

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

RSA-652-2014(O&M)

Date of decision:-30.7.2019

Parkashwati widow of Pawan Kumar and others

...Appellants

Versus

The Haryana Urban Development Authority, Panchkula and another

...Respondents

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

Argued by: Ms.Harveen Mehta, Advocate for
Ms.Promila Nain, Advocate for the appellants.

Mr.Som Nath Saini, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs -
Parkashwati, Diwakar and Dinkar legal representatives of Pawan
Kumar had filed 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 plaintiffs agricultural land situated at village Darra Kalan, Thanesar, Tehsil Thanesar, District Kurukshetra, in which their predecessor-in-interest Sh.Pawan Kumar 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 affected landowners; Sh.Pawan Kumar was not satisfied with the quantum of compensation awarded, as such he filed a reference under Section 18 of the Land Acquisition Act, however, the amount was not enhanced; then Sh.Pawan Kumar had approached the High Court by way of filing a Regular First Appeal, which was decided on 14.3.1990 and compensation amount was enhanced; however during course of proceedings Sh.Pawan Kumar expired and the plaintiffs were brought on record as his legal representatives; 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 or more, then the land owner is entitled to get plot measuring 250 square yards and since land of predecessor of the plaintiffs acquired by defendants was more than seven acres, they became entitled for allotment of plot having area of 500 square yards at a reserve price; that despite various requests made by the plaintiffs, the defendants failed to consider their claim, giving rise to a cause of action to them to bring

the suit in question seeking a declaration that they are 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 plaintiffs.

On getting notice, the defendants appeared and filed a joint written statement raising various preliminary objections, to wit, that the plaintiffs were not having locus standi to file the suit; that the suit was not maintainable; that the Civil Court lacked jurisdiction to entertain and try the suit; that the plaintiffs were estopped by their own acts and conduct from filing the suit etc. On merits, such defendants admitted that the land of predecessor-in-interest of the plaintiffs was acquired by them but according to them, it was for public use and development of the land and reasonable compensation had been paid to the plaintiffs; that the compensation was later on enhanced, which has also been paid to them, as such now the plaintiffs have 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 acquiring the land of oustee; 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 10.2.2011 decreed the suit of the plaintiffs.

The defendants were aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Kurukshetra, which was assigned to Additional District Judge, Kurukshetra, who vide judgment and decree dated 22.7.2013 accepted the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiffs with costs.

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

I have heard learned counsel for the parties besides going through the record and I find that the impugned judgment and decree passed by the Additional District Judge, Kurukshetra are not sustainable and are liable to be set aside.

The trial Court by proper appraisal of evidence and correct analysis of the factual and legal position, had concluded that since the plaintiffs fulfilled the necessary requirements, they deserve

to be granted 500 sq. yards plot in Urban Estate, Kurukshetra on payment of reserve price under oustees quota and their claim was wrongly rejected by the defendants without affording proper hearing to the plaintiff. The trial Court has referred to policy Ex.P4 of the defendants. The contents of that policy are as under:

“The existing policy lays down that only those land owners, whose land was acquired on or after 10.9.1997 are eligible to acquire a residential plot.

As a follow up to the decision of Hon'ble Punjab and Haryana High Court given in CWP No.14708 of 1990 titled as 'Suman Aneja Versus State of Haryana', the matter was placed before the authority in its 77th meeting held on 20.2.2000. It has accordingly been decided that in view of the judgment of the Punjab and Haryana High Court, where the land was acquired prior to 10.9.1987 and plots are still available, while floating the plots on such land, the oustees claims shall be invited and they will have the prior right for the allotment of plots.

In para No.12 of its judgment the trial Court has specifically observed that defendants themselves have not complied with the terms and conditions of their own guidelines/policy Ex.P4

and Ex.P5 vide which they outrightly rejected the claim of the plaintiffs; that neither any notice was given to the plaintiffs nor any opportunity was afforded for hearing to the plaintiffs and without passing any speaking order the claim of the plaintiffs was rejected. It was further observed that DW1 Yash Pal, Assistant, a witness examined by the defendants in his cross-examination had admitted that such policy is with regard to allotment of plots in oustees quota. The trial Court has referred to judgment by Civil Court in which plot was allotted to similarly placed persons under oustees quota, which judgment was affirmed by Additional District Judge, Kurukshetra in appeal.

However, learned Additional District Judge, Kurukshetra by misappraisal of evidence, wrong interpretation of the legal position and non-application of mind rejected the claim of the plaintiffs, in the process upsetting the legal and valid judgment passed by the trial Court. The judgment and decree passed by learned Additional District Judge, Kurukshetra are not sustainable. The plaintiff is certainly entitled to a 500 sq. yards plot in Urban Estate, Kurukshetra on payment of reserve price under oustees quota as has been rightly observed by the trial Court.

Though learned counsel for the respondents – 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 plaintiffs and HUDA 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 residential plot of 500 sq. yards under oustees quota. Those findings can simply be not brushed aside and the plaintiffs 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 respondents in any manner.

The judgment and decree passed by the trial Court is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law and it was wrongly upset by learned

Additional District Judge, Kurukshetra. That wrong is being undone by acceptance of the present appeal.

Resultantly the judgment and decree passed by Additional District Judge, Kurukshetra are set aside and the judgment and decree passed by the trial Court decreeing the suit of plaintiff are restored.

The appeal stands allowed accordingly with costs.

Since the main appeal stands allowed, 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