

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

**RSA No.1691 of 1986 (O&M)
Date of Decision.25.03.2019**

Jalandhar Improvement Trust ...Appellant
Vs

Dr. (Capt) Agya Ram Thapar (D) through LRs and another
...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Khunger, Advocate and
Mr. G.S. Gill, Advocate
for the appellant

Mr. N.C. Sahni, Advocate
for respondent No.2.

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AMIT RAWAL J. (ORAL)

C.M. No.6444-C of 2011

The application for impleading legal representatives of deceased respondent No.2 is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record for the purpose of adjudication of present appeal.

Registry is directed to carry out amendment in the memo of parties.

Main case

The present regular second appeal is directed against the concurrent finding of fact whereby suit of the respondents-plaintiffs for injunction seeking restraint against the appellant-Jalandhar Improvement Trust from disposing of the land bearing Khasra No.16692/6729 measuring 8 kanals 5 marlas falling in 55 Acres Development Scheme of Jalandhar Improvement Trust without keeping any provision for allotment of plots to the plaintiffs as local

displaced persons has been decreed by the trial Court and affirmed in appeal.

The respondents-plaintiffs alleged that the Jalandhar Improvement Trust came out with a scheme known as 64 Acres Development Scheme on Police Line Road, Jalandhar, on the basis of that Award No.1 of 1973 was pronounced and vide letter dated 22.02.1973, compensation in respect of land holding of the plaintiffs was offered but compensation was not collected, instead submitted an application for exemption/allotment of plots for their residential purposes. It is pertinent to mention that subsequently the scheme was replaced with 55 Acres Scheme. It was alleged that plaintiff No.1 had shareholding of 1 kanal 15 marlas whereas 5 marlsa of plaintiff No.2 in the aforementioned khasra numbers. On 09.03.1976, plaintiffs were actually called in the office of the defendant Trust and they were informed that plots No.43C and 413 were tentatively earmarked for the plaintiff but no such plot was offered.

Appellant-defendant opposed the suit by raising objection of non-maintainability of the suit and stated that the State Government vide notification dated 10.07.1975, issued under Section 42 of the Punjab Town Improvement Act 1922, accorded sanction to the Development Scheme and award No.1 of 77 i.e. 5.1.1977 came to be passed. The Improvement Trust obtained possession of entire land including khasra number aforementioned on 11.05.1977. The factum of assessment of compensation in favour of plaintiffs was not denied but their status as local displaced person was disputed.

On receipt of the replication, the trial Court framed following issues:-

- “1. Whether the plaintiffs are entitled to the injunction prayed for as alleged? OPP*
- 2. Whether the suit is not maintainable as alleged in preliminary objection No.1? OPD”*

Plaintiffs in support of the aforementioned evidence examined five witnesses and brought on record various documents i.e. Ex.P1 to P26 establishing the correspondences between the Department and assessment of compensation, much less, its offer. On the other hand defendant examined two witnesses and brought on record Ex.D1.

The trial Court noticing the contents of award dated 5.1.1977 in respect of 55 Acres Scheme found that compensation in favour of the plaintiffs was found to be disputed. DW2 Raj Krishan witness of the Department did not acknowledge disbursement of the compensation and the trial Court decreed the suit. The appeal taken before the lower Appellate Court, as indicated above, was also dismissed.

This Court while issuing notice of motion had stayed the execution. The appeal was admitted on 29.10.1986. Vide order dated 22.05.1987 on the statement made on behalf of the counsel for the Trust two plots were kept reserved for the respondents-plaintiffs and in case of failure of the appeal, further undertaken to deliver possession immediately thereafter. The order dated 22.05.1987 reads as under:-

“Mr. Mattewal, learned counsel for the appellant states that two plots shall be kept reserved for the respondents and in case the appeal fails, they will be delivered possession of the plot immediately thereafter.

The stay will continue subject to the above statement”

Mr. Sandeep Khunger, learned counsel appearing on behalf of the appellant submitted that the controversy with regard to definition of local displaced person is no longer *res integra*, in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Jalandhar Improvement Trust Vs. Sampuran Singh etc. 1999(3) SCC 494** wherein while noticing the Jullundur Improvement Land Disposal Rules, 1954 and as well as Punjab Town Improvement (Utilization of Land and Allotment of Plots) Rules, 1983 and Punjab Utilization of Land and Allotment of Plots by Improvement Trust Rules, 1975, the definition of local displaced person was confined to a person whose property had been acquired for a scheme to be executed under the Punjab Development of Damaged Area Act and not under the Punjab Town Improvement Act, 1922. Attention of this Court was drawn to paragraph 5, 6, 7 and 12 of the judgment.

