defended his title in previous round of litigation and had filed layout plan approved by the Town & Country Planning and permission given by the competent authority under Urban Land (Ceiling and Regulation) Act, 1976 and the copies of sale deeds. In paras 62 and 65 to 67 in the cross-examination, plaintiff has admitted his deposition (Ex.P/7) in previous round of litigation and has answered the questions put to him in this regard. Ajay Bansal (PW.2), who is a valuer and has obtained B.E. Degree in Civil, has been examined to prove valuation report (Ex.P/9) to prove that market value of the plots in question as on 21.11.2007 was Rs.30.00 lacs. In para 9 of his cross-examination, he has admitted that he has no knowledge whether any plot in locality was sold in 2007 and though he had enquired about rates of plot from residents of locality, however he is unable to tell their names. From perusal of Ex.P/9, it is evident that the market value has been determinated as per plinth area method. The defendants have examined

Ravi Kumar Gupta (DW.1), Clerk in the office of Registrar. Smt. Madhu Bhargava has been examined as DW.2, i.e., Secretary of the society, who stated that original defendant executed the sale deeds as Secretary of the society and the society is the owner of suit plots. Bharat Bhargava (DW.3) has stated that adjoining plot was sold by his father, i.e., original defendant vide registered sale deed dated 17.6.1999 (Ex.D/6) and has relied upon Ex.D/8, i.e., guideline issued by the Collector for the purposes of market value of the plots. He has also challenged valuation paper, Ex.P/9, in para 6 of his examination-in-chief.

14. Admittedly, after the plaintiff had purchased the suit plots by registered sale deed dated 3.3.1989, a Civil Suit under Order 1 Rule 8 of the Code of Civil Procedure, namely, Civil Suit No. 263A/1994 was filed by one Ramveer Singh and others on 22.6.1989, in which a declaration was sought that sale deeds executed in favour of the plaintiff who was arrayed as defendant No.8 in the suit, be declared null and void. It is also not in dispute that the aforesaid civil suit was decreed vide judgment and decree dated 10.4.1997 wherein in paragraph 25, the trial Court recorded the finding in the following terms :-

"25. यद्यपि प्रतिवादी क0 8 जो सेना से सेवानिवृत्त मेजर

है तथा उभयपक्षों की साक्ष्य में यह आया है कि वह पूर्व में इसी कालोनी में निवास करता था तब प्रतिवादी क01 के व उसके पिता की ख्याती के प्रभाव में आकर उसने प्रतिवादी क01 पर विश्वास कर बड़ी भूल की जबकि वस्तुतः प्रतिवादी क01 ने उसे कूट रचित वसीयत व प्रतिवादी क04 समिती की सम्पत्ति होने का झॉसा देकर प्रतिवादी क01 लगायत 4 के साक्षी जितेन्द्र सिंह कुशवाह (प्र0 सा02) जिसने स्वयं वादग्रस्त विक्रयपत्र की कार्यवाहियों का संचालक होने का वर्णन दिया है के सहयोग से कूट रचित दस्तावेज की आड़ में प्रतिवादी क08 को ठका एवं प्रतिवादी क01 की यह कार्यावाहियॉ से प्रतिवादी क0 8 त्रस्त हुआ है जिसके लिये प्रतिवादी क0 8 के पास सिविल व कीमिनल कार्यवाही दोनो के उपचार प्राप्त है क्योंकि प्रतिवादी क01 ने इन विक्रयपत्रों हेतु प्रतिवादी क0 8 से धन लिया एवं भूमियों के इतने वर्षों में जितने भाव बढ़े उस अनुपात में प्रतिवादी क0 8 प्रतिवादी क01 से वसूली क्षति की कर सकता है प्रतिवादी क01 सक्षम भी है, अतिरिक्त इसके इस कूट रचना द्वारा झॉसा देकर सार्वजनिक सम्पत्ति बेचने के आपराधिक दायित्व हेतु भी प्रतिवादी क08 प्रतिवादी क01 को दांडिक न्यायालय के समक्ष अपराधिक कृत्य का पीड़ा उपचार निवारण कर अपराधियों को दंडित करवा सकता है एवं उसे ऐसा करना चाहिये लेकिन बावजूद इसके यह न्यायालय प्रतिवादी क08 को कोई राहत नही दे सकती।"

