

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

RSA-1307-2013(O&M)

Date of decision:-30.7.2019

Estate Officer, Haryana Urban Development Authority, Kaithal and
others

...Appellants

Versus

Smt.Usha Rani through G.P.A. holder Gobind Lal

...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 Ram
Saran Dass (since deceased) 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 for issuance of directions to the defendants
to deliver the free hold residential developed plot of 500 square yards

to him on the price, which was fixed in the year 1992.

As per the version of the plaintiff, he was owner in possession of land measuring 22 kanals 1 marla, out of which 18 kanals 19 marlas was acquired by the defendants in the year 1992 for development of Sectors 19 and 20, HUDA, Kaithal; that as per the policy of defendants issued vide memo No.2-92/2082 dated 18.3.1992, the oustees were entitled to get plot, size of which would depend upon the area of land acquired and such landowners fulfilling the requirements; in terms of that policy, plots to the oustees would be offered if the land was under the ownership of the oustees prior to the publication of the notification under Section 4 of the Land Acquisition Act and if 75% of the total land owned by the land owners in that sector was acquired; as per guidelines that if the area acquired was less than 500 square yards, then 50 square yards plot; between 500 square yards and one acre, 250 square yards plot and from one acre above, 500 square yards plot would be offered. According to version of plaintiff, though the defendants were under legal obligation to allot a free residential plot of the area of 500 square yards to him as per price fixed in the year 1992 but it was not so done. On refusal of the defendants to allot a plot to the plaintiff, he brought the suit in question.

On notice, the defendants appeared and filed a written statement raising various legal objections; with regard to

maintainability of the suit contending that the case of the plaintiff did not fall under oustees quota; that he did not have any locus standi to file the suit; that he had not deposited 10% earnest money alongwith his application, which was mandatory to be deposited; that the suit was time barred; that the civil Court had no jurisdiction to try and entertain the suit. On merits, it was contended that the plaintiff was not absolute owner in possession of the land but he was co-sharer with other persons in joint khata and not more than 75% of his land had been acquired as per HUDA policy. It was also contended that there were different policies regarding allotment of plot to the oustee from year 1987 to year 2000 and therefore the plaintiff was not entitled for allotment of any plot, as per these policies; that the policy dated 18.3.1992 was partially modified in the year 1993 providing that benefit under oustees policy shall be restricted to one plot according to the size of the holding irrespective of the number of co-sharers; that neither the plaintiff submitted any application in the year 1992 along with 10% of earnest fee nor any earnest money was ever deposited by the plaintiff, as such, he was not entitled to allotment of any plot. 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.

It may be mentioned here that the plaintiff died during

the pendency of the suit, as such his legal representative Smt.Usha Rani, who was his daughter was brought on record in his place.

After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 4.11.2009 dismissed the suit of the plaintiff.

The plaintiff, legal representative was aggrieved by the said judgment and decree and she had filed an appeal before the Court of District Judge, Kaithal, which was assigned to Additional District Judge, Kaithal, who vide judgment and decree dated 30.11.2012 accepted the appeal.

Now it was turn of the defendants to feel dissatisfied and they have filed the present regular second appeal before this Court, notice of which was issued to the respondent/plaintiff, who appeared through counsel.

The judgment and decree passed by the trial Court does not show proper application of mind and rather go to reflect the misappraisal of evidence and wrong interpretation of law. On the other hand, the judgment and decree passed by learned Additional District Judge, Kaithal is based upon proper appreciation of evidence and correct interpretation of law. Learned Additional District Judge, Kaithal had observed that as per advertisement Ex.D2 inserted by the defendants inviting applications from general public, the date of booking of plots was started from 2.9.1992 up to 1.10.1992 and

applications were invited from oustees for allotment of residential plots along with documents of ownership of the land, which was acquired by the respondents and further in pursuance of that advertisement, an application was submitted by Sh.Ram Saran Dass (since dead) on 18.2.2000; that Ram Saran Dass had expired on 16.10.2002 during the pendency of the civil suit and he had executed a Will Mark – B in favour of his daughter Smt.Usha Rani; further in pursuance of application, a plot No.175 measuring 420 meters was allotted to three different co-sharers jointly, when as per the policy dated 18.3.1992, every co-sharer, whose land was more than one acre was acquired, was entitled for allotment of one plot individually in his name measuring 500 square yards and in fact as per clause (2) Sub Clauses (a) (b) and (c) of the policy dated 18.3.1992, as per the acquired area, the area of size of the plot has been individually mentioned and further 10% of the earnest money was not to be deposited, therefore appellant was not aware of as to what was the exact amount at which the plot was to be sold or to be allotted as being the oustee; that it was only at the time when the exact amount was assessed, he could be asked to deposit 10% of the amount and further there was no condition precedent for depositing of earnest money in the policy itself along with the application.

Learned First Appellate Court has further observed that as per policy formulated on 12.3.1993, it was modified to the extent

that all the co-sharers whose land had been acquired would only be entitled for allotment of one plot in their joint names but the same had no retrospective effect and it was struck down as being void by this Court in Full Bench judgment reported as **2011(1) RCR(Civil)915 titled as Jarnail Singh and others Versus State of Punjab and others**. The First Appellate Court has also referred to judgment **Sandeep Versus State of Haryana and others** decided on 16.5.2011 in Civil Writ Petition No.19927 of 2009 in that regard.

Learned Additional District Judge, Kaithal had observed that plaintiff was entitled for allotment of a plot of area of 500 square yards on payment of the reserve price since he fulfilled the necessary requirements for the same. Learned Additional District Judge, Kaithal has kept in mind the factual and legal position while accepting the appeal. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Kaithal.

No substantial question arises in this appeal.

The appeal stands 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