

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**FIRST APPEAL No. 1084 of 2000
To
FIRST APPEAL No. 1087 of 2000
With
FIRST APPEAL No. 353 of 2001
To
FIRST APPEAL No. 356 of 2001**

For Approval and Signature:

**HONOURABLE MR.JUSTICE AKIL KURESHI
HONOURABLE MR.JUSTICE C.L. SONI**

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

**NARESH PRAHLADBHAI MODI & 1 - Appellant(s)
Versus
MAHENDRABHAI VITTALBHAI PAEL & 7 - Defendant(s)**

=====

Appearance :

MR DC DAVE for Appellant(s) : 1,
MR SHITAL R PATEL for Defendant(s) : 1 - 5.
NOTICE SERVED for Defendant(s) : 6 - 7.
MR HARIN P RAVAL for Defendant(s) : 8,
MR PM RAVAL for Defendant(s) : 8,

=====

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE C.L. SONI

Date : 7/05/2012

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE C.L.SONI)

1. This group of appeals arise out of common judgment and decree dated 14.06.2000 passed by the learned Civil Judge (S.D.), Mirzapur, Ahmedabad (Rural) Exh.256. By the said judgment and decree, the suits filed by the appellants (plaintiffs) of First Appeal Nos.1084 to 1087 of 2000 for relief of specific performance of contract came to be dismissed and as regards relief for damages came to be partly allowed. The original defendant Nos.1 to 5 (herein after referred to as "the landlord")were ordered to refund earnest money to the tune of Rs.85,500/- to the plaintiffs and to pay them damages of Rs.6,69,209/-. The plaintiffs have, therefore, filed First Appeal Nos.1084 to 1087 of 2000 against the dismissal of their suits for specific performance of contract and the defendants have filed First Appeal Nos.353 of 2001 to 356 of 2001 insofar as they are directed to refund earnest money and to pay damages to the plaintiffs. First Appeal No.1084 of 2000 is filed against the judgment and decree passed in Special Civil Suit No.380 of 1992, First Appeal No.1085 of 2000 is filed against Special Civil Suit No.381 of 1992, First Appeal No.1086 of 2000 is filed against Special Civil Suit No.382 of 1992 and First Appeal No.1087 of 2000

is filed against Special Civil Suit No.383 of 1992.

2. The Landlord executed agreement to sell in respect of lands bearing survey Nos.866,868, 856(3) and 863 dated 25.01.1981 in favour of the plaintiffs.

3. The plaintiffs filed above stated respective suits on 30.12.1992 for specific performance of contract on the basis of agreement to sell and in the alternative, for damages against the landlords. The landlords resisted the suit, by filing written statements and denied to have failed to perform their part of contract and alleged that it was the plaintiffs who had failed to perform their part of the contract therefore, they were not entitle to any relief as prayed for in the suit. It appears that before the suit could be filed, the landlords had already executed another agreement to sell in favour of the defendant Nos.6 and 7 (respondent Nos.6 and 7 in First Appeal Nos.1084 to 1087 of 2000 and the appellant Nos.6 and 7 in First Appeal Nos.353 of 2001 to 356 of 2001). Therefore, pending the suits, at the instance of the plaintiffs, they were joined. The plaint was amended and the landlords then filed further written statement and the defendant Nos.6 and 7 also filed their written statements. The landlords and defendant Nos.6 and 7 both have strongly opposed the suits mainly on the ground that the suits were filed after a long delay of 11 years and such suits were time barred and also on the ground that the plaintiffs having committed breach of agreement, they were not entitled to any relief in the suits filed by

them.

4. The suits were consolidated and on the basis of the pleadings of the parties, the learned Judge initially framed issues at Exh.153 on 08.09.1988 which are as under:-

"1. Whether plaintiffs side prove the contentions taken in the pleading or the plaint Exh. 1? If yes, what effect?

2. Whether the defendant side proves, the defence taken by the written statement/written statements? If so, what effect?

3. Whether this Court has got jurisdiction to entertain and decide the present suit? If no, what effect?

4. Whether the present suit suffers from misjoinder or nonjoinder of the necessary party?

5. Whether the present suit barred by the limitation?

6. Whether plaintiffs side is entitled to the reliefs prayed for? If yes, what?

7. What order and decree?"

5. It appears that with the consent of the parties, the issues were recast and they are as under:-

"1. Whether plaintiffs prove that defendant No.1 executed a Banakhat to sell the suit land in favour of the plaintiffs as alleged by executing Banakhat on 25.01.1981?

