

THE CONFLICT BETWEEN “CAVEAT EMPTOR” AND “AS IS WHERE IS BASIS”- AN ANALYSIS OF HARYANA FINANCIAL CORPORATION AND ANOTHER v. RAJESH GUPTA

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TITLE- Haryana Financial Corporation and Another v. Rajesh Gupta

CITATION- (2010) 1 SCC 655

DATE OF JUDGEMENT- December 15, 2009

COURT OF DECISION- Supreme Court of India

ABSTRACT

The impact of the interpretation of the “as is where is cause” has a major impact on agreements of sale and transfer. This clause has been developed from the common law doctrine “Caveat Emptor” or “Let the buyer beware”, which puts the responsibility on the buyer to carry out inspection diligently and ascertain all defects which are present before purchasing the property or entering into an agreement. If he fails to do so, and defects are later discovered, then the purchaser may not be entitled to revoke the contract or demand damages for it and it will be presumed that he was aware of such defects. In the 17th century, the case of Chandelor v Lupos laid down the foundation for the doctrine of Caveat Emptor wherein it was held that the seller of the store (defendant) would not be liable for any defects since the buyer (plaintiff) was free to examine and ascertain the same. This doctrine was also seen to develop on the principle, “no man can be cheated except it be with his own consent.” The “as is where is” clause provides that a thing which is contracted for is transferred from one to another in the condition it exists in and the transferee has accepted it along with its defects and faults which may or may not be apparent immediately. The seller is often seen to include this clause in the agreement so as to escape liability at a later stage for not informing the seller about material defects in the property. Today, in commercial contracts, which have

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the government as a party, wherein the government transfers a certain property to the bidder for activities such as construction on the government's behalf, it is observed that this clause is often included.

FACTS

The appellants, Haryana Financial Corporation had put a piece of land namely M/s. Unique Oxygen Pvt. Ltd. (or defaulting unit) on sale through an advertisement in the Economic Times. The initial offer of Rs. 25,000,000 by the respondent was increased to Rs. 50,00,000 during later negotiations. The respondent had deposited Rs. 2.5 lakhs as earnest money the same day. The absence of a separate independent passage had been brought to the notice of the appellants but did not elicit response from them in this matter. Furthermore, the respondents had enquired about the absence of an approved passage to the factory and had told them that the passage or gate being used being unauthorized. The Branch Manager too informed the appellants that the "rasta" or passage of "3 karams" mentioned in the sale deed did not have a direct connection to the Unit and no vehicles could move on the land which was bought by the defaulting unit in order to comply with the details of "rasta" put on the revenue record. Furthermore, the Office Building was constructed on a land not mortgaged to the appellants and if that was separated, the Unit would be deprived of the separate "rasta" and the main gate of the factory would also not be accessible. The appellants in reply had merely told the Manager and respondents of an independent passage being present to the Unit, placing reliance only on the documents supplied by the defaulting unit while taking loan. The Corporation had then issued notice to the respondent for the 25% balance sum of money to be deposited. However, receiving no satisfactory information, the respondents had not paid the amount asked for following which the appellants had invited new tenders for selling the land.

On having to relinquish the security deposit to the Corporation, the respondents filed a writ petition in the Punjab and Haryana High Court who ruled in their favour. This prompted the Corporation to appeal against the order in the Supreme Court.

ISSUES

The main issue at hand was whether the appellants would be liable for the defects in the plot when it had been accepted by the respondent on "as is where is" basis? And whether the purchaser of the plot could cancel a bid which was confirmed?

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ARGUMENTS

(i) Appellant:

The counsel for the appellant contended that the respondents could not back out of their bid that they had confirmed after they had accepted the plots of land on a “as is where is basis” merely on the grounds that the unit did not possess a separate road for approaching. Furthermore, it was the duty of the respondents to enquire about the “rasta” from the authorities. He also submitted that the respondent should have been aware of the “rasta” as he had visited the site priorly and that the presence of a “three karams rasta” leading from the road to the unit was indicated by the documentation which had been provided. Relying upon Section 55 of the Transfer of Property Act, 1882 the counsel also contended that the precise nature of the land being bought by the respondent was known to him and hence, as per the terms and conditions of the sale of property which were present in the advertisement, the appellants were entitled to the amount given as a security deposit. He also justified the appellants being entitled to the amount by relying upon Section 29 of The State Financial Corporation Act, 1951.

