

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

C.R. No.7957 of 2013

Decided on: 18.09.2015

YADWINDER SINGH AND ORS

. . . Petitioners

Versus

LUDHIANA IMPROVEMENT TRUST AND ANR

. . . Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

1. *Whether reporters of local newspapers may be allowed to see judgment? Yes/No*
2. *To be referred to reporters or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

Present: Mr. A.S. Salar, Advocate
for the petitioners.

Mr. J.S. Toor, Advocate
for respondent No.1.

Mr. Arun Jain, Senior Advocate with
Mr. Arjun Veer Sharma, Advocate
for respondent No.1.

KULDIP SINGH, J. (Oral)

Impugned in the present revision is the order dated 13.11.2013, passed by the learned Civil Judge (Senior Division), Ludhiana, vide which while dealing with two consolidated execution applications dated 01.06.1993 and 24.11.1995, which were

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regarding the plot No.42-A, measuring 500 sq. yards, situated in Rajguru Nagar, Ludhiana, it was held that :-

“14. Plot No.42-A is incapable of being allotted to Charanjit Singh for being already allotted to Sudarshan Kumar. There is an information bearing No.LIT 5834 dated 14.10.2011 received under RTI Act from Improvement Trust by L.Rs of Charanjit Singh with regard to cases of double allotment i.e. where the same plot was allotted to two different persons. Improvement Trust has informed that in said situation alternative plot was allotted to second allottee. It is not the case of JD that another similarly situated plot is vacant in Rajguru Nagar, Ludhiana. Moreover the allotment pertains to year 1987 and no alternative plot in the said area is available. Then by applying the Doctrine of harmonious interpretation decree dated 12.09.1995 can also be executed as price thereof certainly can be paid to DH in order to satisfy said decree. As current price of plot no.42-A is equivalent to holding the plot in its physical form. Because a plot is held in its physical form and current price thereof is also a way of holding the plot. So if JD is unable to allot the plot in physical form then decree dated 12.09.1995 can certainly be executed by directing JD Improvement Trust to make the payment of current price of the said plot to Charanjit Singh. Which certainly is a compliance of decree dated 12.09.1995. Accordingly JD Improvement Trust is directed to make the payment of current price as per Collector’s rate as prevailing in locality for impugned plot no.42-A measuring 500 sq. yards

situated in Rajguru Nagar Ludhiana to L.Rs of Charanjit Singh after adjusting the sale consideration of Rs.55000/-. Said payment be made within 10 days from the passing of impugned order otherwise the same will be got recovered in due course of law. Accordingly both the execution applications stands disposed off.”

15. In view of above said discussion both the decrees dated 29.05.1992 and 12.09.1995 stands executed. Accordingly the application filed by JD Under Order XLVI read with Section 113 CPC for referring the present execution to Hon’ble High Court of Punjab and Haryana at Chandigarh on ground that both the decrees have become inexecutable and the said question be got decided from Hon’ble High Court has become infructuous and accordingly the said application also stands disposed off.

The perusal of the file shows that one Sudarshan Kumar filed a suit for injunction against Improvement Trust Ludhiana on 15.09.1989 for restraining Improvement Trust Ludhiana, from cancelling the allotment of plot No.42-A, measuring 500 sq. yards, in Rajguru Nagar, Ludhiana allotted to the plaintiff vide allotment letter No.LIT/SB/209 dated 26.08.1987. Further direction was sought not to allot the said plot to any one else and to accept the installments of the said plot as per terms of the allotment letter. The said suit was decreed on 29.05.1992, after contest by the respondent-Improvement Trust, Ludhiana. It comes out that petitioner Charanjit Singh Dhindsa had also filed a suit for

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declaration on 11.09.1990, seeking declaration against Improvement Trust, Ludhiana that he is owner of plot No.42-A, measuring 500 sq. yards, situated in Rajguru Nagar, Ludhiana. Mandatory injunction was also sought for directing the Trust to allot plot No.42-A, measuring 500 sq. yards, situated in Rajguru Nagar, Ludhiana with consequential relief of possession of said plot. The said suit was also decreed on 12.09.1995. Both the judgments and decrees have become final. Both the parties i.e. Sudarshan Kumar and Charanjit Singh Dhindsa filed separate executions which were disposed by the impugned order.