2. Whether plaintiffs prove that they were and are ready and willing to perform their part of

the contract, but the defendants fails to perform their part of the contract as alleged?

3. Whether plaintiffs are entitled to decree for specific performance of the Contract dated 25/01/1981?

4. Whether plaintiffs prove that in the alternative, they are entitled to recover the amount of damages as claimed with interest as alleged?

5. Whether defendants prove that plaintiffs fails to perform their part of the contract as alleged?

6. Whether suit is time barred by period of limitation?

7. What order and decree?"

6. The answers to the said issues are stated to be as under.

Issue Nos.1 to 4 in negative. Issue No.5 is stated to be included in original issue No.2 which is answered in affirmative and issue No.6 which is original issue No.5, is answered in affirmative.

7. The learned Judge though found that the landlords executed the agreement to sell(Banakhat) at Exh.181 to 184 in favour of the plaintiffs, however, the plaintiffs have miserably failed to prove that they were ready and willing to perform their part of contract. The learned Judge has further come to the conclusion that the plaintiffs having remained silent for 11 years after execution of the agreement and

having failed to produce any evidence to show that balance amount of consideration was paid to the landlords, the plaintiffs were not entitled to get decree for specific performance of contract, as prayed for. However, the learned Judge held the plaintiffs entitled to the damages and also for refund of earnest money paid by the plaintiffs. Pending the appeals, Sardar Vallabhbhai Patel Education Trust was permitted to be impleaded as party respondent No.8 vide order dated 27.11.2000 in First Appeal Nos.1084 to 1087 of 2000 filed by the plaintiffs on the ground that Sardar Vallabhbhai Patel Education Trust purchased the lands in question after the suits of the plaintiffs were dismissed and it was necessary party to the appeal. It appears that after Sardar Vallabhbhai Patel Education Trust was impleaded as respondent No.8 in the above appeals, the plaintiffs have moved 2 different applications being Civil Application Nos.7180 of 2001, and Civil Application No. 7182 of 2001 for permitting the plaintiffs to amend the plaint so as to challenge the sale deed executed in favour of the respondent No.8 by introducing the amendment as per 'Exh.A' of the applications, which we have allowed by separate order.

8. We find from the record that after suits were consolidated and evidence was recorded in Special Civil Suit No. 380 of 1992. On behalf of the plaintiffs in all the suits, Shri Bhailalbhai Bababhai Patel-plaintiff No.2 of Special Civil Suit No.380 of 1992, was examined as plaintiffs' witness No.1. He has stated in his deposition that the plaintiffs of the suits are his partners. He is also a Power of Attorney

holder of the plaintiffs in all the suits. He has stated that the agreement to sell was executed on 25.01.1981. The amount stated in the agreement to sell was paid through cheque i.e. Rs.27,500/-. He stated that as per the terms and conditions of the agreement to sell, the landlords were to sell the lands in question to the plaintiffs. He admitted that time of six months was fixed for performance of contract and within said time limit, permission under the U.L.C. Act and other requisite Government permissions were to be obtained by the plaintiffs, but the plaintiffs did not do anything. He also admitted that the plaintiffs did not approach landlords or issue any notice for performance of contract till filing of suit. He has stated that Shri Mahendrabhai, one of the landlords, had undertaken the proceedings for exemption under Section 21 of the U.L.C. Act and has also undertaken proceedings for releasing the lands from reservation, which continued upto 1990 but his attitude remained non-cooperative and, therefore, there was no option but to file the suit. This witness was cross-examined at length. On behalf of the landlords, Shri Mahendrabhai Vitthalbhai Patel-defendant No.1 was examined as defendant witness No.1. He has mainly stated that one of the main condition of the agreement was to obtain permission from the State Government within six months. The plaintiffs could not obtain such permission. He did not extend the time limit to the plaintiffs for obtaining such permission. He had already informed the plaintiffs for return of the earnest money. He has stated that there was no reservation when the agreement to sell was executed

and there was no agreement on his part to get the lands released from reservation of AUDA. He has stated that the agreement to sell was executed in 1981 and the suit came to be filed in the year 1992 and during this period, the plaintiffs did not initiate any proceedings. He also stated that the plaintiffs did not pay any other amount as agreed. He has stated that before the suit was filed, the lands were given to Arogyanagar Co-operative Societies in the year 1992. The lands were given to the said society at the rate of Rs.75/- per sq.mtrs. on 13.11.1992. He has also stated that the lands were agreed to be given to the plaintiffs at the rate of 17/- per sq.mtrs. and if the plaintiffs failed to bring the permission under U.L.C. Act from the State Government within six months, the agreement was to stand cancelled automatically. This witness was cross examined by the plaintiffs as also by defendant Nos.6 and 7.

