

In the High Court of Punjab and Haryana at Chandigarh

RSA- 109 of 2011 (O&M)

Date of Decision:15.11.2019

Ludhiana Improvement Trust, Ludhiana

---Appellant

vs.

Sunder Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Anil Sharma, Advocate
for the appellant
Mr. Jaideep Verma, Advocate
for respondent No. 1
Mr. Amber Sachdeva, Advocate
for respondent No. 2

Rekha Mittal, J.

CM No. 355-C of 2011

Prayer in this application is for condoning delay of 21 days in
refiling the appeal.

Heard.

Allowed as prayed for. Delay of 21 days in refiling the appeal
stands condoned.

Main case

Challenge in the present appeal has been directed against
concurrent findings recorded by the courts whereby suit for declaration,
mandatory and permanent injunction was decreed by the trial court to the
following effect:-

“Suit of the plaintiff is decreed declaring that he is the allottee

of plot No. 1296 in the Model Town Extension Part-II (Atam Nagar) Scheme of the Improvement Trust Ludhiana and the said plot stands allotted in favour of the plaintiff by the defendant No. 1 with a direction to the defendants to hand over the actual physical possession of the said property after giving demarcation to the plaintiff of the said plot and to execute and to get the registered the conveyance deed in his favour and also restraining the defendants from allotting or handing over the possession of the plot No. 1296 in the Model Town Extension-II (Atam Nagar) scheme of the defendant No. 2 in favour of anybody else in any manner whatsoever except the plaintiff, as per the discussion made by me in issue No. 1, with the costs.”

The appeal preferred by the Ludhiana Improvement Trust, Ludhiana (in short “the Trust”) through its Chairman against the judgment and decree passed by the trial court came to be dismissed by the Additional District Judge, (Fast Track Court), Ludhiana whereby findings of the trial court were affirmed without variance.

Counsel for the appellant would fairly concede that there is no dispute that plot No. 1296 measuring 125 square yards was allotted to respondent No. 1-plaintiff by Atam Nagar Co-operative House Building Society Limited, Ludhiana (hereinafter referred to as “the Society”) as he was one of the members of aforesaid society. It has also not been denied that land of the Society was acquired by the Trust and there was litigation between the Society and Trust in respect of acquisition of land. He further

admitted that writ petition filed by the aforesaid Society against State of Punjab and others was decided by the High Court of Punjab and Haryana, Chandigarh vide judgment dated 12.1.1979 (Ex. D1). The Special Leave to Appeal against the judgment dated 12.1.1979 was decided by Hon'ble the Supreme Court vide order dated 20.8.1979 (Ex. D2) and the Trust agreed to forward case of the Society to the State Government for exemption from operation of the provisions of the Act as directed by the High Court. He would inform that the Trust vide letter dated 12.3.1982 (Ex. D3) referred the matter to Government of Punjab for exemption of plots to the Society for development scheme of Model Town Extension Part-II vide letter Ex. D3. He would refer to resolution No. 651 dated 29.1.1983 (Ex. D4) passed by the Trust whereby the Trust had agreed to exempt 50% of area in the shape of plots, details whereof were given in Resolution Ex. D4 and plot No. 1296 is also included in the list of 296 plots with total area measuring 50250 square yards.

The sole submission made by counsel for the appellant is that since the Trust had delivered possession of the disputed plot to the Society and allotment of the plot in question in favour of the respondent-plaintiff has been made by the Society, the courts have wrongly decreed the suit against the Trust with directions to execute the sale deed and deliver possession of the disputed plot. It is argued with vehemence that since the disputed plot is an exempted plot, it is none of the obligations of the Trust to execute sale deed in favour of the respondent-plaintiff. Counsel would argue that there is difference between a plot which is exempted from acquisition by the Trust and a plot which is allotted by the Trust. It is

further argued that since the disputed plot was not allotted to the respondent-plaintiff by the Trust, the Trust is not obligated to execute the sale deed in favour of the respondent-plaintiff.

