

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

**RSA No.1372 of 2013 (O&M)
Date of Decision: 07.02.2017.**

Radha Krishan Thareja

....Appellant.

VERSUS

The Administrator, Haryana Urban Development Authority and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ashok Kaushik, Advocate for the appellant.

Ms. Supriya Garg, Advocate for the respondents.

SNEH PRASHAR, J.

This was Regular Second Appeal filed by appellant-plaintiff Radha Krishan Thareja (hereinafter referred to as the “plaintiff”) impugning the judgment and decree dated 22.01.2013 passed by learned Additional District Judge, Faridabad whereby the appeal filed by the respondents-defendants-The Administrator, Haryana Urban Development Authority and another, challenging the judgment and decree dated 30.05.2012 passed in Case No.254 of 09.04.2008/09.04.2011 by learned Civil Judge (Junior Division), Faridabad, decreeing the suit for declaration with mandatory and permanent injunction, was allowed; the judgment and decree dated 30.05.2012 was set aside; and the suit of the plaintiff was dismissed.

Precisely, the facts are that the plaintiff filed a suit seeking a decree for declaration that the respondents-defendants-HUDA (for short,

“HUDA”) be directed to withdraw the resumption order qua Plot No.1720, Sector 64, Faridabad (hereinafter referred to as “the suit property”) and to accept the outstanding amount from him (plaintiff). As a consequential relief, a decree for permanent injunction restraining HUDA from interfering in his possession and for declaration that he is owner in possession of the suit property was also sought by the plaintiff.

The plaintiff pleaded that he had applied to HUDA for a plot on 14.09.2006 as per rules and had deposited 10% tentative amount of Rs.38,943/- to participate in the draw. The UTI Bank issued receipt on completion of requisite formalities. The draw was held in March, 2007 and Plot No.1720, Sector 64 measuring 04 Marlas was announced to be allotted to him (plaintiff) and he was directed to deposit Rs.39,329/- which he complied with. Thereafter, no further intimation was received from HUDA and despite efforts the outstanding amount was also not accepted. On 12.06.2007, HUDA issued a letter asking him to deposit requisite documents regarding defence service. Since he had never been an employee of any defence services, he sent various letters from 15.06.2007 to 11.09.2007 clarifying that he had retired as an employee of Uttar Haryana Bijli Vitran Nigam Limited (for short, “UHBVNL”) and that he had applied in the general category only and also that the plot was drawn from the general category. However, HUDA issued letter dated 05.10.2007 again demanding the documents and threatening resumption of the plot in case the documents were not deposited. Replies dated 11.10.2007 and 14.11.2007 sent by him were not taken into consideration and on 01.01.2008 he was informed that the plot had been resumed. The legal notice dated 06.02.2008 given by him was replied on 11.03.2008 in the same manner. Therefore, he

had no option than to file the present suit.

The respondents-HUDA contested the suit raising preliminary objections regarding maintainability, cause of action and concealment of true facts by the plaintiff. It was submitted that in the application form given by the plaintiff for a 04 Marlas plot, he had mentioned the category as 'Defence' by writing "DEF". Accordingly, his application was considered in the defence quota, but he failed to fulfill the requisite conditions/ formalities despite repeated requests. Since he failed to furnish the requisite documents despite being given adequate opportunity to do so, the plot was rightly resumed. Accordingly, a prayer for dismissal of the suit was made.

On the rival contentions of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to a decree of permanent injunction restraining defendants from selling, allotting or transferring the suit property, as prayed for? OPP.
2. Whether the plaintiff is entitled for damages for harassment? OPP.
3. Whether the suit is not maintainable in the present form? OPD.
4. Whether the plaintiff has not come with clean hands and concealed the true facts? OPD.
5. Relief.

Both the parties adduced evidence in support of their rival contentions.

Considering the submissions made on behalf of the parties and the evidence on record, learned trial Court decreed the suit vide judgment and decree dated 30.05.2012.

The defendants preferred an appeal which was allowed by

dated 22.01.2013 and the judgment and decree dated 30.05.2012 passed by learned trial Court was set aside and the suit of the plaintiff was dismissed.

Feeling aggrieved with the judgment and decree dated 22.01.2013 passed by learned first appellate Court, the appellant-plaintiff filed the instant Regular Second Appeal.

The submissions made by Mr. Ashok Kaushik, learned counsel representing the appellant and Ms. Supriya Garg, learned counsel for the respondents have been heard and record perused.

At the very outset, learned counsel for the appellant-plaintiff argued that from the very initial stage, it is the case of the plaintiff that he had retired w.e.f. 31.07.2005 from UHBVNL vide Office Order dated 19.07.2005 of Chief Engineer, UHBVNL, Panchkula (Haryana). He had applied for allotment of a plot under 'general category' and had not written the code "DEF" in his application form so as to apply under 'defence category'. Otherwise also, it is apparent from the application form Ex.D1 produced by the defendant-HUDA that there is cutting in the column meant for writing reservation category. The code "DEF" written was erased. Neither the plaintiff had written the code nor the cutting was done by him and he cannot say who had done so. In all his letters written to HUDA Ex.P5 to Ex.P10 the plaintiff had mentioned his status of being a retired employee of UHBVNL and also stated that he does not own any residential plot/house in his name or in the name of his spouse or in the name of any of the dependent member of his family in Urban Estate, Faridabad (Haryana). In said state of facts, HUDA had no right to cancel allotment and resume the plot allotted to the plaintiff.