Admittedly, the aforesaid decree has attained finality whereunder liberty is granted to the plaintiff in paragraph 25 of the judgment to claim damages against his vendor to the extent of escalation of the price of the plots has attained finality and is binding on the parties in view of the principles of *res judicata* even though an issue may not have been formally framed in this regard. See, **Sayeda Akhtar vs. Abdul Ahad (2003) 7 SCC 52;** and **Commissioner of Endowment and others vs. Vittal Rao and others (2005) 4 SCC 120.** Even otherwise, admittedly the sale deeds executed in favour of the plaintiff have been held to be null and void by the trial Court and the decree passed by the trial Court has attained finality.

Therefore, on the basis of principles contained in Section 73 of the Act the plaintiff is entitled to claim damages.

15. The trial Court while computing the damages has taken into account the guidelines issued by the Collector (Ex.D/8) for the year 1989-90 and has held that as per guideline, Ex.D/8, market value of the property was Rs.350/- per square meter, whereas in the year 2006-2007, it was Rs.3900/- per square meter. Thus, the trial Court came to conclusion that from 1989-90 to 2006-07, the rates of residential plots increased by Rs.3550/- per square meter (Rs.3900 - Rs.350). Accordingly, it was held that average increase in the price of residential plots was Rs.197.2/- per year. The market value of the plots was computed to be Rs.1580/- per square meter (197.2 x 8). It was held that since area of plots is 278.72 square meters, market value of plots in the year 1995-96 comes to Rs.4,40,380/-. Thus, the trial court has computed market value of the property by taking into account the guidelines issued by the Collector, which is not permissible in view of decision of the Supreme Court in the case of **Land Acquisition Officer vs. S. Jasti Rohini (1995) 1 SCC 717,** as guidelines are issued by the Collector for fiscal purpose of collecting stamp duty and registration charges and market value mentioned therein cannot form basis for determining compensation.

The trial Court also erred in not appreciating that transaction in question is commercial transaction and in granting interest at the rate of 6% only. The trial Court also erred in awarding interest on sale consideration from 10.4.1997, in view of the fact that sale deed was executed on 3.3.1989.

16. Section 73 of the Act is declaratory of the common law as to damages. Though the section deals with damages in case of breach of contract and, therefore, the section in terms may not be applicable to the fact situation of the case as in the instant case, issue pertains to claim of damages on account of sale deeds being declared null and void. However, it is well settled in law that even though a provision may not apply in fact situation of the case, yet the principle governing the provision may be applied to facts of a case. **[See, Irrigation Department, Government of Orissa vs. G.C.Roy (1992) 1 SCC 508,** and, **Sarva Shramik Sangathana (KV) vs. State of Maharashtra, (2008) 1 SCC 494]**. In this connection, reference may also be made to decision of Division Bench of Allahabad High Court in the case of **Mt. Akhtar Jahan Begam and others vs. Hazarilal (AIR 1927 ALL 693),** wherein it has been held that principles of Contract Act apply to Transfer of Property as well.

17. We, therefore, proceed to deal with claim of plaintiff for damages in the light of principle incorporated in section 73 of the Act. The plaintiff therefore is entitled to damages, i.e., the difference between contract price and market price on the date of breach and would not be entitled to damages which he could have avoided. The plaintiff would also not be entitled to recover any amount on account of indirect loss or mental agony and physical suffering.

