

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

RSA No.4367 of 2013

Shri Sanatan Dharam Sabha

...Appellant

Versus

Haryana Urban Development Authority and Ors.

....Respondents

Date of Order: 10.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Pawan Kumar Sharma, Advocate for the appellant.

Mr. S.K. Mahajan, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Appellant-plaintiff is in appeal against the judgment and decree dated 25.4.2013 rendered by the lower Appellate Court whereby the findings of the trial Court rendered vide judgment and decree dated 18.4.2011 in favour of the plaintiff has been reversed in appeal filed by defendant No.4 with liberty to the respondents-HUDA to allot the site in question after inviting fresh applications under the provisions of HUDA Act and rules framed thereunder.

Plaintiff-appellant instituted the suit claiming the following reliefs:

“Suit for a declaration to the effect that the amount for development of religious site in Sector 25, Panchkula having already been charged from the allottees of residential plots, no further amount is payable for allotment of the site and a suit for

mandatory injunction directing the defendants to allot the religious site measuring 900 sq meters to the plaintiff Society which is the only representative body of the allottees/residents of Sector 25, Panchkula and to direct the defendant Nos.1 to 3 to cancel the allotment of the site in question to defendant no.4 issued vide no.11725 dated 13.8.2003. Suit under order VII Rule 1 CPC.”

The suit was filed by the Society on the premise that defendant Nos.1 to 3-HUDA floated Sector 25, Panchkula for residential and commercial purposes. As per the master plan, Sector 25 was to be developed in 220.50 acres and one acre out of this was earmarked for religious buildings. An Advertisement was issued by the defendants-HUDA inviting applications for allotment of religious sites in the urban estate of Panchkula comprising of 2023,2000,930,900 sq meters approximately.

The plaintiff applied for the aforesaid plot. He received a communication from from defendant No.3 to appear for interview on 27.5.2003 before the Allotment Committee but the plot was not allotted though the plaintiff-society had already deposited 10% earnest money of Rs.38,250/- with the defendants-HUDA at the time of submission of the application and additional 15% amount was to be deposited. Against the requirement of Rs.57,375, the plaintiff-Society attached a Certificate of their banker showing a deposit of more than Rs.1 lac in their account. It was stated that the plaintiffs had already deposited the amount but the defendants-HUDA did not allot the plot but defendant Nos.1 to 3 vide letter dated 13.8.2003 allotted the site in question to defendant No.4 i.e Atmanand Jain College, Trust & Management Society, Ambala City.

The suit was contested by the defendants-HUDA by raising numerous objections. It was submitted that 21 (twenty one) applications were received, which were placed before the Zonal Committee for consideration qua allotment of different sites and decision was taken after hearing all the claimants including the plaintiff but the plaintiff-Society was not found fit to allotment of any site.

Defendant No.4 filed separate written statement and denied the claim of the plaintiff in the written statement.

From the pleadings of parties, the trial Court framed the following issues:

“1. Whether, the plaintiff-Society is entitled for allotment of religious site measuring 900 sq meters in Sector 25, Panchkula?OPD

2. If issue No.1 is proved, whether the plaintiff is entitled for decree of declaration and mandatory injunction on the grounds mentioned in the plaint?OPD

3. Whether the suit is bad for want of notice u/s 80 of CPC?OPD

4. Whether the jurisdiction of civil court is barred u/s 50 of the HUDA Act, 1977?OPD

5. Whether the suit has not been valued properly the purpose of court fees?OPD

6. Whether the suit is not maintainable?OPD

7. Whether the plaintiff has no locus standi to file the present suit?OPD

8. Whether the plaintiff is estopped from filing the suit by its own act and conduct?OPD

9. Whether defendant No.4 is entitled to allot the site in dispute as per allotment letter dated 13.8.2003?OPD

10. Whether the cancellation order dated 6.10.2003 is illegal, null and void?OPD

11. If issue No.9 and 10 are proved, whether defendant

No.4 is entitled for mandatory injunction and declaration on the grounds mentioned in the counter claim?OPD

12. Relief.”

Both the parties in support of their evidence led evidence besides tendering documents on record.

