

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.3595 of 2003 (O&M)

Date of Decision: November 02, 2015

The Amritsar Improvement Trust, Amritsar Appellant

vs.

Talwinder Singh Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. H.S. Sethi, Advocate for the appellant.

Mr. Ajaivir Singh, Advocate for the respondents.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.

Impugned in the present regular second appeal is the judgment and decree dated 24.01.2003 passed by learned Addl. District Judge, Amritsar, affirming the judgment and decree dated 23.10.2000 passed by learned Civil Judge (Jr. Divn.), Amritsar, vide which the suit of the plaintiff was decreed and defendant No.2 i.e. The Amritsar Improvement Trust, Amritsar (in short 'the Trust') was directed to consider the claim of the plaintiff as genuine member of the society and if he is found entitled for allotment of plot, the same be allotted to him as per the Ajnala Road Development Scheme of the Trust.

The facts of the case are that the plaintiff, who happens to be the practicing Advocate at District Court, Amritsar, filed a suit

for mandatory injunction for directing defendant No.2 to make allotment of the plot to the plaintiff, who is the member of the Amritsar District courts Advocates Co-operative House Building Society Limited, Amritsar (in short 'the Society') as per the sanction granted by the State Government vide memo No.867-144-CII-83, dated 14.07.1983 in the Trust and also as per directions of this Court in Civil Writ Petition No.3749 of 1993 dated 26.04.1994.

The case of the plaintiff before the lower court was that the plaintiff is an advocate and practicing in the District Court at Amritsar. He was enrolled in the Bar Council of Punjab and Haryana High Court on 12.06.1983 vide No.389 of 1983. The advocates, who were practicing in District Court at Amritsar, and had no residential house at Amritsar had formed a society called "The Amritsar District Courts Advocates Co-operative House Building Society Limited, Amritsar" and the said Society was registered with the office of the Registrar, Co-operative, Societies, Punjab vide registration No.1000 on 18.01.1981. The Society approached the Government for allotment of residential houses to its members and ultimately, the Government agreed to make the allotment of plots as per sanction letter of July, 1983.

Despite the best efforts made by the Managing Committee of the Society, the defendant-authorities did not make allotment. Then a civil suit was filed on 03.03.1988 against defendant No.2 and others, which was decreed by the Civil Court and defendant No.2 was directed to make the allotment to members of the Society.

The appeal filed by defendant No.2 against the judgment of the civil court was dismissed by learned Addl. District Judge, Amritsar, vide order dated 28.02.1992. The plaintiff also became member of the said society and the letter dated 20.12.1994 was issued to him in this respect by defendant No.3. The plaintiff claimed that he is an ex-serviceman and had also applied for the allotment of the plot in Ajnala Road Development Scheme through Zila Sainik Board, Amritsar. He had also applied for the plot in the Development Scheme, opposite Guru Nanak Dev University, Amritsar and deposited ₹4,000/- on 27.09.1989. It goes to show that the plaintiff, in fact, was in need of the plot. Some members of the Society, who were not allotted plots, had filed CWP No.3749 of 1993 before this Court, in which the Division bench vide order dated 26.04.1994, held that those, who are the bonafide members of the Society, the allotment be made to them, immediately. The plaintiff being a bonafide member of the Society requested the Trust vide letter dated 03.01.1995 for allotment of the plot, in view of the directions of this Court issued on 26.04.1994 in CWP No.3749 of 1993 but the defendant No.2-Trust refused to make the allotment to the plaintiff. Hence, the present suit.

In amended written statement, the contesting defendant took the stand that the plaintiff is not a genuine member of the Society. Hence, he is not entitled to the allotment of the plot. It was admitted that the plaintiff is an advocate. It is also admitted that the Society was registered on 18.01.1981. It was stated that the Society

had supplied the list of 80 members through its President. In the said list the name of the plaintiff Talwinder Singh did not exist. As per office record of the defendant, another list of 74 members, who were eligible for allotment of plots, was supplied by the Society to the defendant-Trust. The name of the plaintiff did not exist in the said list also. The filing of the civil suit was admitted. It was stated that when the suit was decreed, the plaintiff was not a member of the Society. It was claimed that the defendant-Trust is not suppose to allot plot to every advocate, who becomes the member of the society. In replication, the plaintiff reiterated his case.

