

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

1. RSA No.519 of 2016 (O&M)
Date of decision : 16.07.2018

Bhagwan Singh ...Appellant

Versus

Ludhiana Improvement Trust and another ...Respondents

2. RSA No.2976 of 2016 (O&M)
Date of decision : 16.07.2018

Gurmail Singh ...Appellant

Versus

Ludhiana Improvement Trust and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S. Salar, Advocate for the appellant.

Mr. G.S. Attariwala, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

By this judgment, RSA Nos.519 and 2976 of 2016 shall stand dispose of, as issue which needs determination is common as agreed by the learned counsel for the parties.

The plaintiff-appellant is in the Regular Second Appeals against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff-appellant is seeking allotment of the plot under the category "Local Displaced Person". Both the Courts have found that the application filed by the appellant was after a period of 22 years approximately in both the cases and, therefore, time barred. Rule 4 of the

Punjab Town Improvement (Utilization of Land and Allotment of Plots)

Rules, 1983 (hereinafter to be referred as "1983 Rules"), reads as under:-

“4. Reservation of residential plots and multi-storeyed houses – (1) Subject to the provisions of rule 10, residential plots and multi-storeyed houses shall be reserved for allotment to the following categories of persons to the extent specified against each:-

<u><i>Category of persons</i></u>	<u><i>Extent of reservations</i></u>
<i>(i) members of the Parliament representing the State of Punjab and the Members of the Punjab Legislature Assembly</i>	<i>Eight per cent of plots of 250, 300, 400 and 500 Square Yards only</i>
<i>(ii) Freedom fighters and political sufferers having domicile in the State of Punjab and who have been awarded Tamra Patras by the Punjab Government and in the case of death of such persons their widows and in the absence of widows their children</i>	<i>Two per cent</i>
<i>iii) Defence Personnel, Border Security Force Personnel, members of the Central Reserve Police Force, Ex-Servicemen and War Widows having domicile in the State of Punjab.</i>	<i>Eight per cent</i>
<i>iv) Persons appointed to Public Services by the State Government who are holding posts in connection with the affairs of</i>	<i>Eight per cent</i>

the State of Punjab and in case of their death while in service their widows.

v) Persons belonging to the Scheduled Castes and Backward Classes *Eight per cent*

vi) Employees of the concerned Trust and in case of their death while in service, their widows. *Two per cent*

vii) Non-Resident Indians *Four per cent of plots of 500 Square Yards size only.*

Provided that ten per cent of the residential plots and multi-storeyed houses shall be reserved for persons whose applications for allotment of residential plots and multi-storeyed houses are pending for a period of more than five years ending with the date of commencement of these rules:

Provided further that the unutilized plots reserved for different categories of persons under sub-rule (1) for want of eligible persons shall be open for allotment to the persons other than the reserve categories of persons.

Provided further that ten per cent of the residential plots and multi-storeyed houses shall be allotted by the Trust with the approval of the Government to such category or class of persons and in the manner as the Government may from time to time keeping in view the socio-economic conditions of such persons specify.

Note 1 – *In this rule eight per cent of plots reserved for the persons belonging to the Scheduled Castes and Backward Classes shall be allotted to them in the ratio of 3:1*

Note 2 – *In this rule eight per cent reservation as shown against item (iii) of sub-rule (1) shall be as under:-*

(a) Defence Personnel *Four per cent*

*(b) Border Security Force Personnel Two per cent
and the members of the Central
Reserve Police Force.*

(c) Ex-servicemen and War Widows Two per cent

Explanation – *The expression “Ex-serviceman” used in this sub-rule shall mean a person who is ordinarily residing in the State of Punjab and has served in any rank, whether as a combatant or as a non-combatant in the Indian Armed Forces or the Armed Forces of the former Indian States or Border Security Force or Central Reserve Police Force excluding the Assam Rifles, Lok Sahayak Sena, Jammu and Kashmir Militia, Territorial Army, Defence Security Corps and the General Reserve Engineering Force for a continuous period of not less than six months after attestation and has been released otherwise than by way of dismissal or discharge on account of misconduct or inefficiency.*

(2) A local displaced person shall be allotted a residential plot on reserve sale price in accordance with the following criteria; provided he applies for such allotment in Form 'A' within a period of three years from the date of taking over the possession of his land acquired by the Trust:-

(i) If the area of land acquired is not 100 square yards less than 1/2 acre and is not more than one acre or if the land acquired consists of a dwelling unit even though it is less 1/2 acre.

