

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

**RSA No.1570 of 1991 (O&M)**

**Date of decision:10.08.2018**

Chandigarh Housing Board, Chandigarh

... Appellant

Vs.

Tarsem Lal and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Sanjeev Sharma, Senior Advocate with  
Mr. Ashish Rawal, Advocate  
for the appellant.

Mr. P.K.Mutneja, Advocate and  
Mr. Arun Gosain, Advocate  
for the respondents.

**AMIT RAWAL, J.**

The appellant-Chandigarh Housing Board is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit of respondent No.1-plaintiff challenging the action of defendant no.1 in declining the allotment of HIG (lower) house out of reserved quota for the Scheduled Tribes, has been decreed by the trial Court and affirmed by the Lower Appellate Court.

Respondent No.1/plaintiff instituted the suit on the premise that he belonged to Scheduled Tribes and had been permanently residing in Chandigarh. Appellant/defendant no.1-Chandigarh Housing Board invited the applications for allotment of flats exclusively for Scheduled Caste and

Scheduled Tribes and in this regard, 35 (thirty five) houses were reserved for the purpose. The plaintiff submitted the application and draw of lots was held on 9.9.1983. Thirty one (31) houses were allotted and four (04) houses were kept in abeyance. Out of 35 (thirty five) houses, more than 10 (ten) houses as per existing instructions were to be allotted to Scheduled Tribes but there were only four applicants from the ST category. In response to the clarification, Chandigarh Housing Board submitted that Scheduled Tribes are entitled for a minimum reservation of 5% but yet the plaintiff was deprived of the allotment.

The defendants contested the suit by raising numerous preliminary objections qua maintainability, want of notice under Section 67 of the Haryana Housing Board Act, 1971 (hereinafter referred to as “1971 Act”). It was pleaded that defendant invited the applications for 15 (fifteen) HIG(upper) and 20 (twenty) HIG (lower) houses. Regulation 25 of the Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979 (hereinafter referred to as “1979 Regulations”) provided the reservation to the extent of 12 ½% of the total number of dwelling units for the members of the Scheduled Castes and Scheduled Tribes. There was no apportionment in the said reservation between the two categories. The allotment of four houses were kept in abeyance awaiting certain clarification from the Administration. The waiting list prepared also included the allotment to the SC and ST persons.

Defendant no.2 -Baldev Singh in the written statement alleged that suit was premature. His name in the waiting list of 15 (fifteen) persons,

was figuring at serial no.3, whereas, Siri Ram at serial no.1 had been allotted the house and Hazura Ram at serial no.2 had withdrawn the earnest money, therefore, he became entitled for allotment of house. Reservation qua SC and ST was denied.

Replication was filed, wherein, it was pleaded that Chandigarh Administration, vide letter dated 21.9.1983 directed the defendant to give 5% quota in favour of the Scheduled Tribes.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled for the allotment of HIG (lower ) category house in view of the draw of lots held on 09.09.1983?OPP*
- 2. Whether the plaintiff after participating in the draw of lots held on 09.09.1983 is not estopped by his conduct from filing the present suit?OPP*
- 3. Whether the plaintiff is entitled to damages as alleged, if so, how much?OPP*
- 4. Whether defendant No.2 is entitled the allotment of HIG (upper) house category?OPD*
- 5. Whether the present suit is not maintainable being pre-mature?OPD*
- 6. Whether the suit is barred by limitation in view of preliminary objection no.2 of the WS?OPD*
- 7. Whether the plaintiff has no locus standi to file the*

*present suit?OPD*

8. *Relief.”*

Both the parties brought on record the documentary evidence as the decision of the suit was based on examination of documentary evidence. The plaintiff brought on record documents, Ex.P1 to Ex.P8, whereas, defendants Ex.D1 to Ex.D4.

The trial Court after taking into consideration Article 342 of the Constitution of India and other material on record, i.e., letter dated 21.5.1985, Ex.D3 addressed to the Chairman, Chandigarh Housing Board by the Assistant Director, Government of India, Ministry of Home Affairs held that migrated persons would also be entitled to derive the benefits admissible to the Scheduled Castes/Tribes from the State/U.T of his/her origin only and not from the State/U.T to which he/she migrated. It was also noticed that plaintiff had proved on record certificate of Scheduled Tribes issued by the competent authority of Rajasthan. The appeal preferred before the Lower Appellate Court on behalf of the Chandigarh Housing Board, has been dismissed.

