

RSA-4439-2014(O&M);
RSA-4440-2014(O&M); and
RSA-4441-2014(O&M)

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

(1) RSA-4439-2014(O&M)

Estate Officer, Haryana Urban Development Authority, Kaithal and
others

...Appellants

Versus

Shakuntla Rani

...Respondent

(2) RSA-4440-2014(O&M)

Estate Officer, Haryana Urban Development Authority, Kaithal and
others

...Appellants

Versus

Munish Chand

...Respondent

(3) RSA-4441-2014(O&M)

Estate Officer, Haryana Urban Development Authority, Kaithal and
others

...Appellants

Versus

Lajpat Rai

...Respondent

Date of Decision:-30.7.2019

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

Argued by: Mr.Baldev Raj Mahajan, Senior Advocate with
Mr.Deepak Balyan, Advocate and
Mr.Deepak Sabharwal, Advocate
for the appellants in all three appeals.

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Mr.Jagdish Manchanda, Advocate with
Mr.Ravi Ghakhar, Advocate
for the respondent in all three appeals.

H.S. MADAAN, J.

By this order, I shall dispose of three RSAs i.e. RSA-4439-2014(O&M), RSA-4440-2014(O&M) and RSA-4441-2014(O&M) filed on behalf of appellants - Estate Officer, Haryana Urban Development Authority (hereinafter referred to as HUDA), Kaithal and others.

Briefly stated, facts of the case are that plaintiffs Shakuntla Rani, Lajpat Rai and Munish Chand had filed civil suits for grant of mandatory injunction directing the defendants to allot free hold residential developed plots to them in Sector-19, Urban Estate, Kaithal under oustees quota; that plaintiffs Shakuntla Rani and Lajpat Rai had prayed for allotment of plot of size 250 square yards each, whereas Munish Chand had prayed for allotment of a plot of the size of 500 square yards. The plaintiffs had contended that the agricultural land belonging to them, situated at Patti, Kayesh Seth, Kaithal had been acquired by the defendants in the year 1992 for development of Urban Estate, which was developed as Sector 19 HUDA, Kaithal; that as per policy of defendants vide memo No.2-92/2082 dated 18.3.1992, the oustees were entitled to get plots in that

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Sector 19, Urban Estate, Kaithal subject to fulfilling their liability criteria as per the area acquired; that in the year 1992, applications were invited from the oustees for allotment of plots and the plaintiffs accordingly submitted the applications but no independent plots were allotted. On final refusal of the defendants on 20.1.2007 to allot separate plots, the plaintiffs had approached the Court by filing separate suits.

Since all the three civil suits involved identical question of law and facts, as such those were consolidated by the trial Court.

On notice, the defendants appeared and filed written statements contesting the civil suits raising various legal objections that the plaintiffs had no locus standi to bring the suits; that the plaintiffs had not deposited 10% earnest money along with their applications, which was mandatory, as such they had no right for allotment of plots; furthermore since more than 75% of the land of plaintiffs had not been acquired, therefore plaintiffs Shakuntla Devi and Lajpat Rai were not entitled to any plot, whereas with regard to plaintiff Munish Chand, the defendants contended that it had been decided by a committee set up for deciding the oustees claim that the plaintiff Munish Chand was entitled to a plot of 500 square yards on the prevailing rates/updated rates vide order dated 29.4.2007; that the earlier decision of the Authority taken in the year 2006 was modified

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in the year 2007 vide which the plaintiff Munish Chand was found individually entitled to a 1 kanal plot but on the prevailing rates. The defendants prayed for dismissal of the suit of plaintiff Munish Chand also.

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 11.11.2011 decreed the suits of the plaintiffs to the effect that plaintiff Shakuntla Devi and Lajpat Rai were held entitled for separate free hold residential plots measuring 250 square yards each and all the plaintiffs i.e. Shakuntla Rani, Lajpat Rai and Munish Chand were required to deposit the prices of the respective plots as were applicable at the time of floating the Urban Estate Scheme, Kaithal and the defendants were directed to complete the formalities for allotment of plots within two months from the date of passing of judgment and decree.

It may be mentioned here that defendants had accepted the entitlement of plaintiff Munish Chand to allotment of plot of 500 square yards though on payment of prevailing rates.