To bring home his contention that possession of the disputed plot was delivered by the Trust in favour of the Society aforesaid, it is argued that during pendency of the suit instituted in the year 1993, the Society issued legal notice Ex. D10 but in the said notice, there is no reference to plot No. 1296 measuring 125 square yards of which possession was not delivered by the Trust to the Society though in para 14 of the notice, there is detailed reference to the plots of which possession was not allegedly delivered by the Trust to the Society, as such, an inference can safely be drawn that possession of the disputed plot was delivered by the Trust to the Society, therefore, it is for the society to execute the sale deed and deliver possession of the disputed plot in favour of the respondent-plaintiff.

Counsel representing the Society, on the contrary, would argue that the Trust did not contest the suit and failed to produce any evidence to substantiate its contention that possession of disputed plot bearing No. 1296 was delivered by the Trust to the Society, therefore, it is obligation of the Trust to deliver possession of the disputed plot to the respondent-plaintiff. However, he has fairly conceded that in case the Trust delivers possession of the disputed plot to the Society, the Society would discharge its obligation to execute a sale deed in favour of the respondent-plaintiff on the basis of allotment made in his favour.

Counsel representing respondent No. 1 would submit that

respondent-plaintiff is interested for getting a valid title and possession of the plot in question irrespective of whether the sale deed is executed by the Trust or Society and possession is also delivered by either of them. He has echoed the arguments advanced by counsel for the Society that possession of the suit plot has not been delivered by the Trust to the Society rendering the plaintiff to indulge in rigmarole who has been litigating for the past more than 20 years.

Counsel for the Trust, in reply, would argue that in case the court does not accept contention of the Trust with regard to delivery of possession of disputed plot to the Society, the Trust would allot another plot measuring 125 square yards in any other scheme in Ludhiana and in that eventuality, sale deed would be executed by the Trust and possession of allotted plot would also be delivered to respondent-plaintiff by the Trust.

Counsel for the respondent-plaintiff has got no objection if an alternative plot is provided by the Trust, in a time bound manner.

I have heard counsel for the parties, perused the paper book and records.

On due consideration of rival submissions made by counsel for the parties, it becomes undisputed position that respondent-plaintiff was a member of the Society and allotted plot No. 1296 measuring 125 square yards by the Society under Model Town Extension Part-II (Atam Nagar) Scheme of the Improvement Trust Ludhiana. As Trust acquired land of the Society and acquisition became subject matter of litigation in view of CWP No. 3577 of 1978 decided by this court vide judgment Ex. D1, the

respondent-plaintiff was left in lurch with regard to allotment made in his favour.

The Trust sought exemption from acquisition by the State Government and thereafter passed resolution dated 29.1.1983 (Ex. D4) and 296 plots with area measuring 50250 square yards were exempted and exempted plots included plot No. 1296 measuring 125 square yards.

The question for consideration is, whether the Trust delivered possession of plot No. 1296 to the Society for further delivery to the respondent-plaintiff.

Admittedly, the Trust did not contest the suit filed by the respondent-plaintiff, therefore, there are no pleadings or evidence on record by the Trust. Counsel for the appellant, by referring to documents produced by the Society and marked as Exs. D1 onwards, tried to contend that possession of the plot in question was delivered by the Trust to the Society, therefore, it is the obligation of the Society to execute the sale deed on the basis of allotment and deliver possession to the respondent-plaintiff. No doubt, in the notice dated 22.1.2001 (Ex. D10) issued by the society to the Trust, there is no reference to non-delivery of possession of plot No. 1296 measuring 125 square yards but this fact alone is not sufficient to substantiate contention of the appellant that possession of plot No. 1296 was actually delivered by the Trust to the Society though admittedly the said plot was exempted from acquisition vide Resolution dated 29.1.1983. That being so, it is the obligation of the Trust to deliver possession of the suit plot to the Society or respondent-plaintiff. In case the appellant is able to identify the disputed plot being available for delivery of possession within

a period of one month from receipt of certified copy of the judgment, the sale deed in respect thereof would be executed by the Society within one month thereafter. However, in case the Trust fails to do so, the Trust would allot an alternative plot measuring 125 square yards in any other scheme in Ludhiana and execute the sale deed and deliver possession thereof to the respondent-plaintiff.

In view of what has been discussed hereinbefore, the appeal stands disposed of with modification in the aforesaid terms.

(Rekha Mittal)
Judge

15.11.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No