From the pleadings, following issues were framed:

- “1) Whether the plaintiff is the member of the Amritsar District Courts Advocates Co-operatives House Building Society Limited, Amritsar?OPP.*
- 2) Whether the plaintiff is entitled to allotment of residential building as per the sanction granted by the Government vide letter dated 14-7-1983?OPP*
- 3) Whether the plaintiff is entitled to the mandatory injunction as prayed for?OPP*
- 4) Whether the plaintiff has no locus standi to file the present suit?OPP*
- 5) Whether the suit is bad for non-service of notice u/s 98 of the Punjab Town Improvement Act?OPD.*
- 6) Relief.”*

After recording the evidence, the lower court determined issued No.1 in favour of the plaintiff. Issue Nos.2 and 3 were also decided in favour of the plaintiff and so were issues Nos.4 and 5 and the suit of the plaintiff was decreed vide judgment and decree dated

23.10.2000.

Aggrieved by the said judgment and decree, the Trust preferred an appeal, which was dismissed by learned Addl. District Judge, Amritsar on 24.01.2003.

I have heard learned counsel for the parties and have also carefully gone through the case file.

A perusal of the judgment and decree of the lower court shows that the lower court had granted the following relief to the plaintiff:

“It is ordered that the suit of the plaintiff is decreed with costs with a direction to the defendant No.2 to consider the claim of plaintiff as genuine member of the society and if he is found entitled for allotment of plot the same be allotted to him as per the Ajnala Road Development Scheme of the Amritsar Improvement Trust.”

It goes to show that defendant No.2-Trust (appellant herein) was directed to consider the claim of the plaintiff as a genuine member of the Society, if he is found entitled, the same be allotted to him as per the Ajnala Road Development Scheme of the Trust.

In this way, it was left to the Trust to examine the claim of the plaintiff to decide whether the plot is to be allotted to the plaintiff or not. Against this order, the Trust went up in appeal which was dismissed by learned Addl. District Judge, Amritsar.

When the learned counsel for the appellant was questioned in this regard as to why the case of the plaintiff was not

considered, when ultimately it was the Trust, which is to decide the matter. Learned counsel for the appellant contended that both the courts below have held that the plaintiff is a genuine member of the Society. Therefore, the findings, which are disturbing the appellant need to be reversed.

Learned counsel has referred to some documents and has pressed that the plaintiff became the member of the society on 02.08.1994 i.e. after the passing of the order dated 26.04.1994 by this Court. He was not the plaintiff in the civil suit. Therefore, he cannot draw the benefit of the order of this Court.

It is necessary to trace the history of the case. It is admitted case that the Society was registered with the Registrar, Co-operative, Societies, Punjab vide registration No.1000 on 18.01.1981. It is also not a denying fact that as per the certificate (ex.P7/1) issued by Bar Council, Chandigarh, the plaintiff was enrolled as an advocate on 12.06.1983.

Now, the question would arise as to when the plaintiff became the member of the Society?

Defendant had produced certificate (Ex.P1) issued by Balkar Singh, Inspector of the Co-operative Societies on the file to show that the plaintiff became member of the Society on 02.08.1994. Balkar Singh himself was examined as PW1 and he proved the certificate Ex.P1. He reiterated that the plaintiff was entered as a member of the society on 02.08.1994. He admitted that members at serial no.149 to 290 were entered on 02.08.1994 and that there are

no signatures of any authority entering the new members in the register. The membership was to be given by the Society and not by any other authority. Therefore, it is established that the plaintiff became the member of the Society on 02.08.1994.

The copy of the judgment and decree dated 11.03.1991 (Ex.PC) of the lower court shows that it was the Society, which had filed the suit against the Trust for directing the defendant to make allotment of the plots to the members of the Society vide memo No.867-144-C-II-83, dated 14.07.1983 (Ex.PD). The suit was decreed and the court directed the defendant to consider the case of the genuine members for allotment of the plots of 150 sq. yards each in the Ajnala Road Development Scheme, subject to the availability of the plots and further subject to completion of all the formalities laid down under the Punjab Town Development (Utilization of land and Allotment of Plots), Rules, 1983 and in letter No.867-144-C-II-83 dated 14.07.1983 issued by the Punjab Government. The formalities were ordered to be completed within four months from the date of passing of the judgment by the genuine members of the Society and thereafter the defendant shall consider the question of allotment of the plots to them.