Feeling aggrieved by the said judgment and decree, the defendants had filed separate appeals before District Judge, Kaithal, who vide judgment and decree dated 13.1.2014 dismissed the

appeals, except for some modifications made qua price, and upheld the impugned judgment and decree passed by the trial Court. Learned District Judge, Kaithal in para No.35 has observed as under:

35. Admittedly in the present cases, plots were not allotted to the plaintiffs so much so not plot was earmarked for plaintiff Shakuntla an oustee though, they applied in pursuance of the policy of 1992. In view of the aforesaid observations, the plaintiffs are entitled for allotment of plots and price are to be charged from them at the price mentioned in the public advertisement in pursuance of which the plot is allotted and not when sector was floated for sale for first time. Accordingly, the directions given by the learned lower Court that they are to pay price as applicable when sector was floated is hereby struck down.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendants have filed regular second appeals before this Court, notices of which were issued and the respondents have 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.

A careful perusal of the judgment passed by the trial

Court goes to show that the trial Court had rejected the objection of the defendants that policy dated 18.3.1992 was partially modified in the year 1993 vide which the benefit under oustees quota was restricted to one plot according to size of holding irrespective of number of the co-sharers and another objection had been taken by the defendants that plaintiffs had not deposited 10% of the earnest money along with their applications, as such they were not entitled to claim allotment of plots. The trial Court had observed that the stand of defendants is bad on the ground of equity because they themselves have held plaintiff in civil suit No.3 namely Munish Chand a co-sharer qua the same land and placed on equal footing as plaintiffs Shakuntla Rani and Lajpat Rani, entitled for a separate plot measuring 500 square yards, under the policy of Government, as admitted in the written statement filed in civil suit No.3. Furthermore, a judgment by Full Bench of this Court in CWP No.2575 of 2009 titled 'Jarnail Singh Versus State of Punjab' has been referred to having observations that restrictions of allotment of one plot to a joint khata holder is unreasonable and arbitrary because each of the landowner is entitled to rehabilitation in his individual right. Furthermore judgment passed by this Court in CWP No.19927 of 2009 titled 'Sandeep Versus State of Haryana and others' has been referred to, wherein it was held that each co-sharer is entitled to

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allotment of a plot individually and the right could not be restricted to allotment of one plot for all the co-sharers.

Coming to the second ground that 10% of the price of the plot was not deposited, the trial Court has again referred to judgment passed by this Court in Sandeep's case (supra) wherein it was observed that denial of the claim on the ground that application was not sent with 10% of the price of the plot was not in conformity with the policy so formulated. It was further observed that the requirement of depositing 10% of the price would arise only if the claims are first invited as per the policies and it has to be through press or newspaper.

The trial Court came to the conclusion that HUDA had not performed its obligation in inviting the claim of oustees separately before floating a sector, in terms of policy dated 18.3.1992 as well as the subsequent policy. Therefore, the contention of defendants regarding non-deposit of 10% of earnest money could not be sustained.

With regard to the case of Munish Chand, where the defendants had taken a stand that he was required to deposit price of plot of 500 square yards on prevailing/updated rates passed by Oustees Lok Adalat, the trial Court again relied upon judgment delivered by this Court in Sandeep's case (supra) wherein judgment

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by the Apex Court had been relied upon observing that prices to be charged would be the rate which is equal to the rate that is fixed when the sector was first floated for allotment.

As such this Court had held that the claims of the petitioners were to be settled in terms of the above law laid down by Hon'ble Supreme Court. The trial Court found that plaintiff Munish Chand was required to deposit the amount, as per the rates applicable at the time the Sector – 19, Kaithal was floated by the defendants and not as per the prevailing/updated rates. Similarly plaintiff Shakuntla Rani and Lajpat Rai were also found entitled to allotment of separate plots of 250 square yards each on payment of the reserve price at the time of floating of the Urban Estate in question. Though First Appellate Court of District Judge, Kaithal did not agreed with the trial Court on that point.

The objections taken by the defendants challenging the locus standi of the plaintiffs to bring the suits, maintainability of the suits etc. were rejected giving valid reasoning.

The concurrent findings on the issues so recorded except with regard to the rate as detailed above 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.

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Since the plaintiffs have neither filed any separate appeals nor submitted cross-objections with regard to the directions issued by First Appellate Court of learned District Judge, Kaithal with regard to the payment of price of the plot to be allotted to them on prevailing rates, such finding has become final and binding upon them and it is to be taken that they have no grouse against the same, as such no interference therewith is called for.

Though learned counsel for the appellant – HUDA has referred to a 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 trial Court after considering the version 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 plaintiffs has merit and they are entitled to allotment of plots under oustees quota. Those findings can simply be not brushed aside and the plaintiffs asked to submit applications again as and when an advertisement is inserted by

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HUDA. The judgment cited basically deals with various situations and eventualities with regard to allotment of plots 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 the appeals.

The appeals stand dismissed accordingly.

Since the main appeals stand 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