(ii) Respondent:

The counsel for the respondent submitted that the appellants had deceived the respondents by making them give a large deposit for an unsuitable piece of land. This was because, the land could not possibly be used in the form of a manufacturing unit in the absence of a separate passage. Furthermore, they had not paid heed to the respondents who had raised several objections regarding the absence of the independent road for approaching. He contended that the appellants could not be allowed to reap the benefits of their own wrongs and he concurred with the findings of the High Court stating that the ruling given by the Court could not be challenged on any ground which the appellants relied upon.

RULE

Sections 55(1)(a), 55(1)(b) of Transfer of Property Act, 1882
Section 29 of The State Financial Corporation Act, 1951.

ANALYSIS

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The Court observed that instead of making any enquiries independently the appellants had solely relied upon the documents which were provided by M/s. Unique Oxygen Private Limited. No efforts were also made by the appellants to verify the truth when they were informed by the defaulting unit's management that the Unit possessed a separate road for approaching. It was further noted that the Branch Manager had apprised the head office about the fact that the separate passage which was mentioned in the sale deed did not have a direct connection to the defaulting unit. Furthermore, the piece of land which had been bought by the defaulting unit solely to connect the 'rasta' with revenue record, was not mortgaged to the appellants and no vehicles could move on it. Consequently, when the above land was excluded, the plot size would reduce and the land which was offered for the sale would not contain the main gate of the factory.

It was noted that the appellants being an instrumentality of the State were expected to act in good faith by the defendant. The Court opined that it was reasonable for the defendant to expect and clearly believe that a proper independent passage or road to the Unit would be provided when he had already submitted Rs. 2.5 lakhs as security and was to pay Rs. 50 lakhs for purchasing the plot of land. The Unit would be unsuitable for being developed as a manufacturing unit and would not amount to more than a piece of agricultural land without the separate passage to it. If the respondent failed to deposit the money, the appellants could legally forfeit the amount given as earnest money. However, the Court held that the respondent had not failed to act in consonance with the conditions of the sale. But the appellants on the other hand had not informed the respondent about a material defect in the property- the absence of the "3 karams passage" to the Unit. Hence, they were liable for violating Section 55(1)(a) and (b) of the Transfer of Property Act, 1882.

JUDGEMENT

The Court held that in consonance with Section 55(1)(a) it was mandatory for the appellants to divulge the fact that the Unit did not have a separate passage to it. They also failed to apprise the respondent that no movement of vehicles was possible on the passage which was mentioned in the revenue record. In violation of Section 51(1)(b) the appellants did not produce all the documents required to the respondent. Hence, the Corporation or appellants could not rely on Section 55 of the Transfer of Property Act, 1882. Consequently, the Apex Court in this case issued directions for the appellants to refund the sum of money they had forfeited from the respondents with 12% interest, within a time period of two months from

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when a certificate copy of order was produced. Furthermore, if this was not complied with the appellants would be liable to pay 18% rate of interest till the payment was made. They were also ordered to bear costs of Rs. 50,000.

PRECEDENTS

- The Counsel on behalf of the Appellants relied upon the case of Union Bank of India v. Official Liquidator and Ors.² wherein it was held that no guarantee is held by the official liquidator for the property which is sold. But the Apex Court in the current case dismissed reliance upon this case stating that the above-mentioned case related to official liquidator selling the property and assets of a company which was liquidated and the case at hand the corporation was selling the property in the capacity of an owner and not an official liquidator at the directions of the court. Nevertheless, the respondent had diligently made enquiries and the appellant had failed to provide an accurate description of the property on sale.
- The Counsel for the appellants also cited the case of U.T Chandigarh Administration and Another v. Amarjeet Singh and Others³ which related to a developer and his responsibilities when he carried out activities related to developing the land and inviting applications for site allotments in a developed layout and hence was disregarded by the Court for not being applicable and similar to the case at hand.
- In the case of Rekha Sahu v. UCO Bank and Others⁴, on a similar issue the Court had laid down that the immunity which was often claimed by sellers in the guise of “as is what is” and “as is what is” was slowly dying and they needed to conduct due diligence before they proposed a property for sale. Furthermore, it also opined that auction procedures could be stopped by the purchaser by intervention of judiciary when there was no knowledge of the property with regard to subsequent encumbrances and it was sold on “as is where is basis”. Consequently, such material information which related to encumbrances would need to be provided or the purchaser would be believed to be misled.

COMPARATIVE ANALYSIS

²Union Bank of India v Official Liquidator and Ors., (1994) 1 SCC 575

³U.T Chandigarh Administration and Another v Amarjeet Singh and Others, (2009) 4 SCC 660.

⁴Rekha Sahu v UCO Bank and Others,(2013) SCC OnLine All 13203.

