IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

116 RSA No.4182 of 2009 (O & M)
Date of Decision:18.07.2018

Ludhiana Improvement Trust ...Appellant

Versus

Tejassavi Chander Sharma ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Kavita Arora, Advocate
for the appellant.

Mr. Joginder Sharma, Advocate
for the respondent.

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ANIL KSHETARPAL, J.

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

In the considered opinion of this Court, following substantial questions of law arise for determination:-

(i) Whether allotment of the immovable property could be made by the Improvement Trust (Public Authority) without inviting applications and granting opportunity to the public at large to compete for allotment?

(ii) Whether receipt of show cause notice proposing cancellation of the allotment and failure to

<u>respond to the aforesaid show cause notice amounts to sufficient opportunity before ordering cancellation of the allotment?</u>

<u>(iii) Whether non deposit of earnest money by the allottee on issuance of the allotment letter creates any right in the immovable property in favour of allottee?</u>

Facts:-

(i) Plaintiff applied for allotment of plot measuring 250 square yards in the year 1979 in Rishi Balmiki Nagar, Ludhiana and deposited a sum of Rs.1,500/-. However, no plot was allotted under the aforesaid scheme. It is the case of the plaintiff that he made a representation to the Chairman of the Ludhiana Improvement Trust for allotment of a flat in 8.4 acres scheme against his application and he was allotted a flat bearing No.40 (2nd floor) situated in 8.4 acre Development Cum Housing Accommodation Scheme, Sant Ishar Singh Nagar, Pakhowal Road, Ludhiana vide letter dated 28.08.1987. The price of the plot was to be paid in installments as per schedule contained in Para 4 of the allotment letter. However, when the plaintiffs went to deposit the first installment, officials informed him that the installments will be accepted on receipt of orders from the Department of Local Government as there were allegations that Chairman of the Trust had made irregular allotment of the flats.

It is further pleaded that the State Government vide different communications cleared 15 allotments made by the then Chairman and since the plaintiff was always ready and willing to pay the installments.

Therefore, his payment should have been accepted. Plaintiff in short alleged that the defendants are threatening to cancel the allotment of the flat. Hence, he filed a suit for permanent injunction.

Defendant contested the suit and pleaded that allotment in favour of the plaintiff was irregular and against the rules applicable provide that the allotment can only be made after inviting application through an advertisement published in a widely circulated newspaper. Such procedure was not followed. It was further pleaded that the plaintiff failed to deposit the earnest money.

During the course of evidence, defendant-appellant produced copy of the order whereby allotment was cancelled. In the written statement, defendants gave four reasons as notified in the show cause notice, which are extracted as under:-

> *"That the plaintiff has not replied the show cause notice dated 12.8.88. The defendant has served the show cause notice with the following requirements:-*
>
> *(i) The then Chairman, Improvement Trust, Ludhiana did not invite applications and did not follow proper procedure as prescribed in Rule 11 of Allotment Rules, 1983 while making allotment to the plaintiff. Thus the plaintiff violated the provisions of these Rules.*
>
> *(ii) According to the terms and conditions of Allotment letter, the plaintiff were required to*

deposit earnest money/first installment within the stipulated period which he has failed to deposit the same during the said period.

(iii) It was pre-requisite to deposit the earnest money alongwith the application for the allotment of a flat. But the plaintiff did not deposit the same alongwith the application in the first instance.

(iv) The requisite affidavit as provided under the Allotment Rules is not available in the record and also there is no proof of Annual Income at the time of your application for the allotment of a flat."

Learned trial Court as well as learned First Appellate Court have decreed the suit filed by the plaintiff and direction has been issued to the Improvement Trust to accept the deposit of the installments.

Learned First Appellate Court has given three reasons to dismiss the appeal filed by the appellant:-

(i) In the list prepared by the Government recommending cancellation, name of the plaintiff does not figure.

(ii) DW-1, an official witness, who has been examined on behalf of the defendant-appellant has admitted that the plaintiff was visiting the Office of the Trust for deposit of the amount whereas the cancellation is only on the basis of non-payment.