9. We have noticed the important conditions in the agreement to sell, to which there is no dispute between the parties.

- (i) The price of the land was fixed at Rs.17/- per sq.mtrs.
- (ii) The time limit of six months for performance of contract was agreed upon. During the period of six months, the plaintiffs were to obtain necessary permission or No Objection Certificate from the authority under the provisions of U.L.C. Act at their own expenses. The

landlords were to co-operate and bound themselves to refund interest free earnest money if the permission as stated above could not be obtained by the plaintiffs.

(iii) The agreement to sell (banakhat) was agreed to be cancelled, if the plaintiffs did not obtain permission within six months.

10. Learned Advocate Shri Dave for the appellants has made the following submissions :

- (1) Since it was for the defendant to make the title clear and marketable, and till that was done, the plaintiffs were not obliged to adhere to time of six months provided in agreement. Therefore time was not essence of contract.
- (2) The plaintiffs were always ready and willing to perform their part of contract because the plaintiffs had paid substantial amount towards consideration as agreed for the lands in question.
- (3) Since there was no dispute about the execution of agreement to sell by the landlord in favour of the plaintiffs, simply because the suits were filed in the year 1992, that itself would not be a ground to refuse the decree of specific performance of contract in favour of the plaintiffs.
- (4) The plaintiffs had no cause to file a suit till

the plaintiffs were refused specific performance of an agreements by the landlords. Since the landlords' scheme under section 21 of the ULC Act was under process and since the land in question were put under reservation, the plaintiffs all throughout waited for clear and marketable title. However, the landlords surreptitiously entered into an agreement to sell with respondent No.6 society on 13.11.1992 and thereafter, entered into supplementary agreement and only thereafter, the plaintiff could finally know that the landlords had by above stated conduct, refused to perform their part of contract, therefore, if anybody was responsible for breach of contract, they were the landlords who committed breach of agreement and the plaintiffs were always ready and willing to perform their part of contract.

(5)The fact that the landlords entered into agreement to sell in the year 1992 with respondent No.6 society though there was already an agreement to sell pending with the plaintiffs and the fact that immediately after the suit of the plaintiffs came to be dismissed, landlords finally sold off the lands in favour of respondent no.8 newly added party in the appeal speaks volumes about the conduct of the landlords which clearly reveals that the landlords never wanted to perform their part of contract. In fact, it was collusive act of the landlords, respondent no.6 society and new purchaser to defeat the rights of the plaintiffs. Simply because there was condition of obtaining

permission from the ULC Authorities and simply because the time limit of six months was provided for having such permission, it cannot be said that the plaintiffs committed breach of agreement by not obtaining permission nor could it be said that the plaintiffs were not ready and willing to perform their part of the contract. The plaintiffs had all genuine reasons to file the suit after eleven years because till the filing of the suit, there was no refusal on the part of the landlords to perform their part of the contract.

(6) In any case, by virtue of repeal of the ULC Act in the year 1999, condition of obtaining permission from the ULC Authorities would pale in to insignificance. The plaintiffs were always ready and willing to perform their part of contract and as on today also, they are ready and willing to perform their part of contract. The plaintiffs have shown their readiness and willingness to deposit the remaining amount as per the agreement towards consideration, therefore, the suits of the plaintiffs are required to be allowed and decree for specific performance of contract is required to be passed in favour of the plaintiffs because there is no other condition in the agreement to sell which remains to be performed or acted upon by the plaintiffs.

