

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

RSA-2041-2001 (O & M)
Date of Decision:16.10.2018

Bishan

...Appellant

Versus

Lakhi Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prem Nath Aggarwal, Advocate
for the appellant.

Mr. Rajesh Sethi, Advocate and
Mr. Sachin Mittal, Advocate
for the respondent.

Mr. Saurabh Girdhar, AAG, Haryana.

ANIL KSHETARPAL, J.

With the consent of learned counsel for the parties, the main appeal has been taken on Board and arguments have been heard at length.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment and decree passed by the learned trial Court.

Some facts are required to be noticed. Plaintiff applied for allotment of the land under “The Haryana Utilization of Surplus and Other Areas Scheme, 1976” ('1976 Scheme' – for short) framed under The Haryana Ceiling on Land Holdings Act, 1972 ('Act' - for short). He was allotted the land in dispute vide allotment letter dated 12.04.1979.

Allotment letter was issued on Form-US-3 as provided under the aforesaid

Scheme of 1976. Clause 3 of the aforesaid allotment letter is extracted as

under:-

“ The total purchase price of land and the building, structure, tubewell, water course including its subsidiary works or crops thereon is Rs.648.80. This amount is to be deposited in ten annual equated installments as indicated below:-

(a) The first installment of Rs.648.80 shall be deposited within 30 days from the date of issue of this Certificate.

(b) The next nine installments each amounting to Rs.648.80 shall be deposited on or before the

3. In case he fails to deposit the said installment with in a period of thirty days or within such extended period as may be permitted by the allotment authority, the allotment shall be cancelled without any further notice.”

It is undisputed that pursuant to the order passed by allotment authority, possession of the land was delivered to the plaintiff on 07.10.1973 Ex.P-3 on the file. It is undisputed that the plaintiff did not deposit even first installment, which was required to be deposited within a period of 30 days. On 09.11.1982, finding that the appellant has not paid any amount, allotment was cancelled and allotment was made in favour of the respondent. It is the case of the plaintiff that before cancellation of the allotment, he was not given any opportunity of hearing. It may be noted that

pursuant to the cancellation of allotment, the allotment was made in favour

of the respondent and possession of the land was delivered to the respondent on 01.06.1989.

Plaintiff filed the suit for permanent injunction restraining the defendants from interfering in his peaceful possession. The prayer made in the suit is extracted as under:-

“Hence plaintiff prays that a decree for permanent injunction restraining defendants from interfering in possession of the plaintiff in the land mentioned in para No.1 of the plaint be passed in his favour and against defendants with costs. In case defendants succeed in dispossessing the plaintiff during the pendency of the suit or they are found to be in its possession, a decree for possession in the alternative be passed with costs.”

Defendant contested the suit. Learned trial Court decreed the suit whereas the learned First Appellate Court has reversed the judgment and decree passed by the learned trial Court by giving following reasons:-

(i) The suit filed by the plaintiff is barred by limitation as he was required to challenge the order of cancellation and allotment in favour of respondent within a period of three years whereas the present suit was filed after a period of almost 5 ½ years.

(ii) Jurisdiction of the Civil Court is barred.

(iii) Even first installment has not been deposited by the plaintiff.

This Court has heard learned counsel for the parties at length

Courts below and the record.

Learned counsel appearing for the appellant has submitted that the allotment in favour of the plaintiff was under unamended Scheme of 1976. He submitted that as per the Scheme, in case of any default in payment of installment by the allottee including first installment, the same could only be recovered by the State as arrears of land revenue as there was no power of cancellation. He further submitted that cancellation order has been passed by the Advisory Authority, which had no jurisdiction. He further submitted that the order passed by the cancelling the allotment is discriminatory as allotment in favour of the appellant has been cancelled on non-payment whereas in the case of the respondent, he was permitted to deposit the installment after a period of more than six years. He further submitted that the appellant was not given opportunity of hearing before passing an order of cancellation.

On the other hand, learned counsel for the respondent has pointed out that the plaintiff has not challenged the order of cancellation in his favour or allotment in favour of the plaintiff. He further submitted that counsel for the appellant is making out a new case as none of the aforesaid arguments has been addressed before the Courts below. He further submitted that as per Section 15 of the Act, the possession of the allotted property could only be delivered after first installment has been deposited. He further submitted that Form (US-3) is part of the Scheme prepared as per the provisions of the Act and, therefore, compliance of such provision in the allotment letter is mandatory. He further submitted that the plaintiff admits that he had knowledge of the order of cancellation 5-6 years back but he never challenged the same.