It was next contended that the Courts below have committed illegality despite having extracted the Rules which clearly revealed that only those persons whose land has been acquired or fallen under the scheme known as Damaged Areas Act would be entitled and not any other scheme, decreed the suit. However, in 1994 the definition as expanded and the local displaced persons were brought under the ambit of acquisition in other schemes under the

Punjab Town Improvement Act, 1922. Since notification in this case was dated 10.07.1975 whereas Rules were promulgated on 18.09.1975, therefore, as per Rules of 1954, respondents-plaintiffs were/are not entitled to plots, thus, urges this Court for setting aside the judgment and decree under challenge.

Per contra, Mr. N.C. Sahni, learned counsel appearing for respondent No.2 supported the finding of fact by urging that there is no illegality and perversity. The appellant-defendant has not been able to place on record any material to bring the case within the ratio of judgment aforementioned, as the extracted Rules would also indicate eligibility/entitlement of local displaced person in respect of acquisition of land under the Punjab Town Improvement Act as well.

I have heard learned counsel for the parties, appraised the paper book, records of Courts below and of the view that following Substantial Question of Law arises for determination by this Court:-

“Whether the case of the respondents-plaintiffs for allotment of land being Local Displaced Person would fall under the ambit of Jullundur Improvement Land Disposal Rules, 1954 as the notification for acquisition of land is dated 10.07.1975 as the Punjab Utilization of Land and Allotment of Plots by Improvement Trust Rules, 1975 came to be promulgated w.e.f. 18.09.1975?”

It would be in the fitness of things to reproduce paragraph 12 of judgment of trial court whereby the trial Court while rendering finding in favour of the respondents-plaintiffs referred to Rules:-

“12. Now the question arises that as recorded owners and claimants whether they are entitled to the allotment of plots as Local Displaced Persons Rule 2(b) of the Rules framed by the Jalandhar Improvement Trust under clause (viii) of Section 74 of the Punjab Town Improvement Act, 1992 defines Local Displaced Person as under:-

“Local Displaced Persons: Means a person whose property has been acquired by the trust for the execution of a scheme under the Punjab Development of Damages Area Act, 1915. Rules 5 provides, inter alia, for selling plot as concessional price to Local Displaced Persons and displaced persons from West Pakistan etc.

Rule 6 runs as follows:-

1. “the land comprised in a scheme under the Punjab Development of Damaged Area Act, 1915, shall in the first place be offered for sale to P -

i) the local displaced persons and to claimants of allotable acquired evacuee properties falling within the scheme area, and

ii) Displaced person from West Pakistan, who in their own name or in the name of their husbands/wives or dependent children do not own a building or building site in Improvement Trust area of Jalandhar. Not more than one plot of

land shall be sold to a local displaced person, claimant of allotable acquired evacuee property or a displaced person from West Pakistan.”

2. the land comprised in a scheme under the Punjab Town Improvement Act, 1922 shall be in the first instance, be offered to the following categories at the reserve price and after meeting their demands, it shall be released for sale to general public:

i) Local displaced persons;

ii) Claimants of allotable acquired evacuee properties

iii) Member of Armed Forces;

iv) displaced persons from West Pakistan who in their own name or in the name of their husbands/wives or dependent children do not own a building or building site in India;

v) Members of a registered Cooperative House Buildings Societies;

vi) Government employees and employees of the local bodies.

Rule 7 provides for issuance of public notice for inviting applications from Local Displaced Persons etc. Rules 8 provides that land not disposed of in the manner mentioned in Rule 7, may be disposed of by tender or public auction.”

From perusal of aforementioned paragraph, it is not fathomable as to Rules of which year 1954 or 1975 were made applicable. The Hon'ble Supreme Court in paragraphs 5, 6, 7 and 12 of judgment rendered in ***Jalandhar Improvement Trust's case*** (supra) held as under:-

“5. The State Government exercising the power vested in it under [Section 73](#) of the Improvement Act on 5.1.1954 notified the Jullundur Improvement Land Disposal Rules, 1954. Rule 2(b) of the said rules defines 'local displaced person' as a person whose property has been acquired by the Trust for the execution of a scheme under the Punjab Development of Damaged Areas Act, 1951 (for short 'the Damaged Areas Act'). Rule 5(ii) of the said Rules provides for certain preferential allotments in favour of local displaced persons, among others.

