

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 2000 of 2015

Date of Decision: April 20, 2015

Estate Officer HUDA, Kaithal and others
.....Petitioners

Vs.

Jai Chand
.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Raman Gaur, Advocate
for the petitioners.

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M.M.S. BEDI, J.

The Estate Officer and Chief Administrator of petitioner No.3 Haryana Urban Development Authority, have preferred the present revision petition under Article 227 of the Constitution of India challenging the order dated January 31, 2015, annexure P-4 and order dated March 7, 2015, annexure P-5 passed in execution proceedings filed by Jai Chand, respondent in case Jai Chand Vs. EO HUDA and others, pending before Civil Judge (Senior Division), Kaithal.

Brief facts relevant for decision of the present revision petition are that respondent-plaintiff had filed a suit for mandatory injunction claiming allotment of 250 sq. yards plot at a claimed price on the basis of

oustee policy of HUDA dated March 18, 1992. Suit of the plaintiff-responder was decreed by the trial Court vide judgment and decree dated March 13, 2008. The appeal preferred by the defendant- petitioners was dismissed by the first Appellate Court vide judgment dated April 1, 2009. RSA No. 2793 of 2009 was disposed of in limine vide order dated September 6, 2012 in terms of Division Bench judgment in LPA No. 2096 of 2011 decided on April 25, 2012 in case HUDA and others Vs. Sandeep and others. The portion relied upon by the petitioners to seek support from the order in RSA No.2793 of 2009 reads as follows:-

“At the very outset, learned counsel for the appellants-defendants has referred to the judgment delivered by the Division Bench of this Court in **LPA No.2096 of 2011, titled as Haryana Urban Development Authority & others vs. Sandeep and others, decided on 25.4.2012**, laying down detailed principles of law and guidelines for allotment of plots under oustees quota and prayed that the instant appeal may be disposed of in the same terms.

Accordingly the instant appeal stands disposed of in terms of the order passed by the Division Bench of this Court in LPA No.2096 of 2011, decided on 25.4.2012.”

Learned counsel for the petitioners submits that when execution application of decree dated March 13, 2008 passed by the trial Court was

filed by the respondent, the petitioner authorities submitted objections in the execution proceedings claiming that the order dated April 25, 2012 would disentitle the respondent to the fruits of the decree. It has been claimed that as the respondent had not applied for the plot by depositing the required amount of 10% in the year 1992, he would not be entitled to execute the decree as the judgment of Sandeep's case (supra) in LPA provides that an oustee is entitled for consideration, for the allotment of the plot only till such time the plots were available for the Oustees in the sector for which the land was acquired for residential/ commercial purposes. As there are no plots available in Sector 19 and 20, Kaithal as such no separate plot can be allotted to the respondent- decree holder. The petitioners are aggrieved by the dismissal of the objections vide order dated January 31, 2015 and the order dated March 7, 2015. The impugned order dated March 7, 2015 reads as follows:-

“Till date JDs have not allotted the plot to the DH in compliance of decree under execution and as directed vide order dated 31.01.2015. On the last date of hearing and before that Executive Officer HUDA was directed to appear in person in the court if JDs failed to allot the plot to the decree holder. But JDs neither allotted the plot nor EO HUDA appeared in the court in person to explain the reason for not allotting the plot to the DH in compliance of order dated 31.01.2015 and subsequent orders. Even

today no one from the office of HUDA, Kaithal appeared in the court. Learned Counsel for the JDs appeared in the court before lunch break and he was asked to enquire from the JDs regarding compliance of decree. But thereafter even learned counsel for the JDs has not appeared in the court. Therefore under these circumstances I am satisfied that JDs will not allot the plot to the DH unless coercive method is used against them. Therefore warrant of arrest be issued against the Executive Officer HUDA Kaithal for 20.03.2015 and the JDs are again directed to allot the plot to the DH. It is also made clear that if by 20.03.2015 JDs fail to allot the plot as directed by this court then JD No.2 Chief Administrator HUDA, Panchkula shall appear in person in the court to explain the reasons for non compliance of decree under execution.

Dasti copy of this order be handed over to office of Estate Officer, HUDA, Kaithal against proper receipt.”

