

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

- (1)

RSA-2098 of 2016 (O&M)

Satpal

...Appellant

Versus

Municipal Committee, Fatehabad

...Respondent
- (2)

RSA-2190 of 2016 (O&M)

Dalip

...Appellant

Versus

Municipal Committee, Fatehabad

...Respondent
- (3)

RSA-2200 of 2016 (O&M)

Baljeet

...Appellant

Versus

Municipal Committee, Fatehabad

...Respondent
- (4)

RSA-2201 of 2016 (O&M)

Inder

...Appellant

Versus

Municipal Committee, Fatehabad

...Respondent

(5)RSA-2241 of 2016 (O&M)

Ram Kumar thr. LR

...Appellant

Versus

Municipal Committee, Fatehabad

...Respondent

(6)RSA-2308 of 2016 (O&M)

Krishan Kumar

...Appellant

Versus

Municipal Committee, Fatehabad

...Respondent

(7)RSA-2312 of 2016 (O&M)

Bhagu Ram thr. LR and another

...Appellants

Versus

Municipal Committee, Fatehabad

...Respondent

(8)RSA-2343 of 2016 (O&M)

Sat Narayan

...Appellant

Versus

Municipal Committee, Fatehabad

...Respondent

(9) RSA-2335 of 2016 (O&M)

Balwant

...Appellant

Versus

Municipal Committee, Fatehabad

...Respondent

(10) RSA-2344 of 2016 (O&M)

Rameshwar Dass

...Appellant

Versus

Municipal Committee, Fatehabad

...Respondent

Date of Decision: 17.05.2016

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Atul Lakhanpal, Senior Advocate with
Mr. Arjun Lakhanpal, Advocate for the appellants.

Jitendra Chauhan, J. (Oral)

The above noted appeals are being disposed of by this single judgment, having arisen out of common judgments of the Courts below. However, the facts are being derived from RSA No. 2098 of 2016.

2. The civil suit No.220-C of 2010 for permanent injunction filed by the plaintiff/appellant was partly decreed by the trial Court, vide judgment and decree dated 28.02.2013, to

the effect that the defendant-Municipal Committee, Fatehabad is restrained from interfering into the peaceful possession of the plaintiffs (in all suits) over their respective plots and also from auctioning any of the plots.

3. Aggrieved against the findings of trial Court, both the parties filed separate appeals, whereby, the civil appeal No.139 of 2013 filed by the appellant was disposed of with certain directions as mentioned in para No.32 and the civil appeal No.126 of 2013 filed by the defendant/respondent was dismissed by the learned 1st Appellate Court, vide common judgment and decree dated 11.01.2016. All the appeals filed by both the parties met with the same fate.

4. The present appeal has been filed against the judgment and decree passed by the 1st Appellate Court, whereby it was directed that the respondent to pass a fresh order relating to cancellation of allotment of shop/plot in favour of the appellant, plaintiff after giving an opportunity of hearing to each plaintiff by passing a speaking order. All the plaintiffs, aggrieved by the judgments of both the Courts below have come up in these regular second appeals, which are being heard simultaneously and disposed of by this judgment.

5. It is contended that the appellant had been running a road side auto repair small workshop on GT Road, Fatehabad for the last 30 years. The persons who were working there set up a small kiosks, however, none of them had any electricity connection or sale tax number etc., and all of them were allotted plots in the Auto Market, Bhuna Road, Fatehabad after verification through various agencies. The appellant being eligible for the same was also allotted plot in the year 1995. Thereafter, the allotment was cancelled on the basis of resolution dated 26.12.2003, which was passed without any notice or hearing to the appellant. Both the Courts below have found the resolution unsustainable in law. However, the learned Appellate Court has erred by directing the respondent-Municipal Committee to pass a fresh order relating to cancellation of allotment after affording an opportunity to each of the appellant to prove automobile business on GT Road before its widening. In this context, it is pertinent to mention here that the appellant was doing the work since 30 years in a kiosk/khoka and there was no electric connection etc. and in the absence of any such document and after such a long period, it is difficult to prove that he was doing automobile business before widening the road.