(iii) the cancellation has been ordered without granting proper opportunity to the plaintiff.

Now the stage is set for considering questions of law.

(i) Whether allotment of the immovable property could be made by the Improvement Trust (Public Authority) without inviting applications and granting opportunity to the public at large to compete for allotment?

This issue is already covered by the judgment of the Division Bench of this Court in the case of Tarlochan Singh vs. State of Punjab wherein while interpreting the Punjab Town Improvement (Utilization of Land and Allotment of Plots) Rules, 1983.

Division Bench has held that no allotment could be made by the Trust without inviting applications by issuing advertisement and permitting all eligible to apply.

Still further, in the cases of allotment to local displaced persons under the Land Disposal Rules including the Rules of 1983 another Division Bench of this Court while deciding CWP-14321-2009 titled Harjiwan Kaur Grewal and others vs. State of Punjab and others, has again reiterated that no allotment can be made to any individual without giving opportunity to all eligible applicants to apply for a plot. Reliance has been placed on various judgments passed by the Hon'ble Supreme Court.

In view of the aforesaid, question No.1 is answered in favour of the appellant.

(ii) Whether receipt of show cause notice proposing cancellation of the allotment and failure to

respond to the aforesaid show cause notice amounts to sufficient opportunity before ordering cancellation of the allotment?

In the present case, the plaintiff when appeared in evidence admitted that he received show cause notice from the defendant and he did not file any reply. In view thereof, principle of natural justice stood complied with. Show cause notice Ex.D-1 on the file clearly calls for a response from the plaintiff on four grounds which have been extracted above. However, the plaintiff failed to respond to the aforesaid notice. Hence, learned First Appellate Court was in error in recording a finding that the cancellation order dated 28.01.1993 was without giving opportunity of hearing.

Hence, question No.2 is also answered in favour of the appellant.

(iii) Whether non deposit of earnest money by the allottee on issuance of the allotment letter creates any right in the immovable property in favour of allottee?

In the present case, as per allotment letter Ex.P-2 on the file, the plaintiff was required to deposit Rs.15,750/- as earnest money. Allotment letter was issued on 28.08.1987. Payment of installments was a subsequent step. It is admitted position that the plaintiff did not make any attempt to deposit the earnest money. Alleged allotment letter is in fact a demand-cum-allocation letter addressed to the plaintiff. Deposit of the earnest money was pre-condition to the allotment. As per Clause 8, it was provided that the plaintiff would be required to complete formalities as stipulated in the demand-cum-allocation letter. Clause 8 is extracted as under:-

> *" In case you fail to complete the formalities within 30 days, as enumerated above and fail to make necessary deposit with the Trust, it will be presumed that you are not interested in the flat and the Trust will be competent to cancel the allocation."*

Since the plaintiff has failed to show that either he deposited the amount of earnest money or made any attempt, no allotment came into existence in favour of the plaintiff. Courts below wrongly held that Rs.15,00/- deposited by the appellant as application money of allotment of plot measuring 250 square yard in Rishi Balmiki Nagar would be treated as earnest money. As per allotment letter, the earnest money was Rs.15, 750/-, for the flat in question which was never deposited.

Still further, the plaintiff has only pleaded that he made an attempt to deposit the installments when it fell due in September 1987 whereas earnest money was required to be deposited within 30 days of issuance of demand-cum-allocation letter dated 28.08.1987. No effort has been shown to be made by the plaintiff to deposit the earnest money.

Hence, question No.3 is also answered in favour of the appellant.

Learned First Appellate Court has further erred in over looking the order dated 28.01.1993 Ex.DW-1/A on the file which clearly shows that Additional Director-Cum-Additional Secretary, Department of Local Government, Government of Punjab passed an order cancelling the allotment. Hence, suit for permanent injunction was not maintainable.

Plaintiff was required to challenge the cancellation of alleged allotment made in his favour.

In view of the aforesaid, judgments and decrees passed by the Courts below are set aside and suit filed by the plaintiff is ordered to be dismissed while allowing the present regular second appeal.

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

18.07.2018 **(ANIL KSHETARPAL)**
sheetal **JUDGE**

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