The trial Court on the basis of preponderance of evidence declined to grant the relief to defendant No.4 and decreed the suit in favour of the plaintiffs in the following terms:

“It is ordered that the suit plaintiff succeeds and is decreed with costs. Resultantly, decree is passed to the effect that defendant Nos.1 to 3 shall consider the application of the plaintiff-Society for allotment of 900 meter plot, as per rules within two months from today and cancellation of plot to defendant No.4 is legal and defendant No.4 is not entitlement of plot and his counter claim is dismissed with costs.”

Neither the defendants-HUDA nor the appellant filed any appeal against the said judgment and decree and only defendant No.4- Atmanand Jain College, Trust & Management Society preferred the appeal wherein the findings have been reversed by the lower Appellate Court by upholding the cancellation in favour of defendant No.4 and gave liberty to respondent Nos.2 to 4 to allot the site in question after inviting fresh applications under the provisions of HUDA Act and rules framed thereunder. The operative part of judgment and decree passed by lower Appellate Court reads as under:

“In view of foregoing reasons and discussion, it is established that allotment in favour of appellant has been cancelled and the name of respondent No.1 has already been rejected, therefore, for all the purposes,

it would be deemed that site in question has not been allotted. Therefore, findings of trial Court on issue nos.1 & 2 are reversed. The finding of Trial Court on issue no.4 is also reversed as respondent No.1 failed to avail remedy available to them under HUDA Act and directly approached civil court. However, findings on other issues are affirmed. The actual position is that site in question has not been allotted so far, therefore, respondent Nos.2 to 4 are at liberty to allot the site in question after inviting fresh applications under the provisions of HUDA Act and rules framed thereunder, at the prevalent rates. With these directions, the appeal is partly allowed. The judgment and decree dated 28.04.2011 passed by trial Court is hereby set aside. The judgment and decree dismissing the counter claim of the appellant is hereby affirmed. There is no order as to costs. Decree-sheet be drawn accordingly. Lower court record be sent back along with copy of the judgment. File be consigned to records after due compliance.”

Learned counsel for the appellant submitted that the amount in respect of allotment of the plot as noticed in the plaint is still lying deposited with the defendants-HUDA, which has not been refunded as yet. He submitted that the decision taken by the defendants-HUDA for not earmarking an area for religious sites is wholly erroneous, for, the lower Appellate Court ought not to have set aside the well reasoned findings rendered by the trial Court in favour of the plaintiff vide which defendant Nos.1 to 3-HUDA were directed to consider the application of the plaintiff-society for allotment of 900 meters plot. Moreover, in the absence of any appeal filed by the defendants-HUDA, the lower Appellate Court should not have reversed the findings of the trial Court.

Per contra, learned counsel for the respondents submitted that the plaintiff was apprised of the rejection of their application in the written statement but they did not seek amendment nor challenged the order of rejection. The spirit and mode of the judgment and decree of the lower Appellate Court is most innocuous, which does not take away the right of the plaintiff to submit application afresh, thus urged for upholding the findings.

After hearing learned counsel for the parties and perusing the paper book, I find no merit in the submissions made by learned counsel for the appellant, for, from the perusal of the contents of the plaint, it reveals that no challenge was laid to the rejection of the application by the HUDA nor any effort to amend the same in the plaint and suit was allowed to continue.

The trial Court while passing the decree directed the defendant Nos.1 to 3 to consider the application of the plaintiff-Society for allotment of the plot but the said direction has been modified by the lower Appellate Court in appeal by giving liberty to respondent Nos.2 to 4-HUDA to allot the site in question after inviting fresh applications. Undoubtedly, the plaintiff has right for consideration qua the plot it cannot seek allotment as a matter of right. Once first application submitted by the plaintiff was rejected, the plaintiff was to avail the remedy as per the HUDA Act and rules.

Be that as it may, no party is prevented to challenge the order in the civil court in case the impugned order passed by the Competent Authority suffers from the lack of jurisdiction or any illegality. As an offshoot of what has been stated above, I am of the view that the judgment

and decree passed by the lower Appellate Court is perfectly justified and has not affected the right of the plaintiff.

No ground for interference is made out much less no substantial question of law arises.

Dismissed.

May 10, 2018
manoj

^(AMIT RAWAL)
JUDGE

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