

105.

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

RSA-4820-2016 (O&M)

Date of decision: 09.05.2017

LUDHIANA GURU ARJAN DEV CO-OPERATIVE HOUSE
BUILDING SOCIETY LTD

... Appellant

VS

LUDHIANA IMPROVEMENT TRUST LUDHIANA AND ANR
.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Nitish Singhi, Advocate,
for the appellant.

HARI PAL VERMA, J.

CM-12454-C-2016

Prayer in the application filed under Section 151 CPC is for
condonation of delay of 28 days in re-filing the appeal.

For the reasons stated in the application, same is allowed
and the delay of 28 days in re-filing the appeal is condoned.

RSA-4820-2016

The appellant-plaintiff has filed the present Regular Second
Appeal against the judgment and decree dated 05.04.2016 passed by
learned Additional District Judge, Ludhiana, whereby the appeal filed
by the respondents-defendants-Trust against the judgment and decree
dated 21.01.2014 passed by learned Civil Judge (Junior Division),
Ludhiana, was accepted (meaning thereby the suit of the plaintiff was
dismissed).

Briefly stated, the plaintiff-Cooperative Society registered under the Punjab Cooperative Societies Act, 1961 (herein referred as 'plaintiff-society') had filed a suit for permanent injunction, restraining the respondents-defendants/Trust (herein referred as 'defendants-Trust') from allotting, alienating, selling, transferring and from handing over the possession of 1.84 acres of land situated in Model Town Ext., Part-II, Ludhiana, forming part of 400 acres scheme of Model Town Ext., Part-II, Ludhiana, to any other person or society, other than the plaintiff-society. Prayer has also been made for mandatory injunction directing the defendants-Trust to allot the remaining 17 plot to the petitioner-society as per notification dated 25.06.1981 and the resolution dated 25.05.1977. As per the plaint, the plaintiff-society had purchased land measuring 31500 square yards situated in Village Jawaddi, Tehsil and District Ludhiana on 25.06.1969. Lateron, the said land of the plaintiff-society was acquired by the defendants-Trust for the development of a scheme known as a 'Model Town Ext., Part-II Scheme'. The plaintiff-society had challenged the said acquisition before the High Court by way of writ petition, however, during the pendency of the writ petition, the matter was compromised by the defendants-Trust, in consultation and approval of the State Government of Punjab, whereby the defendants-Trust had agreed to exempt the land of the plaintiff-society to the extent of 45% to 55% and the plaintiff-society was requested to withdraw the said writ petition. Accordingly, the plaintiff-society withdrew the said writ petition and the

Government of Punjab issued a notification dated 25.06.1981 exempting the land of the plaintiff-society to the extent of 45% to 55%. As per the resolution passed by the defendants-Trust, all the bona fide members of the society i.e. 113 in number, were to be accommodated by allotting plots and while doing so, if the land allotted to the plaintiff-society exceeds the limit of exemption, in that case, reserve price shall be charged from the plaintiff-society. In the year 1983, the defendants-Trust had allotted 92 residential plots of different dimensions in Model Town Ext., Part-II Scheme out of the exempted land and the remaining members were to be accommodated at a later stage. The plaintiff-society made several representations for the remaining allotment of 21 plots, but the defendants-Trust dilly-dallied the matter. As such the plaintiff-society had served a notice under Section 98 of the Punjab Town Improvement Act, 1922 on 15.04.1998, but despite notice, no allotment was made, forcing the plaintiff to file a civil suit. But after filing of the suit, the defendants-Trust allotted 4 plots to the plaintiff-society with a promise to allot remaining 17 plots at a later stage. Thereafter, on this assurance of the defendants-Trust, the plaintiff-society withdrew the said suit. But the defendants-Trust did not fulfill the promise of allotment of 17 plots, despite several representations, which had constrained the plaintiff-society to file another writ petition before this High Court. The High Court directed the defendants-Trust to decide the representation of the plaintiff within two months, but the defendants-Trust did not do so, forcing the

plaintiff-society to file another writ petition i.e. CWP No.19341 of 2006. The writ petition was disposed off on 01.09.2006 with an observation that the subject matter of the writ cannot be decided or determined by the High Court for want of evidence and consequently, the plaintiff-society was directed to seek remedy before the civil court. Thereafter, the plaintiff-society served a legal notice upon the defendants-Trust under Section 98 of the Town Improvement Trust Act, 1922 for allotment of remaining 17 plots to the plaintiff-society for onward allotment to its members as per the notification dated 25.06.1981 and the resolution dated 25.05.1977. But despite receipt of notice, the defendants-Trust failed to allot the remaining 17 plots to the plaintiff-society. Hence, the suit was filed.