Once the respondent had allotted shop to the appellant against proper verification, the subsequent cancellation of allotment is not sustainable in the eyes of law. The learned trial Court has already partly decreed the suit restraining the respondent-Committee from interfering into the peaceful possession of the appellant over the plot and from auctioning the plot, therefore, the learned Appellate Court instead of decreeing the suit has directed the respondent to pass fresh order after giving opportunity to the appellant to prove his claim.

6. Heard, the learned counsel for the appellants in each appeal and perused the record minutely.

7. In the present case, the appellant had been running a road side auto repair small workshop on GT Road, Fatehabad for the last 30 years. The persons who were working there set up a small kiosk/khoka. A scheme to widen the GT Road, Fatehabad was launched and the respondent conducted a survey and prepared a list of persons who were dealing in business adjacent to the GT Road, Fatehabad. The respondent had decided to rehabilitate the shopkeepers, who were dealing in auto line business at GT Road, Fatehabad and established a new Auto Market at Bhuna Road, Fatehabad. The respondent-Committee

invited the applications for allotment of plots from the affected persons/shopkeepers. The appellant applied for the same and he was asked to deposit an earnest money of Rs.10,000/-, which was duly deposited. After verification of the business, the appellant was allotted plot measuring 2.75 x 8.25 sq. meters @ Rs.1500/- per sq. metre. Subsequently, on the basis of vigilance enquiry, on 17.06.2000, the respondent-Committee had cancelled the allotment, by way of publication and in compliance of the Haryana Govt. correspondence dated 20.08.1999. A resolution dated 26.12.2003 was also passed to this effect. The suit filed by the appellant was partly decreed and the appeal against the same was also disposed of with certain directions as mentioned above. It is an admitted fact that before cancellation of allotment, no opportunity of hearing was given to the aggrieved persons. It has been proved on record that the appellant was allotted plot and the possession of the same was handed over to him against verification and this fact has been corroborated by PW-3, Harish Kumar, Clerk, MC House Tax Branch, Fatehabad. Once the possession has been delivered to the appellant, the subsequent cancellation of allotment without affording an opportunity of hearing, is not sustainable. Perusal of the record reveals that

earlier the other similarly situated persons filed suits seeking similar relief which was decreed by the Civil Court, vide judgment and decree dated 17.02.2009, Ex.P50 and Ex.P51. The allotment was cancelled on the basis of vigilance inquiry conducted by the State Government, however, none of the allottee was associated in the enquiry proceedings. No doubt, the respondent-Committee has failed to lead any evidence to show that any of the appellant was ever given a chance to lead an evidence to prove his claim but the onus to prove is upon the appellant to substantiate his claim, however, no evidence has come on record to prove that the appellant has deposited the entire amount of price of the plot allotted to him. The appellant has to prove his stand by leading cogent and convincing evidence. Since, none of appellants (in separate appeal) have brought on record the document i.e. bill of electric connection or sales tax receipt or any other evidence to show that he/they were actually running the business of automobile before widening of the road, therefore, this Court concurs with the findings of the learned Appellate Court, whereby the respondent was asked to pass a fresh order after giving opportunity of personal hearing to the allottees as ordered in the earlier suits.

8. In view of the above discussion, this Court finds no scope to interfere with the well reasoned judgment and decree of the 1st Appellate Court. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeals. Hence, no interference is called for. Accordingly, the appeals are dismissed in limine.

9. However, keeping in view the fact that the plaintiff (s)/appellant(s) is/are settled in business of automobile, he/they will be given another four months to relocate their business, from the date of passing of fresh order by the Municipal Committee, Fatehabad.

17.05.2016

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(JITENDRA CHAUHAN)
JUDGE