I have carefully considered the contentions of learned counsel for the petitioners. The revision petition has been filed on two grounds (i) the decree dated March 13, 2008 upheld by the first Appellate Court is not executable in view of a subsequent LPA decided on April 25, 2012 in **Sandeep Kumar’s case** (supra) and (ii) that the executing Court has acted

illegally in adopting coercive means by directing that in case the judgment debtors fail to allot the plot to the decree holder, the Chief Administrator, HUDA, Panchkula shall appear in person to explain the reasons for non-compliance of the decree under execution. I have also carefully gone through the facts and circumstances of this case.

So far as the contention of learned counsel for the petitioners regarding the non-executability of the decree on the basis of the decision of LPA in **Sandeep Kumar's** case (supra) is concerned, the said objection has been carefully considered by the Executing Court. Copy of the judgment in LPA has been appended with the petition as annexure P-7. The operative part of the order passed by the Executing Court dismissing the objections considering decision of LPA reads as follows:-

“6. I have heard learned counsel for the parties at length and have also gone through the entire case file very thoroughly and carefully.

7. In LPA no.2096 of 2011 titled as Haryana Urban Development Authority and others Vs. Sandeep and others Hon'ble Punjab & Haryana High Court following directions were issued:-

i. That date of notification under Section 4 of the Land Acquisition Act. 1894 is relevant to determine the eligibility of a land-owner for allotment of a residential plot, even if the

acquisition is for the purposes of commercial, industrial or institutional;

- ii. That the entitlement of the size of the plot and the procedure for allotment shall be as on the date of allotment in pursuance of an advertisement issued inviting application from the oustees;
- iii. That the HUDA or such other authority can reserve plots up to 50% of the total plots available for all reserved categories including that of oustees. As to what extent there would be reservation for the oustees, is required to be decided by the State Government and/or by HUDA or any other authority, who is entitled to acquire land;
- iv. That the oustees are entitled to apply for allotment of plot along with earnest money in pursuance of public advertisement issued may be inviting applications from the general public and the oustees through one advertisement. If an oustee is not successful, he/she can apply again and again till such time, the plots are available for the oustees in the sector for which land was acquired for residential/ commercial purposes or in the adjoining sector, if the land acquired was for

institutional and industrial purposes etc. The plots to the oustees shall be allotted only by public advertisement and not on the basis of any application submitted by an oustee;

- v. That the price to be charged from an allottee shall be the price mentioned in the public advertisement in pursuance of which, the plot is allotted and not when the sector is floated for sale for the first time;
- vi. That the State Government or the acquiring authority shall not advertise any residential plot for sale without conducting an exercise in respect of plots ear-marked for reserved categories and after identification of the plots available for the oustees in each sector. Thereafter, the State Government or the acquiring authority shall publish an advertisement inviting applications from such oustees to apply for allotment of plots in accordance with law; and
- vii. If in any sector, more than 50% plots have been allotted by way of reservation including to the oustees, then such allotment shall not be cancelled or reviewed in view of the judgment of this court.

8. Defendants/JDs refused to allot a free hold residential plot to the plaintiff/DH while relying upon the direction no. iv issued by the Hon'ble Punjab & Haryana High Court in case titled as Haryana Urban Development Authority and others Vs. Sandeep and others LPA No. 2096 of 2011. Learned counsel for the JDs has submitted that DH had not deposited 10% of earnest money at the time when he applied for the plot and therefore, he is not entitled for allotment of any plot and he is at liberty to reapply for the allotment of the plot along with 10% of earnest money whenever new Sector would be developed by the Jds/defendants.

However, above said contention/ plea taken by the defendants/JDs is devoid of any merit as the direction no. iv issued by the Hon'ble Punjab & Haryana High Court in case titled as Haryana Urban Development Authority and others Vs. Sandeep and others LPA No. 2096 of 2011 is not applicable to the facts of the present case. In the present case plaintiff/ DH was held to be entitled to free hold residential plot measuring 250 square yards @ Rs.825/- per square yards as per the

policy dated 18.03.1992 and in that policy there was no such condition that along with the application under the oustees quota, oustee has to deposit 10% earnest money. It is also worthwhile to mention that vide letter bearing No.2571 dated 12.05.2008 a residential plot measuring 10 marlas bearing No. 396 Sector 20 Urban Estate, Kaithal was allotted to the plaintiff/DH along with other co-sharers. Defendants/ JDs again issued notice/ letter bearing no.3324 dated 17.05.2010 to the DH asking him to deposit 25% of the price of the plot. In compliance of the above mentioned notice/ letter the DH had deposited Rs. 50,000/- at one time in total Rs.1,50,000/- which were duly received by the defendants/JDs. Till date plot bearing No.396, Sector 20 at Urban Estate, Kaithal has not been allotted to any person. Some of the co-sharers including Krishan Bajaj has already been allotted separate plot.