On notice, the defendants-Trust appeared and filed written statement taking preliminary objections of concealment of true facts, no locus standi, no cause of action, plaintiff has not verified the plaint as per law, no valid notice under Section 98 of the Punjab Town Improvement Trust Act, 1922 has been served and the suit is barred by limitation. The plaintiff-society has no concern with the land in question measuring 1.84 acres, which is otherwise owned and possessed by Ludhiana Improvement Trust and the said land has been kept reserved for a primary school. Maintainability of the suit has to be adjudicated first and it is only thereafter, the case has to be dealt with on merits. Since the suit was not maintainable, the same was liable to be dismissed. The plaintiff-society had not intentionally disclosed the

fact that it was owner of land measuring 36 Kanals 18.1/2 Marlas (22332 square yards) in Village Jawaddi (Ludhiana), and also the owner of another land measuring 2B-17B-4B (8634 square yards) in Village Taraf Burrda out of Khasra No.464 (1B-6B-9B) and in Khasra No.2120/452 (1B-10B-15B). After the passing of award dated 27.07.1976 regarding the land in question, the mutation of this land measuring 1B-10B-15B out of Khasra No.2120/452 situated in Village Burrda was cancelled from the name of the plaintiff-society and the ownership of that land was transferred in the name of Ajit Singh son of Niranjan Singh. Similarly, mutation of another land measuring 1B-6B-9B out of Khasra No.464 of Village Burrda (Ludhiana) was also cancelled from the name of plaintiff-society and the same was transferred in the name of Bhagwant Kaur etc. In this way, the plaintiff-society remained owner of land measuring 22332 square yards only and not of the land measuring 30966 square yards as alleged in the suit. As per exemption, the plaintiff-society was entitled to exemption of land to the extent of 45% out of the land measuring 22332 square yards and not out of land measuring 30966 square yards. But while making misrepresentation, the plaintiff-society in connivance with some Trust officials has already got allotted an area of 16120 square yards from the defendant-trust in an illegal manner which is in excess to the permissible area of 45%, which was to be taken by the plaintiff-society in view of the exemption notification dated 25.06.1981. After the receipt of summons of the present case, the record regarding the

land in question was checked and it had come to the notice of the Trust that the above referred Ajit Singh also got allotted plots No.320-CX to 336-CX as LDP of said land comprised in Khasra No.464 of Village Burrda (Ludhiana). In this way, the plaintiff-society, by misrepresentation, has already got allotted an excess area from the defendants-Trust, who reserves its right to claim back the possession of that excess area from the plaintiff-society and the plaintiff-society is liable to hand-over that excess area to the defendants-Trust. On merits, it was submitted that no copy of resolution was supplied to the defendants-Trust, as such the correctness of the same is denied. In the year 1983, the defendants-Trust vide memo dated 30.06.1983 allotted/exempted 58 plots and vide memo dated 27.07.1984, other 34 plots of the plaintiff-society were exempted.

The trial Court vide judgment and decree dated 21.01.2014 has held that the plaintiff-society was originally owner of land to the extent of 30960 square yards, out of which, 8634 square yards of land was wrongly transferred in the name of Ajit Singh and Bhagwant Kaur against whom the plaintiff had filed a suit, which was decreed in favour of the plaintiff-society. The appeal preferred by Ajit Singh was also dismissed. Thus, the plaintiff-society was held owner of land to the extent of 30960 square yards and was held entitled to the land wrongly transferred in the name of Ajit Singh and Bhagwant Kaur. As per notification, the plaintiff-society was entitled to 17325 square yards of land but they have been allotted 92 plots, measuring 15827 square

yards of land. The plaintiff-society had earlier filed a suit which was dismissed as withdrawn by the plaintiff on the assurance by the defendants-Trust that they will clear the balance claim of the plaintiff-society and accordingly, four more plots were issued to them. Thus, only 96 plots were allotted to the plaintiff-society against 113 members and still 17 plots were yet to be allotted. Accordingly, the trial Court, vide judgment and decree dated 21.01.2014, decreed the suit of the plaintiff-society.