This Court has evaluated the arguments of learned counsel for the parties. As regards the first argument of learned counsel, it may be noted that no doubt in the Scheme, there is no provision for cancellation. However, the allotment would come into force only once the plaintiff deposits the amount of first installment. As per Clause 2a and Clause 3 of the allotment letter, it is apparent that in absence of deposit of the first installment within a period of 30 days or within such extended period as may be permitted by the allotment authority, the allotment shall stand cancelled without any further notice. It is not in dispute that first installment has not been deposited. As per the allotment letter, the cancellation is automatic and there is no requirement of service of notice. In fact on careful reading of Section 15 Sub Section (5) of the Act on deposit of the first installment, the prescribed authority can put the allottee in possession. It is specifically provided in Section 15 Sub-Section (5) of the Act that allottee shall become owner only on deposit of the entire consideration. For reference, Section 15 Sub Section (5) of the Act is extracted as under:-

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

(2) XXXX

(3) XXXX

(4) XXXX

(5) On payment of full price or the first instalment thereof, as the case may be, the prescribed authority, where the allottee is not already in possession of the

land, shall put him in possession thereof. The allottee shall, however, become the owner of the land on payment of the full price:

Provided that the allottee shall not be competent to transfer, sell, lease or mortgage the land allotted to him or any part thereof or transfer his rights, title or interest therein, in any manner whatsoever, to any person for a period of five years from the date of his taking possession in purchase of the allotment under the schedule framed for utilising the surplus area under this Act, even though the full purchase price has been paid in a lumpsum or in installments alongwith interest within the aforesaid period.”

In these circumstances, this Court does not find any substance in the first submission of learned counsel for the appellant.

As regards second submission, it may be noted that the order of cancellation has been passed in the meeting of the Advisory Authority. However, the allotting authority was member of the Advisory Committee. In such circumstances, the decision of cancellation of allotment cannot be held to be of Advisory Authority but is also of the Competent Authority.

Learned counsel for the appellant further submitted that Advisory Committee has wrongly noticed that the possession has not been taken. In the considered view of this Court, such error in the order of Advisory Committee does not improve the case of the appellant.

Next argument of learned counsel that the order is discriminatory as installment deposited by the respondent has been accepted

after a period of 6 ½ years is also without any substance because the Allotment Authority has the power to extend the time. However, such power is to be exercised by the Allotting Authority.

Next argument of learned counsel that no notice was issued and opportunity was granted is liable to be rejected on two grounds:-

(i) As per allotment letter, the allotment was liable to be cancelled without notice. Terms contained in the certificate of allotment/allotment letter were in knowledge of the appellant. He was required to comply with the requirements of the aforesaid allotment letter.

(ii) Still further, it has been found that a notice Ex.D-5/4 was sent to the appellant but it was received back with the report of refusal. Therefore, plaintiff-appellant cannot claim that the order was passed without granting opportunity of hearing.

In fact, the suit filed by the plaintiff is itself defective as he ought to have challenged the order of cancellation as also the allotment in favour of the respondent. However, he has failed to challenge the same. Learned counsel for the appellant has relied upon a judgment passed by the Division Bench of this Court in **Siranja Singh and another versus The State of Punjab and others, 1983 PLJ 432.** The said judgment is interpreting the provisions of Pepsu Utilization of Surplus Area Scheme, 1960. In the aforesaid case, the Court found that the allotment had been secured by fraud and tampering with the record. The Court found that since the order is without jurisdiction, therefore, it is not liable to be challenged. The aforesaid judgment has been passed in a particular fact situation and interpreting a different scheme.

In the present case, in fact it is proved on file that the plaintiff

was given a notice which he refused to receive. The show cause notice issued by the Allotment Authority on 26.07.1982, which was refused by the plaintiff on 29.07.1982.

Still further, on careful reading of the plaintiff's evidence, it is apparent that he was in knowledge of the order of cancellation but never chose to challenge the same. When he was confronted with the fact that he has not deposited any amount, he just stated that he had not received any notice from the allotment authority for deposit of the amount. As per allotment letter, there was no requirement to issue notice calling upon allottee to deposit the installment.

In view of the aforesaid, there is no ground to interfere.

Regular second appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

16.10.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No