(ii) If the area of land acquired exceeds 200 square yards one acre but does not exceed two acres;

(iii) If the area of land acquired exceeds 300 Square Yards two acres but does not exceed three acres

(iv) If the area of land acquired exceeds 400 Square Yards three acres but does not exceed five acres

(v) If the area of land acquired exceeds 500 Square Yards five years;

Provided that the local displaced persons having a joint khata being co-sharers shall be allotted only one plot taking into account the whole or their joint land acquired.

3) The residential plots left after reservation under sub-rule (1) and after making allotments to the local displaced persons under sub-rule (2) shall be open for allotment to the general category of persons in accordance with their eligibility as provided in rule 10.

(4) The reserved categories of persons and the local displaced persons shall not be entitled to allotment of plots earmarked for general category of persons under sub-rule (3) if they have applied for allotment under sub-rule (1) or sub-rule (2)."

Both the Courts below have held that as per Rule 4(2), it was obligatory for "Local Displaced Person" to apply for the plots in Form-A within a period of 3 years from the date of taking over the possession of the land acquired by the Trust. In the present case, it is not disputed that the possession of the land was taken over by the Improvement Trust on 19.06.1984.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and various judgments cited by learned counsel for the parties.

It may be noted that in the present case, the acquisition proceedings were initiated by issuing Notification under Section 36 of the Punjab Town Improvement Trust Act on 02.07.1976. The Land Acquisition

Collector announced the award on 04.08.1981. At that time, the Government had framed the Rules namely Utilization of Land and Allotment of Plots by Improvement Trust Rules, 1975 (hereinafter to be referred as "1975 Rules"). As per Rule 7(ii) of "1975 Rules", a "Local Displaced Person" may be allotted a plot upto the size of 500 square yards on freehold basis. However, procedure for application etc. was not laid down. "1975 Rules" were substituted by the Government by framing the "1983 Rules".

As per Rule 16 of "1983 Rules", "1975 Rules" were repealed.

Rule 16 of "1983 Rules" is extracted as under:-

“16. Repeal and savings – (1) The Utilization of Land and Allotment of Plots by Improvement Trusts Rules, 1975 are hereby repealed.”

Rule 4 of "1983 Rules" has already been extracted above. The manner of allotment of plot was regulated by Rule 11 of "1983 Rules", which is extracted as under:-

“11. Manner of allotment- Every Trust shall invite applications for allotment of residential plots or multi-storeyed houses by the dates to be specified in the notice to be published in the newspapers widely circulated in the locality for this purpose.

(2) Every intending purchaser shall make application to the concerned Trust in Form 'B' by the date specified in the notice alongwith an affidavit in Form 'C' to the effect that he fulfils the conditions of eligibility under rule 10.

(3) No application made under sub-rule (2) shall be valid unless accompanied by a bank draft in favour of the Trust in token of earnest money as under:-

<i>Area of plot</i>	<i>Amount of earnest money</i>
<i>500 square yards</i>	<i>Rs.10,000</i>
<i>400 square yards</i>	<i>Rs.8,000</i>
<i>300 square yards</i>	<i>Rs.6,000</i>
<i>250 square yards</i>	<i>Rs.5,000</i>
<i>200 square yards</i>	<i>Rs.4,000</i>
<i>150 square yards</i>	<i>Rs.3,000</i>
<i>100 square yards</i>	<i>Rs.1,000</i>

Provided that an application for allotment of a multi-storeyed house shall be accompanied by a bank draft of the amount equivalent to 10 per cent, to the estimated cost of such house.

(4) Every person, whose application for allotment of residential plot or multi-storeyed house is pending with any Trust on the commencement of these rules shall also be required to apply afresh for allotment of residential plot or multi-storeyed house, as the case may be, in Form 'B' in accordance with his eligibility as specified in rule 10:

Provided that if such a person fails to so apply to the Trust within a period of three months from the date of notice under sub-rule (1) within a period of three months from such commencement, whichever period is later he shall be considered for allotment of a residential plot or a multi-storeyed house for which he is eligible in accordance with the gross annual income or gross monthly income shown in the application already pending with the Trust.

(5) All valid applications received by the Trust in response to the notice published under sub-rule (1) and all applications pending with the Trust before the commencement of these rules in lieu whereof such applications have not been received under sub-rule (4) shall be entered in a register to be maintained for this purpose

and shall be allotted a serial number.

(6) Immediately on the expiry of the date fixed for receipt of applications the register referred to in sub-rule (5) shall be closed and the Chairman of the Trust shall attest the last entry made therein on that day by subscribing the words "Entry closed".

(7) A list of all the persons who have applied in pursuance of the notice published under sub-rule (1) shall be caused to be prepared by the Trust and posted outside its office and copy of such list shall also be sent to the Government for information."

