

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1633 of 2019 (O&M)
Date of Decision: April 05, 2019

Improvement Trust, Ludhiana

...Petitioner

Versus

Mahant Narain Puri & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. G.C.Garg, Advocate,
for the petitioner.

Mr. Arun Jain, Senior Advocate with
Mr. Saurabh Arora, Advocate,
for the caveator.

AMIT RAWAL, J.

The present revision petition is directed against the impugned orders dated 19.12.2018 (Annexures P-10 and P-11), whereby the application of the petitioner-judgment debtor for dismissal of the execution petition has been dismissed and the application for extension of time submitted by the decree-holder for depositing the amount of allotment price, has been allowed.

Before referring to the arguments of Mr. G.C.Garg, learned counsel for the petitioner, the attention of this Court has been drawn to the order dated 14.05.2018 passed in Civil Revision No.5338 of 2016 between the same parties, preferred by the decree holder against the order dated 02.07.2016, whereby the objection filed by them adjourning the execution application sine-die, was set-aside and the request was allowed with the

following directions:-

“The suit was decreed by the trial Court vide judgment and decree dated 16.1.2006. An execution application filed thereto. However, the executing Court adjourned sine-die the execution application on the premise that case of the parties lis was governed by the matter pending before the Full Bench of this Court in CWP No.2575 of 2009 titled as Jarnail Singh and others v. State of Punjab and others. It was submitted that the aforementioned case pertains to the allotment of land to the oustees and not to the LDP as the aforementioned Rules envisaged allotment of land to the LDPs. In support of the aforesaid argument, attention of this Court was drawn to an affidavit, Annexure P.5, filed by the Improvement Trust in one of the matters, i.e. CWP No.13592 of 2015, titled as Jaspal Singh v. State of Punjab and others, wherein, the Improvement Trust endorsed the view expressed by the petitioner with regard to the policy for the allotment of land to LDPs by the Improvement Trust as per the Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983. Thus, it was submitted that the impugned order may be set aside.

Ms.Kavita Arora, learned counsel appearing for respondent No.1 submitted that no cause of action arose to the petitioner, inasmuch as, nothing prevented the petitioner to seek the revival of the execution application as liberty was granted, however, no application for revival was filed. Thus, it was submitted that the present revision petition may be dismissed.

I have heard the learned counsel for the parties.

The pith and substance of the order under challenge vide which the objection of the improvement trust has been allowed is on the ground that the matter between the parties was to be governed by the policy of the State Government which was published in the Punjab Government Gazette on 15th December, 2005 for the allotment of land to LDPs or the matter pending before the Full Bench of this Court in CWP

No.2575 of 2009 titled as Jarnail Singh and others v. State of Punjab and others for the allotment of land to the oustees. For the sake of brevity, para 5 of the affidavit, Annexure P.5, is reproduced as under:

“That it is humbly submitted that the respondents already have a policy with regard to allotment of land to local displaced persons by Improvement Trusts in the State, which is applicable in the whole of the State. It is submitted that following provision in sub-rule (2) of Rule 4 of the Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983 has been made vide notification No.GSR 36/P.A.4/22/S 73/Amd (3)/2005, published in the Punjab Government Gazette on 15th December, 2005:-

“(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 the entire land acquired by the Trust along with an affidavit to the effect that he does not own any residential house in his/her name or in the name of his /her spouse in the area falling under the Trust:-

(a) If the area of land acquired is not less than half acre and is not more than three acres

-100 sq. yds.

(b) If the area of land acquired exceeds three acres, but does not exceed five acres

-200 sq. yds.

(c) If the area of land acquired exceeds five acres

-500 sq. yds.

Provided that the local displaced persons having a joint khata being co-sharers shall be allotted only one plot taking into account the

whole of their joint land acquired.”

This fact has not been disputed by learned counsel appearing for the Improvement Trust.

In my considered opinion, the executing Court did not take into consideration the difference between the expression of “oustee” and “LDPs”.

The matter pending before the Full Bench of this Court in CWP No.2575 of 2009 titled as Jarnail Singh and others v. State of Punjab and others pertains to the allotment of land to the oustees is not applicable in the instant case.

For the reasons aforementioned, the impugned order is set aside. The matter is remanded back to the executing Court to decide the application which was adjourned sine-die, in accordance with law and the order dated 13.2.2017, whereby one of the plots has been ordered to be reserved shall continue till the decision of the execution application.”

Learned counsel for the petitioner submitted that in view of the latest policy, the allotment letter was issued in favour of the decree holder @ ₹ 31,000/- per sq. yard as per notification dated 30.06.2016. Since no cause of action survived before the Executing Court, an application was moved for dismissal of the execution, but the same has erroneously been dismissed. Since the decree-holder did not deposit the amount, application for extension of time ought not to have been allowed by directing the Improvement Trust not to cancel the allotment of the plot in case the decree holder fails to deposit 1/4th of the price of the plot till the adjudication of the matter by the Court as per 1964 Rules.

I am afraid, the aforementioned arguments would not be sustainable as the decree dated 16.01.2016 was in the following terms:-

“This suit coming on this 16th day of January, 2016 for final disposal before me Shri K.S.Cheema, PCS, Addl.Civil Judge (Sr.Divn.), Ludhiana in the presence of Shri N.C.Kapil,

Advocate, for the plaintiff and Defendants exparte. It is ordered that the suit of the plaintiff is decreed with costs that he is the Local Displaced Person, is entitled to allotment of a plot measuring 500 sq.yards in lieu of acquisition of his land measuring 50 bighs and a mandate is also issued to defendant No.1 to allot a plot measuring 500 sq.yrds.to the plaintiff on receipt of balance concessional rates as defined under the “Rules of 1964.”

The Improvement Trust cannot be permitted to circumvent the decree by taking the aid of the notification and allot the plot at the rates as referred to in the application seeking dismissal of the execution application. The Executing Court has already kept the issue pending with regard to the applicability. In my view, the application was nothing but bereft of any explanation as well as malicious.

Since the decree has attained finality, it is yet to be adjudicated upon the Executing Court's jurisdiction not to cancel the plot by accepting 1/4th price of plot as the 1964 Rules are most innocuous.

For the reasons mentioned above, no ground for interference in the orders under challenge is made out. Resultantly, the revision petition is dismissed.

April 05, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No