9. Therefore, under these circumstances defendants/ JDs under the garb of direction No. iv issued by the Hon'ble Punjab & Haryana High Court in case titled as Haryana Urban Development Authority

and others Vs. Sandeep and others LPA No. 2096 of 2011 cannot refuse to allotment of plot measuring 10 marlas to the DH Rs.825/- per square yards. Accordingly, the objections filed by the defendants/JDs stand rejected.

Defendants/ JDs are directed to allot 10 marlas of plot @ Rs.825/- per square yards to the DH within a period of 15 days from the date of this order, failing which coercive method shall be adopted by the court to implement its order.”

A perusal of the above said order indicates that the implication of LPA on the rights of the decree holder/ respondent has been carefully considered by the Executing Court in the exercise of its powers as an Executing Court which is not competent to go beyond the decree. The pleas which had been raised by the petitioners in their written statement that the plaintiff- respondent had not applied for the plot under oustees quota in the year 1992 in terms and conditions of the brochure has been considered by the trial Court as well as by the Appellate Court. The judgment passed in LPA No. 2096 of 2011 was a judgment in rem and the directions issued by the Division Bench of this Court would not confer any eligibility retrospectively and will not, in any manner, decide the rights of the respondent- decree holder acquired by him on the basis of the decree. Besides this, nothing mentioned in the judgment in LPA would prejudice the

legal rights of the decree holder, as such I do not find any infirmity in the order dated January 31, 2015 dismissing the objections.

So far as order dated March 7, 2015 referred to hereinabove, is concerned, the same deserves to be interfered with by passing direction in the exercise of supervisory powers under Article 227 of the Constitution of India as the coercive means adopted by the Executing Court in an endeavour to pressurize the petitioners to implement the directions in the decree, seem to be harsh and contrary to the legal provisions. A decree for recovery of money can be executed by arrest or detention as per provisions of Section 55 to Section 58 of the CPC read with provisions of Order 21 Rule 37 CPC. As per provisions of Order 21 Rule 32 CPC, in a case of execution of decree for injunction where the JD has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced by attachment of his property or by his detention in civil prison. As per Order 21 Rule 37 CPC, where the application is for execution of a decree for the payment of money by arrest and detention in civil prison of the JD, discretion can be exercised by issuing a notice to the judgment debtor calling up on him to appear before the Court on a specific date and show cause as to why he should not be committed to civil prison. In case appearance is not made in obedience to the order, the Court is competent to issue warrant for arrest of the judgment debtor in the exercise of powers under Order 21 Rule 37 (2) CPC.

In the present case, since the Executing Court is not executing a decree for money, the coercive means adopted by directing the Chief Administrator to appear in the Court are not sustainable. Order 21 Rule 32 CPC provides that when a decree holder despite having had an opportunity of obeying the decree, willfully fails to obey the directions/ injunction the decree may be enforced by attachment of the property or by detention of the judgment debtor in civil prison. In the present case, the judgment debtors have allotted a plot No. 396, Sector 20, Kaithal to the respondent vide letter No. 2571 dated May 12, 2008. It is directed that the Executing Court shall ensure the execution of the decree passed in favour of the plaintiff-respondent by first adhering to the attachment of the property of the judgment debtors but in case despite an opportunity to obey the order, the Executing Court is compelled to adopt coercive means, the relevant provisions of arrest and detention in civil prison shall be adopted after determining their applicability in facts and circumstances of the case. It is ordered that it will be obligatory for the petitioners to implement the decree dated March 13, 2008 in its letter and spirit. However, the personal appearance of the Executive Officer, HUDA, Kaithal and Chief Administrator, HUDA will remain exempted pursuant to the order dated March 7, 2015. It is observed that in case the decree is not executed by adopting the coercive means of attachment, it will be open to the decree holder to file an application for execution of the decree by detention of the concerned officer which would be considered and decided by adopting the

due procedure of law after giving an opportunity to the judgment debtors to comply the decree sought to be executed.

The revision petition is partly allowed, in the aforesaid terms.

April 20, 2015
sanjay

(M.M.S.BEDI)
JUDGE