Refuting the arguments of learned counsel for the appellant-

plaintiff, learned counsel representing HUDA argued that it is clear from the application form Ex.D1 of the plaintiff that in the column of reservation category, he had written the code “DEF”. Even though the plaintiff had not filed the requisite documents alongwith the application, yet his application was considered in defence category because of “DEF” written in the column of reservation category as stated by DW1 Satpal, Clerk, Estate Office. After the plot was allotted to the plaintiff, he was repeatedly called upon to produce the relevant documents, but as he failed to furnish the same, the resumption order was passed.

Learned counsel also vehemently contended that the jurisdiction of the Civil Court is expressly barred in terms of Section 50 of the Haryana Urban Development Authority Act, 1977 (for short, “the Act of 1977”). He submitted that the Civil Court exercising power of judicial review over the order passed by the authorities under the Act of 1977 would examine only the decision making process not the decision itself and therefore, the order of resumption cannot be interfered with by the Civil Court. To support her arguments, learned counsel relied upon *The Estate Officer and Anr. vs. Parveen Kumar, 2009(4) P.L.R. 619.*

Perusal of the application form Ex.D1 filled by the plaintiff shows that in the column of 'reservation category of the applicant' the plaintiff had mentioned the category code as “DEF”. No doubt, the code written was erased but the fact remains that the code “DEF” was written and was later struck off. DW1 Satpal, Clerk of the Office of Estate Officer, HUDA explained that only when the category code is not mentioned in the application form, it is treated under 'general category'. He stated that taking

the plaintiff was considered in the said category during the draw.

Indeed, as pointed out by learned counsel for the plaintiff, DW1 Satpal in his cross-examination stated that the category code for defence category is 'DEPER' but at the same time the witness also stated that the code was not known to him also. Meaning thereby that even though there was some error in writing the reservation code, HUDA had treated the application form of the plaintiff under defence category. After the plot was allotted in the name of the plaintiff, in the letter written to the plaintiff dated 12.06.2007 Ex.DW2, he was asked to submit certificate of his being a defence personnel issued by District Sainik Board. The subsequent letter written demanding the said documents is Ex.D3. In his replies Ex.D5 to Ex.D9 although the plaintiff had written that he had retired from UHBVNL but not a word was spelt out by him to say that he had not applied under 'reserved defence category'. He also did not state that he had applied under the 'general category'.

Indeed, the plaintiff does not admit that he had written the code "DEF" in his application or that he had struck off the same. DW1 Satpal, who appeared on behalf of defendant-HUDA, also stated that he does not know who had written the code "DEF" and who had cancelled the same. In any case, the fact is that the code "DEF" was written in the application form and was struck off. The defendant-HUDA had nothing to gain by writing the code or striking of the same and by treating the application of the plaintiff under defence category. It is because of the code written in the reservation category column that the confusion had arisen. Had the column of reserved category been blank when the application was submitted, the

plaintiff filed the suit maintaining that he had been allotted plot from general category quota whereas it is not correct. The plot allotted to him was of 'defence quota' and the plaintiff not being a defence personnel cannot hold on to the plot and cannot claim any right over the same. The resumption order was passed when the plaintiff was unable to produce the required documents pertaining to proof of defence service. In the said facts and circumstances, the order of resumption by no stretch of imagination can be held to be illegal.

In the **Estate Officer and Anr.'s** case (supra), this Court finding that there is not even an iota of allegation that the order passed by the Authorities under the Act is a nullity, or that the order had been passed in violation of the principles of natural justice, had held that the Civil Court could not have exercised jurisdiction over the matter.

The Full Bench of this Court in the judgment reported as **State of Haryana and Ors. v. Vinod Kumar and Ors. AIR 1986 P&H 406** had examined the question of bar of jurisdiction when statute expressly bars the same. It was held that the Civil Court will still have the jurisdiction over the orders passed by the authorities under the Act if such orders violate the principles of natural justice. The relevant extract from the judgment is as under:-

"..Applying these two tests it does appear that the words used in S. 3(4) and S. 16 are clear. Section 16 RSA No. 2317 of 2009 [6] in terms provides that the order made under this Act to which the said section applies shall not be called in question in any Court. This is an express provision excluding the Civil Courts' jurisdiction. S. 3(4) does not expressly exclude the jurisdiction of the Civil Courts but in the context, the inference that the Civil Courts' jurisdiction is intended to be excluded,

appears to be inescapable. Therefore, we are satisfied that Mr. Goyal is right in contending that the jurisdiction of the Civil Courts is excluded in relation to matters covered by the orders included within the provisions of S. 3(4) and S. 16.

This conclusion, however, does not necessarily mean that the plea against the validity of the order passed by the District Magistrate, or the Commissioner, or the State Government can never be raised in a Civil Court. In our opinion, the bar created by the relevant provisions of the Act excluding the jurisdiction of the Civil Courts cannot operate in cases where the plea raised before the Civil Court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is nullity."

In **East India Cotton Mfg. Co. Limited v. Haryana Urban Development Authority Faridabad 2003(3) PLR 842** and the **order dated 13.02.2007 passed in Regular Second Appeal No.457 of 2007 (Sada Wanti and Ors. v. The Haryana Urban Development Authority and Anr.)**, it was held that the Court could not have exercised jurisdiction over the matter as if it is an Appellate Authority.

In the instant case, as discussed above, the plaintiff invoked the jurisdiction of the Civil Court without exercising the efficacious remedies available to him under the Act of 1977. It is not his allegation that the order of resumption suffers from malafide or illegality.

Resultantly, there being no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

07.02.2017.
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**