18. The core issue involved in these appeals is with regard to quantum of damages and not with regard to entitlement of plaintiff to claim damages. In the instant case, market value of plots in question has to be ascertained as on 11.7.2005, i.e., when the decree passed by the trial court declaring the sale deeds in favour of plaintiff attained finality and cause of action accrued to him. The plaintiff is under the duty to take all reasonable steps to mitigate the loss consequent on the breach and debars him from claiming any part which is due to his neglect to take such steps. [See, **British Westinghouse Electric and Mfg. Co.Ltd. vs. Underground Electric Rlys. Co. of London Ltd., (1912) AC 673.** The plaintiff is, therefore, not entitled to claim damages up to 9.3.2007 as he could have avoided damages by

instituting the suit in quite promptitude immediately after the dismissal of Special Leave Petition on 11.7.2005 by the Supreme Court. There is no material on record to ascertain market value of sale deeds in the year 2005. Though the burden to prove market value of suit plots is on the plaintiff, however, it loses its significance when both parties adduce evidence on an issue. In order to prove the market value of the plots in question the plaintiff has examined Ajay Bansal. From his evidence, it is clear that he has not seen the documents pertaining to sale of plots of the locality and is unable to disclose the name of a single person from whom he allegedly made enquiries with regard to market value of suit plots. The valuation report (Ex.P/9) does not disclose any reasonable basis for ascertaining the market value of the property. Therefore, the same cannot be made basis for ascertaining the same.

19. It is well settled in law that an element of some guess work is always involved while ascertaining the market value of the property, however, the same has to be ascertained by making an assessment by an objective standard. In the instant case, the comparable as well as instances of sale of similar lands in the neighbourhood which are the best evidence for determining the market value of the suit plots at the

relevant time are not available. Therefore, it is the duty of this Court to ascertain that market value determined in respect of suit plots is just and fair. See **Charan Dass vs. Himachal Pradesh Housing Urban Development Authority and others (2010) 13 SCC 398**. It well settled in law that court can take judicial notice of the fact that there is steady increase in the market value of the land and the Supreme Court has approved 10% increase per year in the market value of immovable property. [See, **Sardar Jogendra Singh vs. State of U.P. (2008) 17 SCC 133),** and **Ahasanvar Hoda vs. State of Bihar (2013) 14 SCC 59].**

20. The sale deed (Ex.D/6) dated 17.6.1999 is on record by which a plot situate in same colony in which suit plots are situate, has been sold at the rate of Rs.35/- per square feet. However, it is pertinent to mention that from recitals of sale deed, it is evident that sale consideration was fixed on 8.10.1990, i.e., at the time of execution of agreement, at Rs.35/- per square feet and possession was handed over though sale deed was executed on 17.6.1999. The plaintiff had purchased suit plots on 3.3.1989 @ Rs.30/- per square feet. It is also noteworthy that sale deed (Ex.D/6) pertains to a bigger plot, i.e., 7660 square feet, whereas plots of plaintiff are

smaller, i.e., 3000 square feet and market value of small residential plot is on higher side. Taking into account the fact that market value of plot in the same locality was Rs.35/- per suare feet in the year 1990 as well as the fact that plot of plaintiff is smaller in area and is capable of fetching higher market price and the fact that Court can take judicial notice of the fact that there is steady increase in the prices of immovable property and there is 10% increase per year in the market value of the immovable property as held by the Supreme Court in **Sardar Jogendra Singh (supra)** , the market value of suit plots can safely be fixed at Rs.146/- per square feet in the year 2005.

21. In view of preceding analysis, market value of the suit plots is assessed in July 2005 at the rate of Rs.146/- per square feet which admeasures 3000 square feet, is quantified at Rs.4,38,000/-. The transaction in question is commercial transaction, therefore, in view of law laid down in the case of **Rampur Fertilizer Ltd. vs. Vigyan Chemical Industeis (2009) 12 SCC 324,** the interest has to be paid on the amount at the rate paid by the banks.