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The following case illustrate the contrasting approaches of the Court to similar case of interpretation the “as is where is” clause-

- In *V. Sambandan v. the Punjab National Bank*⁵, the Court was seen to dismiss the petition of a purchaser who had not made payments willfully and claimed refund of the amount which had been paid because the seller had sold the property without the copy of documents or the original title deed and had cited the reason of the property being sold on “as is where is basis”.
- In *United Bank of India v. Official Liquidator and Others*⁶, the Court had laid down that when a property is sold on an “as is where is basis”, the purchaser will be considered to buy it along with all liens, claims and encumbrances which are subject upon it.
- In *Punjab Urban Planning and Development Authority and Others. v. Raghu Nath Gupta and Others*⁷, the Apex Court held that once respondent had accepted the commercial plots from PUDA on an “as is where is basis”, they could not later claim that they had not been given the basic amenities.
- In *Delhi Development Authority v. Kenneth Builders & Developers Ltd*⁸the Court had opined that when a sale had been conducted on an “as is where is basis” it is presumed that the buyer had examined the site and was familiar with the conditions which were prevailing in all matters including facilities available with the infrastructure before bidding.
- In *Rajasthan State Industrial Development & Investment Corporation v. Diamond & Gem Development Corporation Ltd*⁹, the Court yet again, while deciding upon the accountability of the government which had transferred the property on an “as is where is basis”, stated that in such cases, the respondent could not contend that it was the responsibility of the government to provide accessibility from the road to the property.
- In *Ram Kala v. Delhi Development Authority*¹⁰, the Delhi High Court laid down that a petitioner could not contend that there was waste, garbage material and flowing water in an allotted parking site which was given to him for collected parking charges on an “as is

⁵V. Sambandan v the Punjab National Bank, MANU/TN/3041/2009.

⁶United Bank of India v Official Liquidator and Others,(1994) 1 SCC 575.

⁷Punjab Urban Planning and Development Authority and Others. v Raghu Nath Gupta and Others, (2012) 8 SCC 197.

⁸Delhi Development Authority v Kenneth Builders & Developers Ltd,(2016) 13 SCC 561.

⁹Rajasthan State Industrial Development & Investment Corporation v Diamond & Gem Development Corporation Ltd,AIR 2013 SC 1241.

¹⁰Ram Kala v Delhi Development Authority,2017 SCC OnLine Del 10258.

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where is” basis in both the above cases, action was sought against patent defects in the property.

Latent defects are those which cannot be normally be known to the buyer while he carries out inspection. Patent defects are those which a purchaser can discover if he carries out inspection diligently. Through the various precedents which have been cited above, it is observed that the judiciary has interpreted that the disclosure of material defects is mandatory and obligatory on the part of the seller. In the presence of the “as is where is” clause enshrined under Section 55 of the Transfer of Property Act, 1882, some Courts have presented a rigid interpretation, excusing the seller of his obligation to inform the purchaser of material defects. On the other hand, other Courts have also been observed to be bold in taking a more flexible interpretation so as to preserve the interests of the buyer in cases where the “as is where is” clause is present. The case at hand is an example of liberal interpretation displaying originalism and functionalism.

REFORMS & CONCLUSION

The doctrine of “Caveat Emptor” is given a new dimension by the “as is where is” clause. Under Section 55(1) of the Transfer of Property Act, 1882, the seller may thus be discharged of his obligation. Hence, it is of utmost importance that the prospective bidder examines the property with due diligence before making a bid. This would prevent the buyer from facing harsh implications in the long term when they are unable to assert objections if defects are discovered in the property contracted for.

In order to maintain a balanced construction between Section 55(1)(a) of the Transfer of Property Act, 1882, and Section 3 of the Transfer of Property Act, 1882 which reflects the doctrine of Caveat Emptor, it must be remembered that the Transfer of Property Act, 1882 is a combination of the Principles of Equity and English Common Law. The legislature could not have intended that the burden of being aware of all defects and being prudent in all cases should be on the buyer when the sale is made on “as is where is” basis. Hence, to prevent unjust enrichment, in such cases where the clause is used, the case should be adjudicated separately on the basis of circumstances and facts of each case, with the application of Principle of Equity rather than positive law which may have a strict interpretation. The purchaser’s responsibility should be limited under Caveat Emptor in the cases of patent defects. On the other hand, even if the purchase is made on “as is where is” basis, the seller

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possesses all the burden in the cases of latent defects to inform the transferee of all such defects which he is aware of.

The case at hand of Haryana Financial Corporation and Another v Rajesh Gupta, is representative of a laudable interpretation given by the Supreme Court which is progressive in nature with regard to the concept of “as is where is” under Section 55, proving that “let the buyer beware” no longer remains an acceptable defense available to the transferor of property.



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