11. In reply to the aforesaid arguments advanced on behalf of the appellants, learned advocate Mr. Shital

Patel for the landlords has made the following submissions :

- (1)The plaintiffs have failed to comply with the condition for obtaining permission within the period of six months.
- (2)Time of six months was the very essence of contract because as specifically provided in an agreement to sell, agreement to sell itself would stand cancelled on expiry of the period of six months, if no permission was obtained from the ULC Authorities.
- (3)The plaintiffs have not paid any amount except the earnest money.
- (4)The plaintiffs have remained silent for eleven years without doing anything. During this period of eleven years, the plaintiffs have not addressed even a single letter or notice showing their readiness and willingness to comply with their part of the contract.
- (5)Since the time was essence of contract, the plaintiffs are not entitled to any relief in a suit which is filed after a period of eleven years.
- (6)Since the plaintiffs did not do anything for a period of eleven years, landlords were justified in entering into an agreement to sell with respondent no. 6 cooperative society and also selling the lands in favour of respondent no.8.
- (7)In the agreement with the plaintiffs, price for the lands in question was fixed at the rate of Rs.17.00 per square meter whereas in the

agreement with respondent no.6 society, the price for the land in question was at the rate of Rs. 75.00 per square meter and the final sale in favour of respondent no.8 was at higher price. This shows upward trend in the rise of prices during this period of eleven years for which the plaintiffs remained silent and when the price of the lands have shoot up like above and when the plaintiff filed the suit after 11 years, the plaintiffs are not entitled to any discretionary relief of specific performance of agreement.

12. Learned Senior Advocate Mr. K.M. Patel with learned advocate Mr. Shah for Respondent No.8 has made the following submissions in reply to the submissions made by the learned advocate for the appellants :

- (1) From the evidence on record, it has been clearly proved that the plaintiffs were never ready and willing to perform their part of contract.
- (2) Parties to the agreement clearly intended that the time was the essence of contract and failure to abide by the term of six months within which the plaintiffs were to obtain necessary permission from the concerned authorities under the U.L.C. Act would make the agreement itself unenforceable.
- (3) Since the plaintiffs did not take any action so as to perform their part of the contract and remained silent for about 11 years, the landlords were free from their obligations under the agreement and it was open for the landlords to

enter into agreement for sale with any other person.

(4)The suit was filed after the landlords entered into an agreement to sell with respondent No.6 society. When the agreement to sell was entered into with respondent no.6 society, period of about eleven years had already passed and during these 11 years, the plaintiffs have not approached either the landlords for execution of the sale deed or the Court of law seeking relief for execution of the sale deed. Since the time was the essence of contract, dormant attitude on the part of the plaintiffs in not showing any inclination to perform their part of obligations within the time limit or not approaching the court of law within the reasonable time would make such plaintiffs disentitled for the relief of specific performance of contract. Relief of specific performance of contract is discretionary relief and if the Court has found that the plaintiffs themselves are responsible for not performing their part of contract and if the plaintiffs have consumed long time for approaching the court and in the mean time, the price of the lands have shoot up, the Court below is justified in refusing to grant the relief of specific performance of contract in favour of the plaintiffs.

(5)Respondent No. 8 is a bona fide purchaser who has purchased the property immediately after the dismissal of the suit and the plaintiffs are not entitled to any decree for specific performance

of contract so as to take away the rights accrued in favour of respondent no. 8. When the evidence on record has conclusively proved that the plaintiffs were never ready and willing to perform their part of contract and the plaintiffs were not vigilant for their rights for a period of about eleven years, the Court below is justified in refusing to grant the relief of specific performance in their favour.

(6) Respondent No. 8 is a reputed institution which has made huge investment in developing the institution and the plaintiffs who have not paid any amount except the earnest money and who were responsible for committing breach of contract are not entitled to any relief on the basis of agreement to sell under the discretionary jurisdiction of the Court.

In support of his submissions, learned Senior Advocate Mr. K.M. Patel has relied upon two decisions of Hon'ble the Apex Court, one in the case of Bal Krishna & Anr. v. Bhagwan Das (Dead) by LRs & Ors., reported in 2008 SC 1786 and the another in the case of Manjunath Anandappa Urf Shivappa Hansi v. Tammanasa and others, reported in AIR 2003 SC 1391 to point out that, the grant of specific performance of contract is discretionary relief and if the evidence on record clearly establish that the plaintiffs were never ready and willing to perform their part of contract and if the plaintiffs do not take any action for a long time, and if the plaintiffs themselves are responsible for breach of contract, the judgment and decree passed by the trial court exercising

discretionary jurisdiction refusing to grant specific performance of contract in favour of the plaintiffs should not be interfered.