Aggrieved against the aforesaid judgment and decree dated 21.01.2014, the defendants-Trust filed an appeal before the Lower Appellate Court. The said appeal was accepted by the Lower Appellate Court vide judgment and decree dated 05.04.2016 and the judgment and decree dated 21.01.2014 passed by the trial Court was reversed. While reversing the judgment and decree of the trial Court, the Lower Appellate Court has held that admittedly, the plaintiff-society was owner of the land measuring 31500 square yards situated in Village Jawaddi and the same was acquired by the defendants-Trust for development scheme known as 'Model Town Ext., Part-II'. It was further held that the defendants-Trust have broadly based their case on the basis of notification Ex.P2 and resolution Ex.P3. The relevant portion of Exs.P2 and P3 reads as under:-

Ex.P2

“In exercise of power conferred by sub-section 1 of Section 56 of the Punjab Town Improvement Act and all other powers enabling him in this behalf the Government of

Punjab is pleased to grant exemption to Guru Arjan Dev Co-operative Housing Building Society from the Model Town Extension Scheme Part-II of the Improvement Trust Ludhiana, on the following terms & conditions:

- a) That the lay out of the proposed Co-operative Housing Colony will form part of over all lay out of the scheme. However, while framing the overall lay out an effort would be made to cater to the requirements of the cooperative society as far as possible.
- b) That development charges will be paid by the society to the trust on the basis of rates fixed by the trust carried out by the improvement Trust.
- c) That utilization in the area exempted in favour of the Co-operative society will be to the extent as the land utilization in the overall scheme. For instance, the land left for roads, parks and other common purpose would be to the same extent as left in overall scheme. Consequently, the area under plots would be about 45% to 55% of the entire area exempted.
- d) That exemption will be in respect of bonafide Housing Societies that its individual members will be given an undertaking that they will not transfer, lease or otherwise alienate plot for a period of ten years. Not more than one plot will be given to an individual member.”

Ex.P3

“Shri Surjit Singh, Secretary, Guru Arjan Dev Co-operative House Building Society has requested that this society has withdrawn its case in the Hon'ble High Court and as such, they be also given exemption like other societies. Improvement Trust, Ludhiana, has received the orders with this reference of dismissed as withdrawn. Society has area

of 31500 square yards and it has 113 members. Its registration No.1277 dated 25.4.1969. Case is presented before the meeting of Trust as per order of the President dated 20-5-1977.

- a) It is recommended to the Government that this society be also given exemption like other societies.
- b) Trust passes the order that the societies who are already exempted, they be allotted/cut plots as per their necessity and if the area of land of societies is increased then the price of increased areas of the plot be recovered.”

The Lower Appellate Court, while accepting the appeal of the defendants-Trust, vide judgment and decree dated 05.04.2016, and setting aside the judgment and decree dated 21.01.2014 passed by the trial Court, observed as under:-

“.....As per the admission of DW1 Avtar Singh, retired Kanungo, in his cross-examination, the total land of the plaintiff society was 31500 square yards. If calculation is done @ 45% of the land, society was entitled to 15029 square yards and if calculation is done @ 55% of the land, society was entitled to 17325 square yards. Admittedly, society is allotted land 15827 square yards which has fallen between 45% and 55%. After the acquisition of the land by the Ludhiana Improvement Trust, the respondent-plaintiff society has no concern or connection with the said property. The respondent-plaintiff society has further failed to show any title or interest in the land measuring 1.84 Acre situated in Model Town Extension Part-II. When the appellants have acquired the land, they have every right to use the property or

to dispose of the property as per rules and no injunction can be granted to restrain the appellants. No document has been produced or proved on the file that the respondent-plaintiff society was entitled to 55% of the land. No declaration has been sought by the respondent-plaintiff society regarding this fact. No document or undertaking has been produced or proved on the file by the respondent-plaintiff in respect of the fact that the appellant was to allot the plots to each member of the society. There is no undertaking in this regard. No mandate can be issued to the appellants for allotting the plots especially when there is nothing in the notification No.215-DSLG-III-81/7143 dated 25.6.1981 or resolution No.26 dated 25.5.1977.”

Aggrieved against the aforesaid judgment and decree dated 05.04.2016, the plaintiff-society (appellant herein) has filed the present Regular Second Appeal.

Learned counsel for the appellant has argued that the judgment and decree passed by the Lower Appellate Court reversing the reasoned judgment and decree passed by the trial Court is against law and facts. The Lower Appellate Court has ignored the fact that earlier the civil suit filed by the appellant-society was withdrawn on the assurance of the respondents-defendants/Trust that the balance land would be cleared, but the same was not done, which led to filing of the present suit. He has further argued that the plaintiff-society is the owner of 31500 square yards, but the appellant-plaintiff/society was allotted only 15823 out of 17325 square yards i.e. 55% exempted land.

