

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

RSA-1083-2012(O&M)

Date of decision:-30.7.2019

Haryana Urban Development Authority and another

...Appellant

Versus

Krishan Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.Som Nath Saini, Advocate
for the appellants.

Mr.Jagdish Manchanda, Advocate with
Mr.Ravi Ghakhar, Advocate for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Krishan Kumar had brought a suit for declaration with consequential relief of mandatory injunction against Haryana Urban Development Authority, Panchkula (hereinafter referred to as HUDA) and its Estate Officer, Kurukshetra.

As per the version of the plaintiff, agricultural land situated at village Darra Kalan, Thanesar, Tehsil Thanesar, District

Kurukshetra, in which he was a co-sharer was acquired by the defendants for development of Sector 13, Kurukshetra; that after issuance of necessary notifications, an award was announced on 16.7.1975 awarding compensation to the landowners; the plaintiff was not satisfied with the quantum of compensation awarded, as such he had filed a reference under Section 18 of the Land Acquisition Act, however, the amount was not enhanced; then the plaintiff approached the High Court by way of filing a Regular First Appeal, which was decided on 14.3.1990 and compensation amount was enhanced; that as per the policy of the Government and the defendants, the persons whose land was acquired are entitled to allotment of plots on reserve price in oustees quota inasmuch as if the land acquired is one acre, then the land owner is entitled to get a plot measuring 250 square yards and since land of the plaintiff acquired by the defendants was more than seven acres, he became entitled for allotment of a plot having area of 500 square yards at reserve price; that despite various requests made by the plaintiff, the defendants failed to consider his claim, giving rise to a cause of action to him to bring the suit in question seeking a declaration that he is entitled to a residential plot measuring at least 1 kanal in Urban Estate, Kurukshetra at reserve price as per declared policy of the Government; in addition to that craving for grant of mandatory injunction directing the defendants to allot such plot to the plaintiff.

On getting notice, the defendants appeared and filed a joint written statement raising various preliminary objections, to wit, that the plaintiff lacked locus standi to file the suit; that the suit was not maintainable; that the Civil Court did not have the jurisdiction to entertain and try the suit; that the plaintiff was estopped by his own act and conduct from filing the suit etc. On merits, such defendants admitted that the land of plaintiff had been acquired but according to them, it was for public use and development of the land and reasonable compensation had been paid to the plaintiff; that the compensation was later on enhanced, which has also been paid to him, as such now the plaintiff has no right to claim any plot under oustees quota, furthermore there was no agreement between defendant No.1 and oustee for allotment of plot in lieu of acquisition of the land; that there is no such provision in Land Acquisition Act, 1894 as well as under Haryana Urban Development Authority Act, 1977; that Sector 13 has already been developed in Kurukshetra. Refuting the remaining allegations in the plaint, the defendants prayed for dismissal of the suit.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 15.6.2010 decreed the suit of the plaintiff.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal before District Judge, Kurukshetra, who vide judgment and decree dated 9.9.2011 dismissed the same and upheld the impugned judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendants have filed the present regular second appeal before this Court, notice of which was issued and respondent has appeared through counsel.

I have heard learned counsel for the parties besides going through the records and I do not find any merit in the appeal.

The trial Court has referred to letter from Chief Administrator, HUDA, which provides guidelines for allotting plots to the oustees, whose land had been acquired. The salient features of such guidelines are as under:

“(i) Plots to the oustees may be offered if the land proposed to be acquired is under the ownership of oustees for a continuous period of 5 years before the publication of notification under Section 4 of the Land Acquisition Act and if 75% of the total land owned by the land owners in that Urban Estate as acquired.

(ii) Ousteas whose land acquired is:

a) Less than 500 Sq.yards should be offered a

plot of 40 Sq.yards.

b) between 500 Sq. yards and one acre should be offered a plot of 250 Sq. yards.

c) More than once acre should be offered a plot of 350 sq. yards.

(iii) In case there are a number of co-sharers for the land acquired such co-sharers be accommodated by offering one plot each of 250 Sq. yards subject to the condition that the land acquired is atleast one acre. In case acquired land of the co-sharer is less than one acre then only one plot of 205 Sq. yards may be allotted in the joint name of the co-sharers.