13. So far as the other four appeals preferred by the landlords being First Appeal No. 353/2001 to 356/2001 are concerned, learned advocate for the appellants means landlords has submitted that since the plaintiffs are found to have committed breach of contract and have not performed their part of contract, the plaintiffs could not have been awarded damages in alternative to their claim for specific performance of contract. He has further submitted that the plaintiffs cannot be permitted to gain out of their own wrong. He would further contend that the damages could be awarded in favour of the party who has been found to have suffered because of the breach of contract committed by the other side, which has not been proved in the present case. In the present case, the plaintiffs have not complied with the main condition of contract, have not paid any amount towards the consideration except the earnest money, have not taken any action for a long period of about eleven years and by virtue of the clause as regards time of six months being the essence of contract, the agreement stood cancelled and, therefore, there was no question of awarding any damages in favour of the plaintiffs. The plaintiffs having been found not to have performed their part of contract, were not at all entitled to any damages and, therefore, award of damages in favour of the plaintiffs cannot be sustained.

14. As against these arguments, learned advocate Mr. Dave has submitted that the plaintiffs were not responsible for not getting the sale deed executed in their favour. He submitted that till 1992, there was no refusal for performance of contract by the landlords and now only because of the passage of long time, the plaintiffs are not being granted discretionary relief of specific performance of contract. However, since the landlords have not disputed the execution of an agreement to sell, the plaintiffs would be certainly entitled to such relief and, therefore, he urged that the trial court has not committed any error in awarding damages in favour of the plaintiffs.

15. Having considered the rival contentions advanced by the learned advocates for the respective parties, following four main points arise for consideration of this Court.

- (1) Whether the time was the essence of contract?
- (2) Whether the plaintiffs were ready and willing to perform the contract?
- (3) Whether in a suit filed after long period of eleven years for specific performance of contract, the plaintiffs can be granted the relief of specific performance of contract when the prices of the real estate have shoot up during this long period?
- (4) Whether the learned Judge was justified in passing the decree for damages in favour of the plaintiffs, having come to the conclusion that the plaintiffs have not performed their part of contract and were responsible for committing breach of the conditions of contract?

16. **Point No.1** : In the present case, time limit of six months for performance of contract was fixed. During this period, the plaintiffs were to obtain

permission from U.L.C. Authorities. The condition of obtaining permission and on failure to take permission within six months, the agreement was to stand cancelled clearly reveals that the parties had intended and taken clear six months to be the time for performance of contract. Though ordinarily in respect of contract for sale of immovable property, time is not taken to be essence of contract. However, it is not always in all cases. Therefore, we hold that the time was the essence of contract.

In case of **Citadel Fine Pharmaceutical v. Ramaniyam Real Estate (P) Ltd., reported in (2011) 9 SCC 147 and (2010) 1 SCC 287**, Hon'ble the Supreme Court has held that when the condition in the contract clearly reveals that the parties intended to perform the contract within the stipulated time and when consequences of non-completion of terms were clearly spelt out strict compliance of time limit in the contract is to be adhered to and the time specified in the contract has to be taken as the essence of contract and in such a case, the plaintiff is not entitled to specific performance of contract.

17. **Point No.2** : As per the condition of agreement, the plaintiffs were required to obtain necessary permission from the authorities under the ULC Act within six months. The plaintiffs were also required to make the payment. Only after obtaining necessary permission by the plaintiffs within six months, the landlords were to satisfy the plaintiffs about clear titles and to accept the money and to execute the sale deed. Admittedly, the plaintiffs have not taken any action within six months period, and for 11 years till

the suit was filed. The plaintiffs did not approach the landlords with any such permission or with remaining amount of consideration and not called upon the landlords for a long period of eleven years to execute the sale deed. Therefore, we are of the opinion that the learned trial Judge has come to correct conclusion that the plaintiffs were never ready and willing to perform their part of agreement.

The above conclusion gets support from the two decisions cited by the learned Senior Advocate Mr. K.M. Patel. Hon'ble the Supreme Court has laid down that merely making statement that the plaintiffs were ready and willing to perform their part of contract is not enough. The plaintiffs have to prove that the plaintiffs had approached landlord to perform their part of contract by fulfilling the conditions in the agreement and the plaintiffs have taken necessary action within reasonable period. It is held that the readiness and willingness on the part of the plaintiffs to perform their part of contract would be required to be demonstrated by the plaintiffs from the institution of the suit till it is culminated into a decree.

