

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

R.S.A. No 5175 of 2017 (o&m)

Date of decision : 02.02.2018

Rupnagar Improvement Trust Rupnagar

....Appellant

versus

Balwinder Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Aman Sharma, Advocate
for the appellant.

RITU BAHRI, J. (Oral)

This regular second appeal is directed against the concurrent finding of facts recorded by the Court below whereby the suit of the plaintiff-respondent (herein after to be referred as 'the appellants') for declaration and mandatory injunction, has been decreed.

The case of the respondent before the Court below was that he filed a suit for declaration and mandatory injunction as fully described and detailed in the head note of the plaint. It was averred in the plaint that the defendant Rupnagar Improvement Trust, Rupnagar allotted the plot No.485 measuring 250 aq. Yards and having dimensions 75'x 30' situated in development scheme No.1 known as Giani Zail Singh Nagar, Rupnagar to Chaman Lal Jain son of Hans Raj Jain, resident of H. No.2172, Chhota Khera, Rupnagar vide letter No.R.I.T. 411/1799 dated 28.12.1977. The entire sale consideration of this plot was deposited by Chaman Lal Jain alongwith interest. The defendant had disclosed the dimensions of the plot through site plan to Chaman Lal Jain to be 75'x30' and are of 250 sq. yards. Chaman Lal Jain had requested the defendant

to deliver the possession of the plot to him vide application dated 19.1.1981 but it was ordered by the defendant vide letter No.R.I.T./411/(250) dated 20.2.1981 that the possession of the abovesaid plot will be delivered to the allottee Chaman Lal Jain son of Hans Raj Jain on payment of all the installments of sale consideration alongwith interest calculated on the said sale consideration. The defendant got an agreement dated 16.2.1983 executed from Chaman Lal Jain son of Hans Raj Jain about the above said plot. The entire sale consideration amounting to Rs.12,500/- of the above said plot along with interest was paid by Chaman Lal Jain allottee to the defendant Trust and letter bearing Memo No.R.E.T./411/118 dated 20.4.1983 was issued by the defendant vide which No Objection Certificate was issued by the defendant regarding plot No.485 measuring 250 Sq. yards. The plaintiff purchased the above said plot from Chaman Lal Jain allottee after making full enquiry and applied for its transfer. The plot was transferred in the name of the plaintiff vide letter number RET/2023 dated 13.09.1995. The plaintiff applied for loan to his department. The department of plaintiff demanded sale deed of the above said plot for giving loan to him and issued a letter No.Estt.-2-96/621 dated 22.1.1996 to the defendant for getting the sale deed excuted by the defendant Rupnagar Improvement Trust, Rupnagar in favour of the plaintiff but neither the defendant Trust executed the sale deed nor delivered the possession of above said plot to plaintiff. Later on it was disclosed by the officials at the office of the defendant that a writ petition titled as ***"Surjit Kaur versus Punjab State and Rupnagar Improvement Trust"*** is pending in the Hon'ble High Court and the suit property is part of the property involved in that writ petition and this was the reason of non-execution of the sale deed of the suit property by the defendant in favour of the plaintiff. It is alleged that it was the fault of the defendant to not to execute

the sale deed and delivered its possession to the plaintiff despite requests and the plaintiff faced harassment. Moreover, heavy costs of construction have increased with passage of time. Further the defendant issued a letter number RET/2420 dated 28.1.2010, imposing penalty of Rs. 3,74,000/- non-construction of the plot, which is wrong, illegal, null and void as the defendant never delivered the possession of the plot of the plaintiff and never executed its sale deed in favour of the plaintiff. It is further averred that the defendant is guilty of concealment of facts for not informing the plaintiff about the pendency of writ petition, which involved his property. The defendant further issued letter number RET/489 dated 23.8.2010 in the form of show cause notice for not raising construction within three years, and not depositing the penalty for non-construction. This letter was duly replied vide reply dated 6.9.2010. The above said letter is also wrong, illegal null and void. The defendant further issued letter bearing memo number RET/677 dated 30.9.2010 in which the defendant has admitted possession of some other person over the suit property and the said letter was also replied on 7.10.2010. The defendant further issued letter No. RET/1578 dated 14.12.2011, cancelling the plot and forfeiting the entire sale consideration. The suit property was never delivered to the plaintiff and the sale deed was never executed in favour of the plaintiff. Therefore, all these letters are wrong, illegal, null and void. It is further pleaded that legal notice dated 23.12.2011 under Section 98 of the Punjab Town Improvement Act, 1922, was served upon defendant and the same was received by defendant on 27.12.2011 but the defendant did not file its reply. Despite requests, the defendant neither repudiated and cancelled the above mentioned letters nor executed the sale deed and delivered possession of the suit property to the plaintiff.

Both the Courts below relied upon a order dated 04.02.2010 passed

by this Court wherein the contention raised in the said writ petition by the defendant/Trust was that Surjit Kaur petitioner in that case had encroached upon over to an extent of 556 sq yards that caused obstruction to other allottees under the scheme to take possession in respect of plot numbers 485 and 486 and the property continued in her possession and if the Government could not subsequently dispossess her out of the house it was only because of intervention of the Court through a writ petition. Therefore, it stood admitted by the Trust in the said writ petition that the allottees of plot No.485 i.e. Plot number in question, could not take the possession of the said plot. Therefore, it is clear that the possession of plot No.485 was never delivered to its original allottee/owner or to the respondent/plaintiff. Due to non-delivery of possession neither the original allottee nor the respondent/plaintiff could raise any construction upon the plot no.485. Therefore, the issuance of letter No.489 dated 23.8.2010 by the Ropar Trust in the form of show cause notice alleging that the respondent/plaintiff has not raised construction within three 3 years and has not deposited penalty if any for non-construction, the Trust had issued this letter wrongly and due to the aforesaid reasons, the letter dated 23.8.2010 and the letter dated 23.1.2010 demanding the penalty both were found to be illegal, null and void

After going through the judgments passed by both the Court below, it is clear the the respondent was lawful owner of the suit property and was struggling hard for all these years to take possession of the property which he had purchased for consideration and the appellant-trust instead of revealing the actual facts with regard to pending writ petition and that the possession of the suit property is not with the appellant trust and actually with Surjit Kaur, kept the respondent unaware of the fact.

Thus, the finding of facts recorded by both the Courts below does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

February 02, 2018

G Arora

(RITU BAHRI)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No