(iv) Such plots should be offered to the oustees only if he does not own any house/shop/plot in any of the Urban Estates of that town.

(v) The persons whose house or part of land has been released from acquisition shall not be considered under the category for allotment of such plot.

(vi) Allotment of plots to the oustees will be made at the normal sector rate of HUDA.

The trial Court referred to oral as well as documentary evidence adduced by the plaintiff and came to the conclusion that ownership of the plaintiff for a continuous period of five years before

publication of notification stood established. The trial Court has referred to document Ex.D1, which provides that where the land was acquired prior to 10.9.1987 and the plots are still available, then oustees claim was also to be invited, providing that they shall have the prior allotment of the plots. The trial Court further observed that it stood proved that the plaintiff was not having any plot in his name or in the name of his dependents in Urban Estate, Kurukshetra and plaintiff fulfilled the necessary requirements for allotment of a plot. Furthermore, DW1 Yash Pal Sharma had admitted that a policy was made to allot the plots to the land owners, whose land was acquired before 1987; that the land of the plaintiff was also acquired before the year 1987. The contention that the claim of plaintiff was considered but rejected in Oustees Lok Adalat was discussed contending that it is not established that any fair hearing was given to the plaintiff there and in similar cases, the Civil Courts had accepted the claim of the oustees. The judgments passed in that regard Ex.P5 and Ex.P6 were referred to. The trial Court reached a specific conclusion that the plaintiff was entitled to a plot measuring 350 square yards, as per Government policy. The objections taken by the defendants that the plaintiff did not have any locus standi to file the suit or that the suit was time barred or that the plaintiff was estopped by his own act and conduct from filing the suit; that the suit was not maintainable or that the Court had no jurisdiction to try the suit were

rejected, while allowing the claim of the plaintiff.

The First Appellate Court was in agreement with the trial Court on all these points. The First Appellate Court had rather observed that the acquisition of the land at nominal price and thereafter sale of the acquired land at high rates has become a matter of debate in the Parliament and throughout the country; that in such a situation, previous owner of the acquired land certainly deserves sympathy of the Court and all concerned. It has been further observed that the plaintiff in fact wants re-purchase of only 350 sq. yards land out of his total land measuring 22 kanals 15 marlas, acquired by the defendants and at the time of granting equitable relief in such type of cases minor infirmities and technicalities cannot be allowed to stand in the way of natural justice. The First Appellate Court has observed that in case no plot is available in Sector 13, Kurukshetra, then the defendants could allot plot in other sector of Urban Estate, Kurukshetra.

The concurrent findings on the issues so recorded do not suffer from any irregularity or illegality. The findings are affirmed. No fault is found with the judgments and decrees passed by the Courts below. Those are upheld.

Though learned counsel for the appellant – HUDA has referred to Full Bench judgment passed by this Court titled **Rajiv Manchanda and others Versus Haryana Urban Development**

Authority and another, 2018(2) PLR 422 contending that the respondent-plaintiff is required to submit application along with the requisite fee as and when an advertisement is inserted by the HUDA with regard to allotment of plots under the oustees category and he cannot be held to be entitled to allotment of plot in such a manner.

However, I find little force in this contention. The Courts below after considering the versions of the contestants i.e. the plaintiff and HUDA in light of the factual and legal position had arrived at the conclusion that claim of plaintiff has merit and he is entitled to allotment of residential plot of 350 sq. yards under oustees quota. Those findings can simply be not brushed aside and the plaintiff asked to submit an application as and when an advertisement is inserted by HUDA. The judgment cited basically deals with various situations and eventualities with regard to allotment of plot(s) under oustees quota and in the concluding part, it has been clarified that this does not release the respondents from their obligations to comply with orders and judgments of the Courts, if any, in individual cases of oustees albeit within the oustee quota. Therefore, this judgment does not come to rescue the appellants in any manner.

No substantial question of law arises in this appeal.

It being so and in view of the concurrent findings returned by the Courts below with which I do not see any reason to disagree, I conclude that the appeal is without merit and is dismissed

accordingly.

Since the main appeal stands dismissed, the civil miscellaneous application, if any, shall stand disposed of accordingly.

30.7.2019

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No