

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1311 of 1992 (O&M)

Date of Decision: December 20th, 2018

Haryana State & another

...|Appellants

Versus

Smt.Motli Devi & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Ashwani Kumar Saini, DAG, Haryana,
for the appellants.

None for the respondents.

AMIT RAWAL, J.

The present Regular Second Appeal is directed against the judgment and decree dated 27.01.1992 rendered by the Lower Appellate Court, whereby the suit of the respondent-plaintiffs for declaration and permanent injunction dismissed by the trial court vide judgment and decree dated 31.08.1989, has been decreed.

Respondent-plaintiffs sought the declaration on the ground that Ganga Singh, their predecessor-in-interest, was allotted the suit land, fully detailed in Para 1 of the plaint vide allotment dated 20.11.1981. In lieu thereof, a sum of ₹6459.40P as costs of the land and ₹282.60P as interest were deposited. Vide Report Roznamcha No.174 dated 24.11.1981 and 273 dated 04.01.1983 possession was delivered and another sum of ₹1743.75P being compensation of the standing crop was deposited. In lieu thereof, mutation bearing No.2785 was sanctioned. Even the construction was also raised after getting the site plan sanctioned from the Municipal Committee.

On demise of Ganga Singh in the month of July, 1983, the aforementioned

property, vide mutation No.3126, was sanctioned in favour of the plaintiffs being his widow and children. Defendant No.2- Allotment and Prescribed Authority under the Ceiling on Land Holding Act, 1972 (for short, 1972 Act) without complying with the principles of natural justice, cancelled the allotment of the land vide impugned order dated 03.08.1984 and ordered for re-delivery of the possession.

The suit was opposed on the premise that on receipt of the complaint filed by one Maman son of Deva Ram, report from the Tehsildar was sought and as per his report dated 08.11.1983, case of the allotment was not found genuine. The cancellation was done in pursuance to the provisions of Sections 15(7) and 21(2) of 1972 Act. Since Ganga Singh had expired, the order could not be communicated to the plaintiffs. In fact, Ganga Singh did not fulfill the criteria of the income, for, he was an Ex-serviceman and also on the premise of his receiving pension, his case did not fall within the parameters.

On the basis of the pleadings of the parties, the trial court framed the following issues:-

“Whether the plaintiffs are owners and in possession of the property in suit? OPP

2. *Whether the order dt.3.8.1984 passed by Prescribed Authority is null and void and not binding upon the plaintiff? OPP*

3. *Whether the suit is liable to be dismissed for want of notice under section 80 CPC? OPD*

4. *Whether the Civil Court has no jurisdiction to try and decide the matter in controversy? OPD*

5. *Relief.”*

The plaintiffs, in support of the pleadings, examined PW-1

Suresh Chand Aggarwal Draftsman, PW-2 Roshan Lal Surplus Kanungo,

PW-3 Thakur Lal, Junior Engineer and plaintiff Motali Devi herself as PW-4, whereas the defendants examined Vir Singh Surplus Patwari as DW-1.

The trial court, on the basis of the pleadings and the evidence, dismissed the suit.

Mr. Ashwani Kumar Saini, learned Deputy Advocate General, Haryana representing the appellant-State, in support of the memorandum of appeal, submitted that the findings arrived at by the Lower Appellate Court holding that the provisions of Section 21(2) of 1972 Act did not envisage any cancellation, is wholly incorrect, for, the factum of Ganga Singh being Ex-Serviceman was not denied and in such circumstances, he was not eligible for allotment being land-less person or having an income prescribed in the conditions. Ganga Singh deceased furnished U.S. Form 2 dated 30.07.1976 that he was getting monthly salary of ₹366.10P as a driver in the office of S.D.O.(C), Rewari, but his total income exceeded ₹2400/- per annum, for, he was Ex-Serviceman and, thus, for all intents and purposes getting the pension and, urged this Court for setting-aside the findings under challenge.

I have heard the learned State counsel, appraised the paper book, records of the courts below and of the view that there is no force and merit in the submissions.

It would be apt to reproduce provisions of sub-section (7) of Section 15 and sub-section (2) of Section 21 of 1972 Act.

“15. Disposal of surplus area. - (1) The surplus area acquired or vested under section 12 shall be at the disposal of the State Government.

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xxx

[(7) Notwithstanding anything contained in section 21, a

person who secured an allotment by furnishing information which is false or which he knows or has reason to believe to be false or which he does not believe to be true and who is or has at any time been in possession of any surplus area to which he is or was not entitled under the law shall, for the period for which the surplus area remains or has remained in his possession, be charged a licence fee equal to thirty times the land holdings tax, recoverable in respect of this area.

21. Penalty for making false statement. - (1)

xxx

xxx

xxx

(2) If any person secures an allotment by furnishing information which is false or which he knows or has reason to believe to be false or which he does not believe to be true, he shall be punished with imprisonment which may extend to two years, or with fine which may extend to two thousand rupees, or with both."

On conjoint reading of the aforementioned provisions, the authorities are not empowered to cancel the allotment, but at liberty to initiate criminal proceedings and also charge licence fee equally to 30 times of the land holding tax. The Lower Appellate Court reversed the findings of the trial court by noticing the aforementioned provisions of law. No other contrary law has been brought to the notice of this court to form a different opinion than the one arrived enabling any right or power to cancel the allotment.

It would not be out of place to mention here that the factum of earning of pension was only a figment of imagination in the absence of any documentary evidence.

For the reasons mentioned above, the findings arrived at by the Lower Appellate Court, being the last court of fact and law, in my view, cannot be said to be suffering from any illegality or perversity. No ground

for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

December 20th, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No