

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.681 of 2015 (O&M)
Date of Decision.28.09.2015

Haryana Urban Development Authority and anotherAppellants

Versus

Prabhu DayalRespondent

Present: Mr. Vishal Garg, Advocate for
Mr. Ajay Kumar Kansal, Advocate
for the appellants.

Mr. Sharad Aggarwal, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers 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?

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K. KANNAN J. (ORAL)

1. The appellants were the defendants in suit. The suit was filed by the plaintiff on a plea that an extent of 4 kanals of land was acquired in the year 1990 and in terms of the policy issued by the Government, there was a scope for making an allotment of property to a person ousted from possession by virtue of acquisition. Corresponding to the property acquired i.e. the extent of 4 kanals, the property that was required to be given to an oustee was 250 square yards. The plaintiff's contention was that all the plaintiff's brothers had no objections and they had already forwarded a letter of consent and the plaintiff was seeking for allotment. Instead of seeking for allotment, the plaintiff had opted for the relief for consideration that he was entitled to the

property. The defendant did not enter a contest and the Court decreed the suit for declaration as sought for. The plaintiff preferred an appeal with application for condonation of delay of 106 days and the Appellate Court dismissed the application as well as the appeal as having not been brought within time. The second appeal is presented again with a delay of 243 days. Notice of application for condonation of delay has been issued to the other side. The counsel on behalf of the respondent is also present.

2. Since it was a matter relating to dispute of immovable property, I directed the counsel to argue the case on merits and if there was a strong case on merits, I thought it would be worthwhile to condone the delay and hear both the parties on merits of the contentions in the case later. The counsel for the appellant argues that as they have preferred appeal without filing a written statement, he would press for the maintainability of the suit, for, the Court was required to consider a plea whether there was a defence or not. The counsel's arguments is that as per Section 34 of the Specific Relief Act if the relief of any declaratory action was capable of being accompanied with an ancillary relief, the plaintiff is bound to seek for such an ancillary relief as well. The counsel would argue that he cannot be declared entitled to the property and the best that he could have done was only to seek for allotment of property in favour of the plaintiff. I asked the counsel if the plaint were to be construed as a prayer for consideration of allotment whether the defendant could have any valid objection. The counsel would respond by saying that the Court granted decree for declaration and the plaintiff has never asked for an allotment

to be made. I find the substantial justice to the plaintiff would be to secure only an allotment and if the plaintiff has asked for a relief which was inartistic and which was not competent, a grant of relief of allotment was lesser one and the appellant cannot take this to be prejudicial in any way. So long as the policy considerations allow for allotment of a plot to oustee and the plaintiff qualifies for such an allotment with no objection coming from other persons who are the brothers, then the justice must prevail for the plaintiff to secure a lesser relief than what has been asked for.

3. I put the matter across to the respondent-plaintiff who is present before this Court on the application for condonation of delay as to how he could sustain his relief for declaration if all that he could claim is only to secure an allotment in terms of the policy. The counsel only says that the proper remedy would be declaration itself. I reject such a plea and will grant to him a lesser relief of the plaintiff being entitled to such allotment from HUDA. That is how the plaint must be read or understood. The reference in the plaint is that it should be declared that he is entitled to allotment of HUDA plot and the declaration must be understood only as declaration to allotment and not to transfer the property as such without a sale deed. The decree granted is clarified that the declaratory relief shall be to entitle the plaintiff to secure allotment from the defendant and if there is registration formality that has to be filled up, the defendant is bound to issue notice within a period of four weeks from the date of receipt of copy of this order. On such issuance of notice, the plaintiff will comply by the terms and secure a sale deed and if the defendant does not do so,

the plaintiff is entitled to approach the trial Court and seek for execution for an allotment to be made on stamp papers to be purchased by the plaintiff on payment of consideration and follow such formality as the requisite Rules of HUDA prescribe.

4. The application for condonation of delay and the second appeal are disposed of with the modification and for guaranteeing the rights of the plaintiff in the manner referred to above.

(K. KANNAN)
JUDGE

September 28, 2015
Pankaj*