

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

RSA-2409-2012(O&M)

Date of decision:-30.7.2019

Estate Officer, Haryana Urban Development Authority, Kaithal and
others

...Appellants

Versus

Lajwanti

...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 Lajwanti wife of Sh.Ram Saran Dass had brought a suit against Estate Officer, Haryana Urban Development Authority (hereinafter referred to as HUDA), Kaithal, Chief Administrator, HUDA, Panchkula and HUDA through its Chief Administrator, Panchkula craving for grant of mandatory injunction in the form of issuance of a direction to the defendants to deliver the free hold residential developed plot of 250

square yards to her on the price, which was fixed in the year 1992.

As per the version of the plaintiff, her agricultural land situated at Patti, Kaisth Seth, Kaithal was acquired by the defendants for the purpose of carving out Sector-19, HUDA, Kaithal; that as per the policy of defendants issued vide memo No.2-92/2082 dated 18.3.1992, the applications for allotment of free hold residential plots of HUDA, Kaithal in oustees quota were invited; that the plaintiff had applied for a free hold residential developed plot on 1.10.1992, however, no plot was allotted to her; that for the second time when the plaintiff submitted her application, the same was rejected for the reason that plaintiff was not eligible for allotment. On refusal of the defendants to allot the plot to her the plaintiff brought the suit in question.

On notice, the defendants appeared and filed written statement raising various legal objections and on merits contending that the plaintiff had not deposited 10% earnest money along with her application, which was mandatory; that no cause of action had arisen to the plaintiff as 75% or more of her land had not been acquired as per terms and conditions of the policy; further the suit of the plaintiff was time barred and Civil Court did not have jurisdiction to adjudicate upon such type of disputes. 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 5.6.2009 decreed the suit of the plaintiff issuing a direction to the defendants to allot one residential/commercial plot of 250 square yards to the plaintiff being an oustee within three months of passing of the judgment and decree.

While decreeing the suit of the plaintiff, the trial Court considering the factual as well as legal position had observed that 6 kanals 16 marlas of the suit land belonging to the plaintiff had been acquired out of total land of 8 kanals 4 marlas owned by her, that means 75% of the land of plaintiff was acquired by the defendants, as such she came under category of oustee for the purpose of getting a free hold residential plot as per policy dated 18.3.1992. The trial Court further observed that from the record, it transpired that Oustee Lok Adalat was organized, in which application moved by present plaintiff was considered, therefore, it could not be said that the suit was not maintainable because rejection of the application was not due to non-submission of 10% of the amount, which leads to inference that defendants themselves had waived of deposit of 10% of total amount, therefore, since the application had been entertained by Oustee Lok Adalat by condoning the limitation period, the suit was not time barred.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal before District Judge, Kaithal, who vide judgment and decree dated 18.7.2011 dismissed the appeal and upheld the impugned judgment and decree passed by the trial Court.

Learned District Judge, Kaithal had observed that defendants had wrongly calculated total holding of plaintiff as 11 kanals 16 marlas, which was against revenue record and document Ex.D6 on the basis of which whole claim of defendants for rejection of the claim of plaintiff was based, was wrong; that as it transpired from the record, the plaintiff was owner of 8 kanals 4 marlas of land on the date of issuance of notification and not 11 kanals 16 marlas; that since the plaintiff's claim was finally rejected by Lok Adalat held on 29.1.2007 and prior to that her claim was rejected by the defendants and the result was conveyed to her vide letter dated 12.4.2006(Ex.P7), therefore the suit filed by her on 28.3.2007 was within limitation and was not time barred. Furthermore, the plaintiff had every locus-standi and cause of action to bring and maintain the suit because her claim was rejected by defendants without any basis; and that the Civil Court had jurisdiction to try and entertain the suit since the defendants had travelled beyond the documentary evidence and the scope of the scheme framed by themselves, while considering the claim of the plaintiff.

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/plaintiff 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 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, Kaithal 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, Kaithal in light of the factual and legal position had arrived at the conclusion that claim of plaintiff has merit and she is entitled to allotment of residential plot of 250 sq. yards under

oustees quota. Those findings can simply be not brushed aside and the plaintiff asked to submit an application again 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