

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.168 of 2003 (O&M)
Decided on:-February 21st, 2015

Smt. Chander Kanta Bhatia.

.....Appellant.

Versus

Chief Administrator, Housing Board Haryana and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. Vikram Chaudhary, Advocate for the appellant.

Mr. Manoj K. Sood, Advocate for the respondents.

Dr. Bharat Bhushan Parsoon, J.

Smt. Chander Kanta Bhatia, plaintiff, now appellant, had sought a decree of permanent injunction against defendant Housing Board Haryana restraining them from auctioning House Nos. 2682 and 2702 of MIG-II category in Sector 11-12 part II-A of Panipat and had further sought a relief of allotment of one of the houses out of the said two houses claiming that his name stood registered at priority No.60 for allotment of one of such houses.

2. The plaintiff, now appellant, had applied for allotment of one MIG house in Sector 11-12, Part II of new Housing Board Colony, Panipat in the year 1985. Initial registration amount as also the subsequent

demanded amount had duly been deposited by her.

3. Whereas, 58 houses have been allotted, the remaining two houses of this category instead of being allotted to the applicants registered on subsequent priority numbers, were put to be auctioned by the respondent, for which an advertisement was published in the Daily Tribune on 18.05.1991.

4. On enquiries, it was found that such benefit had earlier been extended in favour of one Mukesh son of Kapur Chand resident of Panipat whose name was on the waiting list and he had been allotted House No. 2965 of MIG II-B, Sector 11-12 of new Housing Board Colony, Panipat and possession had already been delivered to him on 11.02.1992.

5. A tough contest was made by the defendants claiming that the plaintiffs have no legal rights to get allotment. Right to auction the houses in dispute was asserted.

6. Lower Court had framed the following issues for adjudication of the rival claims of the parties:-

1. *Whether the plaintiff has got a claim over the house bearing No.2682 and 2702 as alleged?OPP.*
2. *Whether the civil court has no jurisdiction to entertain and try the present suit?OPD.*
3. *Whether the plaintiff has no locus standi to file the present suit?OPD.*
4. *Relief.*

7. Deciding all the issues against the plaintiff, the suit of the plaintiff was dismissed on 17.05.1996. Plaintiff had unsuccessfully challenged this decree of the lower Court. Judgment of the Ist Appellate Court is of 20.09.2002.

8. Notwithstanding the concurrent findings of the courts below, in

this appeal substantial question of law, which arise for determination by this court, are as under:

1. Whether defeating the rights of the plaintiff, the defendants could put the houses to auction abruptly changing their policy?; and,
2. Whether the civil court has no jurisdiction to entertain the suit even when impugned action of the defendants cause and beyond their statutory domain and sweep?

9. During the course of arguments, plea of the counsel for the appellant is that once name of the plaintiff was in the priority list and a policy of the defendants was also in place to make such allotment to the applicants in such list, such policy could not have been changed abruptly and that too to the prejudice of the appellant.

10. It is also urged that when action of the defendants was in-defiance to the precincts of law, invocation of jurisdiction of civil court was valid.

11. Counsel for the respondents has claimed that in view of the concurrent findings of the two courts below, there is hardly any scope for interference and thus, the substantial questions of law need to be answered against the appellant.

12. Admittedly, appellant Smt. Chander Kanta Bhatia was listed at priority No.60 in the draw of lots. There is a clear recital in the pleadings of the defendants that earlier there was policy of drawing of waiting list out of priority list of applicants but later on, as per the decision of the defendants, the payment deposited by the appellant was refunded with interest.

13. When para Nos. 2 to 6 of the plaint are read in relation to corresponding paras of the written statement, there is no dispute that policy of preparation of waiting list of the applicants appearing in the priority list was there and allotment of the houses used to be made according to that but

this policy was subsequently changed.

14. During the course of evidence, neither M.P. Sahi, Estate Manager-DW1 nor D.P.Sharma, Revenue Officer- DW2 appearing for the defendants could explain the reasons for abrupt change in the policy of the respondents/defendants.

15. Concedingly, houses of the category applied for by the appellant are available. Priority number of the appellant is 60. 58 houses have been allotted. The allotment was to be made according to the list of applicants priority wise. There is nothing on record to show that there was any policy of the respondent- Housing Board to auction the houses ignoring the priority list which was pending allotment for about 4 years.

16. When DP Sahi-DW1 and DP Sharma-DW2 in cross examination were caught napping in abruptly changing the policy of priority list and switching on to sale by auction of houses, both of them claimed that the deposit made interalia by the appellant had been returned and his departmental appeal had also been decided and thus she was not entitled for allotment. However, DP Sharma-DW2 has clearly admitted that letter vide which cheque of refund of money deposited by the appellant had been sent, was never received by her. It is also admitted by him that the said cheque of refund is still with the respondents/defendants.

17. Cross-examination of DP Sharma-DW2 further reveals that houses bearing No.2682 and 2702 of the category for which the application for allotment was made by the appellant had earlier been allotted, but remained unoccupied without allotment and then allotment was cancelled. From such cross examination as also from the pleadings of the defendants, it is clear that these houses had remained unallotted because of cancellation of their earlier allotment. Thus, these two houses were of the category of the houses for which application was made by the appellant.

18. No record has been produced by the defendants to show that under this scheme only 58 houses were to be allotted. Rather, complete reading of pleadings and evidence produced by the defendants reveals that otherwise the numbered houses were not constructed for auctioning but for allotment in terms of the scheme in which the appellant was also registered as a prospective allottee.

19. Thus clearly decision of the respondents for withdrawing the policy of allotment as per priority from the list and abruptly switching over to auctioning of these two houses is against the pronounced and well established policy of the respondents. This policy of allotment by priority from the list, could not have been changed to the prejudice of the appellant by taking a decision of allotment of these left out houses of the scheme of which the appellant is a member, by auction. The first question thus is answered in favour of the appellant and against the respondents.

20. So far as the second substantial question of law, is concerned, when the respondents were going beyond and further from their pronounced and well established policy and were themselves violating the provision of the Haryana Housing Board Act, 1971 (hereinafter called, the Act) and the policy made thereunder and infact violating the same had issued the public notice for auctioning of two left out houses of the scheme invocation of jurisdiction of civil courts in terms of Section 9 of CPC by the appellant-plaintiff was fully valid and competent.

21. Even when viewed from another angle, the defendants themselves having bypassed the law, as also policy established by them had abruptly took an about turn by taking a decision of sale by auctioning of the left out houses. They had thus put the statutory provisions of the Act as also the Rules made thereunder on the back burner. Thus, there was no bar in filing of the civil suit against the respondents notwithstanding, the statutory provisions of Section 55 of the Act.

22. Sequelly, both the substantial questions of law are answered in favour of the appellant. Consequently, while reversing the decree of the lower court dated 17.05.1996 as also of the Ist Appellate Court dated 20.09.2002, and accepting this appeal, decree of permanent injunction is passed in favour of appellant and against the respondents to allot her either of the House No.2702 or 2682 in Sector 11-12, Part II or any other house of this category of the new Housing Board Colony, Panipat. The respondents would be entitled to claim the remaining amount of price of the house as it stood on the date of allotment of such houses to the other applicants No. 1 to 58. Decree sheet be drawn.

February 21st, 2015
pooja saini

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?