18. **Point No.3:** We have noticed from the evidence on record that the agreement to sell in all the cases is dated 25.1.1981. After about eleven years, when the landlords entered into an agreement in favour of respondent no.6 society, on 30.12.1992, the suit came to be filed by the plaintiffs on 23/30.12.1992. As stated above, the plaintiffs were to obtain necessary permission from the concerned authority under the ULC Act within six months. The plaintiffs were to make

remaining payment towards the consideration after obtaining such permission and the landlords were to execute the sale deed after satisfying the plaintiffs about clear titles of the property. We have also noticed that when the agreement was entered into, price of the lands was fixed at Rs.17.00 per square meter and the price fixed with the respondent no.6 society when the agreement to sell was entered with the said society on 30.12.92 was Rs.75.00 per square meter. Thus, this gives an idea about rise in the price of the land to a great extent. In his evidence, witness for the plaintiffs has categorically admitted that it was the responsibility of the plaintiffs to obtain necessary permissions within the time stipulated. That the plaintiffs did not obtain such permission at all. That the plaintiff did not pay any amount except the amount of earnest money in the banakhat. From the evidence on record, it appears that the plaintiffs have tried to put forward excuse of the land being kept in reservation and initiation of the proceedings of the landlords under section 21 of the ULC Act, 1976 but the plaintiffs have remained unsuccessful in proving the above said facts. There was no such condition in agreement also. From the evidence of the plaintiffs we find that there is no reasonable explanation coming from the side of the plaintiffs for causing delay of long period of eleven years in filing the suit for specific performance of contract against the landlords. The plaintiffs have not done anything for this long period of eleven years. We have also held that the time was the essence of contract. We have also noticed that there was

upward revision of prices to a great extent during the intervening period of eleven years. Therefore, we are of the opinion that the plaintiffs are not entitled to relief of specific performance of contract as claimed in the suit and we concur with the findings and conclusions recorded by the trial court for refusing the relief of specific performance of contract.

19Point No.4:- As regards last point about damages, no elaborate discussion is required in view of the fact that not only the learned trial Judge has found that the plaintiffs were responsible for non performance of their part of contract but the plaintiffs are also responsible for delay in approaching the court of law for claiming relief of specific performance of contract or in the alternative for damages, in lieu of the decree for specific performance of contract. From the evidence on record, as we have noted above, it clearly emerges that the plaintiffs were never ready and willing to perform their part of contract. The plaintiffs after getting an agreement executed in their favour, remained silent, did not take any action so as to perform their part of contract. In fact, the agreement to sell clearly stated that if the plaintiffs do not obtain any permission within six months, the agreement would automatically stand cancelled and the landlords shall refund the amount of earnest money to the plaintiffs. The plaintiffs have also not paid the remaining amount of consideration nor have at any point of time approached the landlords to show that they were ever ready and willing to perform their part of contract.

In fact, it is the plaintiffs who were responsible for breach of contract and it clearly appears that the plaintiffs were never ready and willing to perform their part of contract to get the sale deed executed in their favour by complying with the conditions incorporated in an agreement to sell. The plaintiffs, for no reason, remained silent for a long period of eleven years. Landlords were, therefore, justified in executing agreement to sell in favour of respondent no.6 society in the year 1992. Therefore, when the plaintiffs having been found to have committed breach of an agreement and when the landlords were within their rights to enter into an agreement with respondent no.6 society in the year 1992, we are of the opinion that the learned trial Judge was not justified in awarding damages in favour of the plaintiffs who were never vigilant towards their rights flowing from an agreement to sell. Therefore, in our opinion, the decree awarding damages in favour of the plaintiffs cannot be sustained. We accordingly hold that the plaintiffs are not entitled to damages. To this extent, appeals filed by the landlords are required to be allowed and the decree awarding damages in favour of the plaintiffs is required to be quashed and set aside.

20. For the reasons recorded above, first appeals No.1086 to 1087 of 2000 filed by the appellants original plaintiffs against the impugned judgment refusing to pass decree of specific performance of contract are dismissed. Judgment and decree refusing specific performance of contract is confirmed. First

Appeals filed by the landlords being First Appeal No. 353/2001 to 356/2001 stand allowed. Consequently, judgment and decree passed by the trial court awarding damages in favour of the plaintiffs stands quashed and set aside. Decree to be drawn accordingly. No order as to costs. Decree shall be modified accordingly.

(Akil Kureshi,J.)

(C.L.Soni,J.)

an vyas