6. On 18.9.1975, the State Government promulgated a Rule titled as "Utilisation of Land and Allotment of Plots by Improvement Trust Rules, 1975". Rule 2(a) thereof defines "'local displaced person" means a person who is the owner of a property acquired by the Trust for the execution of a Scheme and has been such owner for a continuous period of two years immediately before the first publication of the Scheme by the Trust under Section 36 of the Punjab Town Improvement Act, 1922.". Sub-rule (ii) of Rule 7 of the said Rules makes reservation of plots and tenements in favour of local displaced persons. On 22.12.1983, the State Government promulgated another Rule titled "The Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983. Rule 2(d) of the said Rules defines 'local displaced person' as follows:-

Local displaced person" means a person who is the owner of any land acquired by the Trust for

the execution of any scheme under the Act and who has been such owner for a continuous period of two years immediately before the first publication of such scheme by the Trust under [Section 36](#).

Rule 4(2) of the said Rules provides for preferential allotment in favour of a local displaced person.

7. A perusal of the above Rules shows that so far as the 1954 Rules are concerned, the definition of 'local displaced person' is confined to a person whose lands have been acquired for a scheme to be executed under the Damaged Areas Act. It is not applicable to any other scheme. So far as the 1975 and 1983 Rules are concerned, the definition of 'local displaced person' applies to a person whose property has been acquired and who has been owner of such property for a continuous period of two years immediately before the first publication of the scheme by the Trust, Thus, it is seen from all these three set of rules that in order to have the benefit of a preferential allotment reserved for a local displaced person, there are certain qualifying standards. Unless and until a person who wants to take benefit of the preferential reservation qualifies to be a local displaced person, the said benefit is not available to him.

12. The High Court as well as the lower appellate court also relied upon the fact that the Trust had made similar preferential allotments as local displaced person in favour of other persons. Therefore, the courts below came to the conclusion that even the plaintiffs-respondents were entitled to such allotment. In our opinion, before coming to this conclusion the courts below should have first decided the question whether the allotment in favour of those persons was within the scope of the Rules applicable. If it was not within the scope of

the Rules then even those allotments in favour of other persons will not create a right in the respondents to claim equality with them; may be, if the allotments were made wrongly in favour of those persons, the same may become liable for cancellation, if permissible in law, but that will not create an enforceable right on the respondents to claim similar wrongful allotments in their favour. In our opinion, even this ground relied upon by the High Court as well as the lower appellate court is unsustainable. The courts below next relied upon the fact that in regard to some of the respondents, the Trust itself at a point of time made allotments and accepted initial deposits towards the consideration of the plot which was subsequently cancelled. Based on those facts, the courts below held that the Trust having once allotted the plots and having collected part of the consideration, it could not have cancelled the allotments, probably basing the respondents' case on the principle of promissory estoppel. Here the courts below have failed to notice the legal principle that there is no estoppel against law. The allotment of plots by the Trust is controlled by the statutory Rules. Any allotment contrary to those Rules will be against the law. Since the allotments made in favour of some of the respondents was based on wrong application of the reservation made for "local displaced person" those allotments were contrary to law. Hence, the principle of promissory/equitable estoppel cannot be invoked to protect such illegal allotments. In the said view of the matter, we are unable to sustain the judgments and decrees impugned in these appeals."

From the pith and substance of aforementioned ratio, it is established on record that a person, who has been owner for a continuous period of two years immediately before the first

publication of scheme, would be local displaced person and in respect of acquisition during the subsistence of 1954 Rules, if the land acquired under the Punjab Development of Damaged Areas Act and not otherwise. However on 18.09.1975, definition of local displaced person applied to a person whose property was acquired and has been owner of such property for a continuous period of two years immediately before the first publication of the scheme in respect of acquisition of land, in any of the schemes under Punjab Town Improvement Act, 1922. In view of such unclarity and ambiguity with regard to applicability of rules, the matter is required to be re-visited by the lower Appellate Court being the last court of fact and law to decide as to whether the case of respondents-plaintiffs would fall within the definition of local displaced person as per 1954 Rules or 1975 Rules.

Keeping in view such circumstances, the impugned judgment and decree of the lower Appellate Court is set aside and the second appeal is disposed of in above terms.

Both the parties through their counsel shall appear before the lower Appellate Court on 13.05.2019, which shall dispose of the appeal as expeditiously as possible and preferably within a period of 10 months thereafter.

(AMIT RAWAL)
JUDGE

March 25, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No