22. We are conscious of the fact that in the preceding paragraph, we have held that market value of the plots has to be ascertained in the year 2005 when the

judgment and decree dated 10.4.1997 passed by the trial Court in previous round of litigation had attained finality. However, the instant case is not a case of compensation but a case of damages. The interest on the market value of the plots is being awarded by way of damages. The distinction between the term "compensation" and "damages" is well established. The term "compensation" as stated in the Oxford Dictionary signifies that which is given in recompense, an equivalent rendered. "Damages" on the other hand constitute the sum of money, claimed or adjudged to be paid in compensation for loss or injury sustained, the value estimated in money, of something lost or withheld.

[See, **Divisional Controller, KSRTC vs. Mahadeva Shetty and another (2003) 7 SCC 197].** In the backdrop of aforesaid well settled legal position, the claim of the plaintiff for grant of interest has to be tested on the touchstone of the principle, namely, that the person who has broken the contract is not to be exposed to the additional burden by reason of the plaintiff not having done what that he ought to have done as reasonable man. Though the sale deed executed in favour of the plaintiff was declared null and void by judgment and decree dated 10.4.1997, the plaintiff neither demanded the aforesaid amount from the defendants nor filed any

suit seeking the relief of damages, in the absence of any order prohibiting him to do so. The plaintiff in previous round of litigation had defended his title and had filed the layout plan approved by Town and Country Planning Authority and the permission granted by the competent authority under the Urban Land (Ceiling and Regulations) Act, 1976 in the previous suit. The plaintiff has also not offered any explanation in the plaint for not having filed the suit immediately after passing of the judgment and decree dated 10.4.1997 except mentioning the fact that appeal was pending against the judgment and decree passed by the trial Court. The plaintiff in para 69 of his cross-examination has admitted that he was placed in possession of the suit plots after execution of the sale deed. In view of preceding analysis, we restrict the claim of the plaintiff for interest at the rate of 9% per annum from 3.3.1989 till 10.4.1997. Therefore, the claim of the plaintiff for interest for a period from 3.3.1989 till 11.7.2005 is negatived.

23. The plaintiff shall also be entitled to refund of the amount of sale consideration of Rs.90000/- along with interest @ 9% per annum from the date 3.3.1989 till actual payment is made in view of indemnity clause with regard to defect of title contained in sale deeds as well

as in view of fact that entitlement of plaintiff to same has not been disputed by defendants. The plaintiff shall also be entitled to get Rs.15000/- as cost of litigation. However, the plaintiff is not entitled to receive sum of Rs.10000/- on account of mental agony in view of the law laid down by the Supreme Court in **Gaziabad Development Authority** (supra).

24. The submissions made by learned counsel for appellant in First Appeal No. 225/2011, that since plaintiff was well aware with regard to revised layout of plots in question and sale deeds were executed after obtaining permission of the competent authority, therefore, the agreement is void under Section 20 of the Act, do not appeal to us. In order to attract applicability of Section 20 of the Act, it has to be common mistake of fact of both the parties with regard to vital fact to the agreement, which is not the case in hand. Therefore, decision referred to in the case of **Tarsem Singh (supra)** does not apply to the fact situation of the case, as it pertains to Section 20 of the Act. The decision in the case of **Draupadi Devi (supra)** referred to by learned counsel lays down the proposition that burden to prove damages is on the plaintiff, whereas in the decision relied on in the case of **Jalpaiguri Zilla Parishad (supra)**,

it has been held that damages can only be given for any loss actually suffered and not for any indirect loss. Similarly, the submission of learned senior counsel for appellant in First Appeal No.187/2012 does not commend to us that market value of suit plots was Rs.3900/- per square feet, as the same is based on guidelines issued by Collector, which is fixed for fiscal purposes and for purposes of stamp duty and cannot be used for determining the market value of the property.

25. In view of preceding analysis, the judgment and decree by the trial Court dated 7.4.2011 passed in Civil Suit No. 1B/2011 is modified to the aforesaid extent. The respondents shall bear the cost of the proceedings. Accordingly, the appeals are disposed of.

(Alok Aradhe)
Judge.

(Rohit Arya)
Judge.

(yogesh)