On co-joint reading of Rules 4, 11 and 16 of "1983 Rules", it is clear that "1975 Rules" ceased to exist on enactment of "1983 Rules" which were notified with effect from 22.12.1983. Hence, no application under "1975 Rules" could be filed after the enforcement of "1983 Rules".

As noticed above, Rule 4(2) of "1983 Rules" provides that the application for allotment is to be made within 3 years from the date of taking over the possession of the land acquired by the Trust. Still further, Rule 11 of the "1983 Rules" mandates that every person whose application for allotment is pending under the old Rules shall also be required to apply fresh for allotment under the "1983 Rules". Admittedly, in the present case, the plaintiff did not apply under the "1983 Rules" within the time prescribed.

Learned counsel for the appellant while relying upon the judgment passed by Hon'ble the Supreme Court in **Civil Appeal Nos.1411 and 1412 of 2016, titled as Jaidev Inder Singh Vs. Amritsar Improvement Trust**, has contended that only on delay, the plaintiff-appellant could not be

denied the allotment. He has referred to para 10 of the judgment passed by Hon'ble the Supreme Court.

On careful reading of the aforesaid judgment, it is apparent that neither the attention of the Court is drawn to the "1983 Rules" hence the Hon'ble Supreme Court never had an occasion to deal with the same. Still further, in the aforesaid case, the appellant was dispossessed only on 09.06.2008. Hence, the aforesaid judgment would have no application.

Learned counsel has further relied upon the judgment passed by the Division Bench of this Court in the case of **Gurdev Kaur and others Vs. State of Punjab and another in CWP No.17248 of 1999, decided on 25.04.2001.**

On careful examination of the aforesaid judgment, it is once again apparent that the attention of the Court was not drawn to the "1983 Rules".

Learned counsel has further drawn the attention of the Court to the judgment passed by the Division Bench of this Court in **CWP No.940 of 2007, titled as Ranjeet Kaur Vs. State of Punjab and another, decided on 23.07.2008.**

In this case, the Division Bench has noticed that the petitioner had applied for the plot in the year 1980 and it was the Improvement Trust which had slept over the allotment. In those facts, relief was granted to the petitioner in the aforesaid case.

Learned counsel for the appellant has further relied upon the judgment passed by this Court in **CWP No.1603 of 2012, titled as Monti Roy Vs. State of Punjab and others, decided on 08.10.2012.** In this case

also, the attention of the Court was not drawn to the "1983 Rules". The Court further noticed that the applicants had deposited the earnest money in the year 1990.

On the other hand, learned counsel for the Improvement Trust has drawn the attention of the Court to the Division Bench judgment of this Court in the case of **Harjeevan Kaur Grewal and others Vs. State of Punjab and others in CWP No.14321 of 2009, decided on 23.01.2015,** wherein after considering all the Rules framed by the Government from time to time, the Court held that if the acquisition was issued prior to promulgation of "1975 Rules" but the petitioner applied after more than 12 years of acquisition of the land and even after promulgation of "1983 Rules", the landowners only get a right for consideration and they have no vested rights for the allotment of the plots only for the reason that their land stands acquired. The relevant discussion is reproduced as under:-

“In the present case, though the Notification under Section 36 of the Act was issued prior to promulgation of "1975 Rules", but the fact remains that the petitioners applied for plots after more than 12 years of the acquisition of their land and even after the promulgation of "1983 Rules". The landowners whose land stands acquired have a right of consideration of allotment of plots in terms of the schemes framed. They have no vested right for allotment of plots only for the reason that their land stands acquired.”

Still further, it is well settled that no allotment can be made without issuing advertisement inviting the application for allotment of the plots from all persons who are eligible. In absence of any advertisement, the appellant cannot seek the allotment of the plot without giving opportunity

to similarly situated persons to compete.

Learned counsel for the appellant has submitted that the acquisition of the land was challenged and SLP filed by the appellant was dismissed and, therefore, the appellant was well within his rights to move an application thereafter.

It may be noted that the suits were filed in the year 2002. As per the statutory Rules namely "1983 Rules", application was required to be filed within a period of three years from the date, the possession was taken over by the Improvement Trust. In the present case, the possession was taken on 19.06.1984, therefore, at the most, the application could be filed within a period of three years thereof i.e. upto the year 1987.

From careful reading of the Rules, challenge to the acquisition proceedings and pendency of the litigation on that account, does not extend the limitation for filing application for allotment under the Rules.

In view the aforesaid discussion, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Both the Regular Second Appeals are dismissed.

All the pending miscellaneous applications, if any, are also disposed of, in view of the abovesaid judgment.

16.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No