

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

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**RSA No.4453 of 2017 (O&M)
Date of Decision : 16.11.2018**

Om Parkash

..... Appellant

Versus

Parkash and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Shiv Kumar, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgments of the Courts below partly decreeing a suit filed respondent No.1. The respondent No.1 had challenged the order dated 29.08.2008 whereby the allotment made in his favour by respondent No.2-HUDA was cancelled and the plot in dispute was allotted in favour of the appellant.

Both the Courts below held that the order dated 29.08.2008 was passed in violation of the principles of natural justice since notice was issued by the HUDA to respondent No.1 on 28.08.2008 and he was asked to appear on the same day and on the very next day the impugned order was passed.

Learned counsel has argued that this is a very hard case where the respondent No.1 who is the brother of the appellant has defrauded him. As per him the respondent No.1 propounded a sale agreement dated 09.12.2005, as per which the appellant was shown to have sold his interest in the plot in dispute to respondent No.1 and on the strength of that forgery moved another forged application for transfer which was allowed. As per learned counsel, the appellant had lodged an FIR against respondent No.1 and respondent No.1 has been convicted (though he has admitted that the revision against the conviction is pending in this Court). He has pointed out that the appellant is serving in the BSF and had proved before the Courts below that on 09.12.2005 he was on duty.

In my opinion, these arguments can not help the appellant. The issue is whether the order dated 29.08.2008 was passed validly or not. On that date the HUDA only had the version of the appellant before it and that is why notice was issued to respondent No.1 to get his version but that notice was illusory since it was issued on 28.08.2008 and the respondent No.1 was asked to appear on the same day and on the very next day the cancellation order was passed.

In my opinion, no fault can be found with the finding of the Courts below wherein the HUDA has been directed to re-decide the issue. Admittedly, the plot in dispute is now in possession of the appellant and the appellant has built his house, therefore, no prejudice can be caused to him if the HUDA decide the issue again after hearing both the parties. The appellant would be at liberty to place all the material which he is relying upon before the HUDA also.

With these observations, the appeal is dismissed.

Since the main case has been decided, the pending Civil
Miscellaneous Application, if any, also stands disposed of.

16.11.2018
pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No