

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4859 of 2016 (O & M)
Date of Decision:23.08.2018

Ludhiana Improvement Trust and another

...Appellants

Versus

Amarjit Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manbir Singh Batth, Advocate
for the appellants.

ANIL KSHETARPAL, J.

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below while decreeing the suit for recovery of Rs.1,10,000/-. The amount of Rs.1,10,000/- was claimed under following heads:-

1	Amount of non construction fine etc. illegally charged and paid under protest pertaining to plot no.335-E, Bhai Randhir Singh Nagar, Ludhiana measuring 150 sq. yards	Rs.30,740/-
2	Interest @ 12% from 05.05.1999 to 04.04.2000	Rs.10,759/-
3	Increase in the cost of building material and other consequential damages	Rs.46,053/-
4	Amount incurred for getting the plan sanctioned for 2 nd time	Rs.2,448/-
5	Amount on account of Mental tension, torture, agony, financial loss and inconvenience and litigation charges	Rs.20,000/-
	Total	Rs.1,10,000/-

It is the case of the plaintiff that plot No.335-E situated at Bhai Randhir Nagar, Ludhiana was allotted by the defendants-appellants to Maghar Singh vide allotment letter dated 03.05.1977. Since Maghar Singh

expired, therefore, the plot was transferred in favour of Lal Singh, Harpal

Singh, Gurbacchan Singh sons of Harbhajan Singh and Smt. Amar Kaur wife of Mewa Singh son of Bhajan Singh vide letter dated 07.05.1993. Plaintiff purchased the said plot from the legal heirs of Maghar Singh. Plaintiff applied for transfer of the said plot in her name vide application dated 29.09.1993. However, the defendants failed to transfer the ownership in favour of the plaintiff in spite of the fact that the plaintiff was called upon to deposit Rs.2400/- as non construction fee for the year 1994, which was duly deposited on 07.01.1994 under protest. It is further pleaded that in spite of repeated request, defendants did not take any step to transfer the plot. Plaintiff was called to attend the Office of the Chairman along with the necessary documents vide letter dated 06.09.1995 and when the plaintiff attended the Office, he was called upon to deposit non construction charges of the year 1995 also. Still the plaintiff deposited the said amount under protest vide receipt dated 14.09.1995 and ultimately after a period of almost two years, the plot was transferred in favour of the plaintiff. Plaintiff claimed that since on account of delay in transfer, plaintiffs suffered mental tension, torture, agony, inconvenience and financial loss, therefore, he claimed damages to the extent of Rs.20,000/-. Plaintiff further submits that at the time of transfer of ownership necessary charges for transfer of ownership i.e. execution of conveyance deed and sanction of the building plan was also deposited but the defendants did not execute the conveyance deed. It was further pleaded that the plaintiff filed a complaint before District Consumer Dispute Redressal Forum, Ludhiana. However, the same was held to be not maintainable as the plaintiff did not fall within the purview of Consumer Protection Act. Hence, the suit was filed. It was further pointed out that sale deed was executed in favour of the plaintiff

only on 06.12.1995 and the building plan was approved after another seven months i.e. on 19.06.1996. Plaintiff also approached the defendants for demarcation of the plot in question so that he is in a position to raise construction but officials of the appellants-defendants failed to give demarcation resulting in further delay in construction of the building. In the meantime, the plaintiff was called upon to deposit non construction fine for the year 1996, 1997, 1998 and 1999, which the plaintiff had to deposit amounting to Rs.30,740/-. Repeated communications were sent and demarcation of the plot was given at the spot only on 13.09.1999.

In the meantime, building plan which has been sanctioned had lapsed and the plaintiff had to spent additional amount of Rs.2,448/- for getting the building plan sanctioned once again.

Defendant contested the suit. It was pleaded that the building plan was to be sanctioned by the Municipal Corporation, Ludhiana for which trust was only to give a 'No Objection Certificate', which was issued on 10.06.1999.

Both the Courts after examining the evidence found that it is a fit case where the plaintiff is entitled to recover the amount of Rs.53,947/- along with interest at the rate of 6% per annum.

This Court has heard learned counsel for the appellants at length and with his able assistance gone through the judgments passed by both the Courts below.

Learned counsel for the appellants has submitted that building plan was to be sanctioned by the Municipal Corporation and, therefore, defendants-appellants cannot be penalized for the delay. However, on being pointed out learned counsel for the appellants admitted that building plan

could only be sanctioned after 'No Objection Certificate' is issued by the Improvement Trust, which was issued only on 10.06.1999 while giving consent to the Municipal Corporation to sanction the site plan.

Next argument of learned counsel is that demarcation was not necessary before plaintiff could raise a construction. This Court has considered the submission, however, find no substance therein. In the colony where planned development has taken place, the allotting authority after demarcation, duly identifies the exact measurement of the plot available at the site so that the allottee/transferee is able to start his construction. This demarcation is given only to rule out a possibility of any allegations of unauthorized encroachment of the area.

In the present case, the facts which have been noticed clearly proved that officials of the Improvement Trust have left no stone unturned to harass the plaintiff-respondent. Learned Courts have only granted Rs.53,947/-, which cannot be said to be excessive.

Hence, 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.

23.08.2018

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(ANIL KSHETARPAL)
JUDGE

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