The copy of the order of this Court (Ex.PB) shows that CWP No.3749 of 1993 was filed by the advocates, in which the plaintiff was not included. Some other Civil Writ Petition Nos.7420 of 1993, 3939 and 5226 of 1994 were also filed by the other advocates, which were disposed of by a single order dated 26.04.1994 by the

Division Bench of this Court. The Division Bench of this Court had ruled as under:

“-- we hereby order that the lawyers who have already been declared genuine members, they be allotted plots immediately and rest of the lawyers be granted a personal hearing before accepting or rejecting their claim by a speaking and well reasoned order which be passed by the improvement Trust --”

The allotment was ordered to be made within a period of three months from the passing of the order.

The plaintiff also claims the benefit of this order. The plaintiff became the member of the Society on 02.08.1994 i.e. within four months, in terms of the decree of the Civil Court and after the order passed by this Court in writ petition.

The contention of learned counsel for the appellant is that the Society had supplied the list (Ex.D2) of 74 genuine members of the Society. A perusal of the said list shows that at that stage, only those lawyers, who had filed the affidavit were treated as eligible members and a note was given that a supplementary list shall be submitted later on when the other members will file affidavits. It goes to show that EX.D2 supplied on 07.01.1992 was not the final list. Further, list (Ex.D3) of 148 members was prepared, wherein the name of the plaintiff does not figure.

I am of the view that the fact whether the plaintiff is the genuine member of the society or not is not to be determined by the Society. The Society just mentioned the names of those advocates,

who had filed affidavits. The genuineness for allotment of the plots is to be determined by the Trust.

It is to be noted that one Tejinder Singh Sodhi, Inspector, Co-operative Societies was examined as PW6 by the plaintiff. He deposed that he was appointed on the directions of this Court and he worked as such for three months from 24.12.1996 to 24.03.1997 and prepared the list of genuine members of the Society. This was done after serving notice to the Trust and the members of the Society. He had also prepared the list dated 06.03.1997 (Ex.D2/1), wherein the name of the plaintiff finds mentioned as genuine member. Again it is reiterated that the Society had given its opinion regarding the genuineness of those members and as per judgment and decree of the lower court, the Trust is to determine about the genuineness of the members for the allotment of the plots. For that purpose, various facts are to be examined.

Therefore, the mere fact that the plaintiff became the member of the Society later on does not mean that his name cannot be considered for the allotment of the plot, subject to fulfillment of the requisite conditions.

Learned counsel for the appellant has referred to the authorities of this Hon'ble High Court delivered in ***“Union Territory, Chandigarh vs Parmod Kumar”, 2000(2) R.C.R.(Civil) 651 and “Amritsar Improvement Trust vs Amritsar District Court's Advocates Co-op. House Building Society”, 2001(3) R.C.R.(Civil) 528.***

Learned counsel has pressed that case of ***Amritsar Improvement Trust***, was involving the present Society. The case of T.S. Virk, Advocate was the different case and was wrongly relied upon by the lower court. In fact, his name was missing from the list. The grounds for allotment to him were different and distinguishable from the facts of the case of the present plaintiff.

The case of ***Parmod Kumar 's case (supra)*** pertains to the allotment of left out plots after the cut of date.

I am of the view that the Trust is supposed to consider the case of the each applicant, in terms of the judgment and decree passed by the lower court to decide whether the plaintiff fulfills all the requisite conditions or not and if he is found entitled for allotment of plot, the same be allotted to him as per the Ajnala Road Development Scheme of the Trust. The findings of the facts have been recorded. Otherwise, on merits also, I do not find any illegality in the impugned judgment and decree. No substantial question of law arises in this appeal.

Hence, the present regular second appeal stands dismissed.

November 02, 2015
sarita

(KULDIP SINGH)
JUDGE