In case, the remaining area of 1502 square yards is given to the appellant-society, its claim with respect to other bona fide members would also be satisfied. The reasoning given by the Lower Appellate Court that the appellant-society has not produced any document that it was entitled to 55% of the land is wholly incorrect. Further, it is also wrongly held by the Lower Appellate Court that no document or undertaking has proved on the file to show that the Trust was to allot plots to the members of appellant-society. Such a reasoning is absolutely against the law.

During the pendency of this appeal, learned counsel for the appellant has filed an application i.e. CM-5689-C-2017, under Order 41 Rule 27 read with Section 151 CPC, to place on record the resolution dated 25.05.1997 and letters/order dated 13.01.1984 and 29.03.1979 (Annexures P-2 to P-4) by way of additional evidence. He has referred to letter (Annexure P-4) vide which the Co-operative House Building Society i.e. appellant-society was asked regarding allotment of plots on the basis of letter dated 29.03.1979, wherein the Trust has admitted to give 55% area of total land to the concerned societies in the shape of plots to the Cooperative House Building Societies vide its Resolution No.29 dated 14.09.1978. He has argued that these documents are necessary for proper adjudication of the case and these documents were in possession of the respondents-Trust, therefore, the appellant-society obtained them under RTI Act in the year 2016 only.

I have heard learned counsel for the appellant.

The precise claim as projected by the appellant-plaintiff/society in the suit, relates to the fact that the society had purchased land measuring 31500 square yards on 25.06.1969. This land was acquired by the respondents-defendants/Trust for the development scheme known as “Model Town Ext., Part-II Scheme”. The said acquisition was challenged by the appellant-society before the High Court through a writ petition and during the pendency of the writ petition, the matter was compromised between the appellant-society and respondents-defendants, whereby the defendants agreed to exempt the land to the appellant-society to the extent of 45% to 55%. Accordingly, the writ petition was withdrawn by the appellant-society and a notification was issued by the State Government of Punjab on 25.06.1981 exempting the land of the appellant-society to the extent of 45% to 55%.

The argument raised by learned counsel for the appellant that the plaintiff-society is entitled to get the exemption of 55% of the land allotted to the society i.e. of the land measuring 31500 square yards and not 45%, whereas it is the consistent stand of the defendants-Trust that in view of the notification (Ex.P2) and resolution (Ex.P3), the area under plots would be about 45% to 55% of the entire area exempted by Trust. Clause (c) of notification (Ex.P2) is reproduced as under:-

“c) That utilization in the area exempted in favour of the Co-operative society will be to the extent as the

land utilization in the overall scheme. For instance, the land left for roads, parks and other common purpose would be to the same extent as left in overall scheme. Consequently, the area under plots would be about 45% to 55% of the entire area exempted.”

Thus, the perusal of aforesaid extract of Ex.P2 clearly provides that the area under plot would be about 45% to 55% of the entire area exempted. Therefore, the plea raised by the appellant-society that only 55% area is to be exempted, cannot be accepted. DW1-Avtar Singh, retired Kanungo, in his cross-examination has stated that the total land of the plaintiff-society was 31500 square yards and if calculation is done @ 45% of the land, society is entitled to 15029 square yards and if the calculation is done @ 55% of the land, the society is entitled to 17325 square yards. Admittedly, the society has already been allotted 15827 square yards of land which ranging between 45% to 55%. After the acquisition of the land by the defendants-Trust, the plaintiff-society has no concern or connection with the said property. The plaintiff-society has further failed to show any title or interest in the land measuring 1.84 acres situated in Model Town Extension Part-II. When the defendants-Trust has acquired the land, they have every right to use the property and no injunction can be granted to restrain the defendants-Trust.

As regards the prayer of the appellant-society made through CM-5689-C-2017 for placing on record Annexures P-2 to P-4 is concerned, wherein vide Annexure P-4, the defendants-Trust has

admitted to give 55% area of total land to the concerned societies, the same cannot be accepted, as such an evidence should have been brought before the court below. Despite the fact that the letter dated 29.03.1979, purported to be produced by way of additional evidence, was already in existence, but no such efforts were made to bring on record this letter so as to bring to the notice of the court below. Accordingly, the application i.e. CM-5689-C-2017 stands dismissed.

No other point is argued.

No substantial question of law arises in the present regular second appeal.

Having taken support from the document (Ex.P2) wherein it has been established that the appellant-society has already been allotted land about 45% to 55%, this Court does not find any illegality in the judgment and decree dated 05.04.2016 passed by the Lower Appellate Court and accordingly, the appeal filed by the appellant-Society is dismissed.

(HARI PAL VERMA)
JUDGE

09.05.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No