Mr. Sanjeev Sharma, learned Senior counsel assisted by Mr. Ashish Rawal, Advocate appearing on behalf of the appellant in support of the memorandum of appeal raised the following submissions:-

1) Article 342 of the Constitution of India provides that any State or UT, whereby, notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes. However,

no notification has been issued under the aforementioned Article in relation to Union Territory of Chandigarh.

2) Regulation 25 of 1979 Regulations provides the 12½% of the total number of dwelling units for the members of the Scheduled Castes and Scheduled Tribes and there was no separate provision for reservation of Scheduled Tribes.

3) The plaintiff was allowed to participate in draw of lots and was unsuccessful, therefore, the Courts below wrongly concluded that plaintiff was entitled to allotment against the reserved category.

4) The certificate dated 06.02.1986 issued by the Sub Divisional Magistrate, Chandigarh had not been interpreted in correct perspective, much less contents of the letter, *ibid* and as well as letter dated 22.2.1985, Ex.D4. The instructions therein were issued only to clarify but did not indicate that Government of India had directed the Chandigarh Housing Board to keep the reservation for the Scheduled Tribes.

5) During the course of hearing, he drew the attention of this Court to the affidavit dated 26.7.2010 of Jaswinder Kaur, Secretary Chandigarh Housing Board, interim directions dated 29.7.1991 of this Court wherein, H.No.3706 of HIG (L) Category in Sector 46-C had been kept reserved for the plaintiff. Four (04) houses were kept in abeyance at the time of draw of lots. No house has been allotted out of discretionary quota, thus, judgments and decrees of the Courts below are liable to be set aside.

Per contra, Mr. P.K.Mutneja, learned counsel appearing on behalf of the respondents submitted that the concurrent findings of facts and

law cannot be interfered until and unless there is gross illegality and perversity. The advertisement Ex.D1 clearly specified HIG houses for SC and ST categories. In the letter dated 21.09.1983 (Ex.P8) written by Finance Secretary to the Chandigarh Housing Board, it has been noticed that there was no notification issued for Scheduled Tribes, Chandigarh but in view of the general instructions, advised to provide minimum reservation of 5% in favour of Scheduled Tribes in respect of built houses/dwelling units constructed by the Chandigarh Housing Board and on similar lines, Ex.D3 and Ex.D4.

It was next contended that plaintiff had worked as Postman Assistant in the office of Post Office Chandigarh and thereafter, worked with TTI. He had been a professional photographer for the Indian Army and taken live pictures during the Kargil War and thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that there is no force and merit in the submissions of Mr. Sanjeev Sharma.

Regulation 25, *ibid*, contents of letter dated 21.9.1983 (Ex.P8) and letter dated 21.05.1985 (Ex.D3) read as under:-

**Regulation 25**

*“25. Reservation of Dwelling units or Flats. -Unless otherwise provided or specified by the Board, out of the total number of dwelling units/flats, the reservation in favour of the applicants shall be to the extent of --*

- (i) 12 ½ Per cent of the total dwelling units flats in each category in favour of applicants belonging to scheduled castes and scheduled tribes;*
- (ii) 5 per cent of the total number of dwelling units/flats in favour of defence/ ex-defence personnel including pensioners belonging to the defence forces;*
- (iii) 5 per cent in favour the Backward Classes as are notified or specified by the Chandigarh Administration;*
- (iv) 5 per cent of the employees of the Punjab and Haryana Governments' and the U.T. Administration who have retired or who may retire within three years;*
- (v) 1 per cent in favour of the blind and physically handicapped persons.*

*Provided that if sufficient applications are not forthcoming from any of the reserved categories mentioned above, the balance of the reserved dwelling units/flats shall be allotted to the applicants in the general category.”*