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

Admittedly, Sudarshan Kumar had filed a suit prior in time for permanent injunction on 15.09.1989, which was decreed on 29.05.1992. Present petitioner had filed a suit later on for declaration on 11.09.1990 and it was decreed much later on 12.09.1995. At the time of the decision of suit in favour of Charanjit Singh Dhindsa, a decree was already existed against Improvement Trust, Ludhiana. Unluckily, the factum of the double allotment was not brought to the notice of the Court in the suit filed by Charanjit Singh Dhindsa. No plea was taken by either party that there is another claim regarding the same plot. Even during the pendency of the suit, when the decree was passed against Improvement Trust, Ludhiana, the factum of passing of the decree was not brought to the notice of the Court rather the evidence of the

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defendant-Improvement Trust, Ludhiana was closed by orders under Order 17 Rule 2 CPC. In this way, the decree in favour of Charanjit Singh Dhindsa was passed, without the first decree in favour of Sudarshan Kumar being brought to the notice of the Court. Faced with these circumstances, the learned Civil Judge (Senior Division), Ludhiana has held that first decree in favour of Sudarshan Kumar is to be executed against plot No.42-A, measuring 500 sq. yards, situated in Rajguru Nagar, Ludhiana and regarding the decree passed in favour of Charanjit Singh Dhindsa, it is stated that there was an earlier decree, therefore, the decree passed in favour of present petitioner cannot be executed against plot No.42-A, measuring 500 sq. yards, situated in Rajguru Nagar, Ludhiana. It was further noticed that the allotment pertains to the year 1987 and no alternative plot in said area is available. Therefore, the lower Court applied the doctrine of harmonious interpretation, and ordered that the decree dated 12.09.1995 cannot be executed. As such, judgment debtor-Improvement Trust, Ludhiana, was directed to make the payment of the current price of the said plot to LRs of Charanjit Singh Dhindsa, as per Collector's rate prevailing in the area where plot No.42-A, measuring 500 sq. yards, situated in Rajguru Nagar, Ludhiana is situated, after adjusting the sale consideration of payment of Rs.55,000/-. The said payment was directed to be made within 10 days.

After going through the impugned order, I am of the view that in view of decree dated 29.05.1992 in favour of

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Sudarshan Kumar regarding plot No.42-A, measuring 500 sq. yards, situated in Rajguru Nagar, Ludhiana, the subsequent decree cannot be executed against the said plot. It being so, prima-facie there is no illegality in the order of the lower Court in ordering the payment of current price of the said plot to Charanjit Singh Dhindsa as per the Collector's rate. However, the learned counsel for the petitioner prayed that the Collector rates are much lower than the actual market rates and that the order of the learned lower Court be modified and he may be allowed to point out some vacant plot of the same area in same or similar locality and press the execution against the said plot of the same area. He is even ready to take lesser plot having lesser area without claiming difference of price between said Plot No.42-A and smaller plot.

In view of the above, the present petition is disposed of.

The impugned order is upheld with the following modification:-

- 1) The present petitioner shall be entitled to the price of the plot as directed by in the impugned order.
- 2) In the alternative the petitioner shall be entitled to point out to the improvement trust about the existence of plot of same size in the same or similar area/scheme and pay the price of allotment of the alternative plot, if it is free from all encumbrances or litigation;
- 3) Further option is given to the petitioner to press for allotment of plot having lesser area in same or similar locality or scheme which is free from any encumbrance or litigation subject to the condition that as undertaken before this Court, he will pay price of Plot No.42-A, Rajguru Nagar even for said smaller plot.

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The execution application can be proceeded in above noted terms.

Needless to say that petitioner shall be required to pay the balance price in terms of allotment letter which was in litigation in the suit filed between the parties.

[KULDIP SINGH]
JUDGE

18.09.2015
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