**contents of letter dated 21.9.1983 (Ex.P8)**

*From*

*The Finance Secretary  
Chandigarh Administration.*

*To*

*The Chairman,  
Chandigarh Housing Board,  
Chandigarh.*

*Memo No.994/sw/83/13773*

*Dated, Chandigarh the 21.9.1983*

*Subject: Allotment of houses to Scheduled Tribes.*

*Reference your office memo no.8645 dated 24.8.1983 on the subject cited above.*

2. *It is a fact that there are no Scheduled Tribes as notified for Chandigarh Union Territory but there are general instructions on reservation for Scheduled Tribes enunciated in the Appendix 3. Note 2 on the Brochure on Reservation of Scheduled Cast and Scheduled Tribes which read as under:-*

*Even though in a particular State/U.T the population percentage of Scheduled Tribes is less than 5% a minimum reservation of 5% has been provided for that community.*

*Accordingly, you are advised to provide minimum reservation of 5% in favour of Scheduled Tribes in respect of all built to houses/dwelling units constructed by the Chandigarh Housing Board.*

*Sd/-*

*Research Officer*

*For Finance Secretary*

*Chandigarh Administration.”*

**contents letter dated 21.05.1985 (Ex.D3)**

*“No.BC.12017/9/85 SC&BCD I*

*Government of India/Bharat Sarkar*

*Ministry of Home Affairs/Grih Mantralaya*

To

*The Chairman,  
Chandigarh Housing Board, 8 Jan Marg, Sector 9,  
Chandigarh-1600019.*

*Subject:- Entitlement of Scheduled Tribe persons for  
allotment of houses by the Chandigarh Housing Board-  
Clarification.*

*Sir,*

*I am directed to refer to your letter No.HB(LO)-  
85/7807 dated 25.4.1985 on the above subject and to say that  
Article 342 of the Constitution specifying Scheduled Tribes  
has not yet been made applicable to the Union Territory of  
Chandigarh and as such there are no Scheduled Tribes. A  
Presidential Order (Scheduled Castes) (Union Territories),  
Part II, 1951 scheduling certain communities as Scheduled  
Caste in relation to the Union Territory of Delhi has however  
been issued by the Government of India on 20.9.1951. As the  
Scheduled Caste/Tribe persons were finding it difficult to  
obtain the Scheduled Caste/Tribe certificate on migration from  
their State of origin to the other State/Union Territory for  
seeking education, employment etc., this Ministry has issued  
instructions in their letter No.BC.16014/1/82 -SC&BCDI dated  
22.2.1985 (copy enclosed) in substitution of their earlier letters  
of even number dated 18.11.1982 and No.BC12025 /79*

*SC&BCD I/IV dated 29.3.1982 to all State Government/Union Territories that the prescribed authority of the migrated State/Union Territory may issue the certificate to the Scheduled Caste/Tribe person on basis of the genuine certificate to his/her father by the competent authority of the State/Union Territory of his origin. It has also been made clear in the letter that the migrated person will be entitled to derive benefits admissible to the Scheduled Castes/Tribes from the State/UT of his/her origin only and not from the State/U.T to which he/she has migrated. Since this letter has substituted this Ministry's earlier letters No.BC 16014/82 SC&BCD dated 29.3.1982, there is no need to send their copies.*

*Yours faithfully,*

*sd/-*

*(Y.P.Marwaha)*

*Assistant Director”*

On cumulative reading of the aforementioned Regulation and contents of letters, it leaves no manner of doubt that Chandigarh Administration instructed the Chandigarh Housing Board to keep the reservation for allotment of dwelling units as aforementioned, thus, issuance of notification under Article 342 of the Constitution of India as per the submission of Mr. Sharma, pales into insignificance. Both the Courts below have relied upon the aforementioned documents.

I cannot remain unmindful of the fact that even the advertisement Ex.D1 envisaged the reservation for Scheduled Caste and Scheduled Tribes categories. Thus, in my view, there is no illegality and perversity in the judgments and decrees of the Courts below in decreeing the suit holding the plaintiff to be entitled to plot he had applied for subject to complying of other conditions.

Concededly, as per the certificate (Ex.P1) issued by the Rajasthan Authority, the plaintiff-respondent is also Scheduled Tribe and holder of such certificate, even from the outside State had not been debarred as per the contents of the letter Ex.D3.

The arguments of Mr. Sharma, had not been able to cut ice and to bring the case within the realm of illegality and perversity, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)  
JUDGE

August 10, 2018  
savita

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |