

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

RSA No.4292 of 2018 (O&M)

Date of Decision:11.07.2019

Magna Nand

.....Appellant

Versus

HUDA and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Shiv Kumar, Advocate
for the appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 13.05.2016, passed by the learned Additional Civil Judge (Sr. Division), Panchkula, as well as judgment and decree dated 09.03.2018,, passed by the learned District Judge, Panchkula..

Brief facts necessary for the adjudication of the case are that plaintiff-appellant filed a suit for mandatory injunction directing the defendants to allot plot No. 593, Sector-19, Panchkula, measuring 4 Marlas and for restraining the defendants from allotting the said plot to any other person. It is pleaded that the plaintiff had applied for allotment of a 4 Marla plot in Sector-19, Panchkula, under the General Category and had deposited earnest money of ₹22,680/-. Application form was submitted on 10.04.2003. A notice was published by the defendants in the month of October 2003, with regard to draw of allotments of the plots. No separate notice of the draw or any intimation with regard to draw was sent to the plaintiff. Consequently, the plaintiff remained unaware of any draw of lots. He thereafter came to know that he was successful in draw of lots and was allotted plot no. 593, Sector-19, Panchkula. However, allotment letter was

not issued. The plaintiff addressed letter dated 05.12.2003 in this respect and received communication dated 19.01.2004 from respondent-defendant no.2 asking him to come present in his office on 20.04.2004. The plaintiff was informed by defendant no.2 on 20.01.2004 that he had applied under the SC Category, which was denied by the plaintiff while submitting that he belonged to the 'Brahmin Caste'. Thereafter, letter dated 05.04.2004, is stated to have been written by the plaintiff to Chief Administrator, Haryana Urban Development Authority, (for short HUDA) Panchkula. Chief Administrator, HUDA, on examining the matter, issued instructions to the Administrator HUDA, Panchkula to enquire into the matter and submit a formal report. An enquiry was conducted but the result of the same was never conveyed to the plaintiff. Complaint under Section 12 of the Consumer Protection Act, was filed by the plaintiff. Reply was filed by defendant no.2 and copies of certain letters allegedly addressed to the plaintiff, were attached. A copy of the application form submitted by the plaintiff was attached and the plaintiff came to know that there was tampering in the application form and the word 'General' had been struck off and SC-A was inserted in the relevant head. The plaintiff was declared successful under the SC-B category. The complaint filed by the plaintiff was dismissed on the ground that disputed questions of fact and law were involved. Appeal against the said order was dismissed by the Hon'ble National Consumer Commission. Special Leave Petition No. 33803/2012 filed by the plaintiff was dismissed by the Hon'ble Supreme Court on 23.11.2012. However, liberty was afforded to the plaintiff to avail the alternate remedy of approaching the civil Court within two months. Present

suit was accordingly filed.

Defendants resisted the suit. Various preliminary objections were raised. Averments on merits were denied. It is stated that the plaintiff was very much present at the time of draw of lots as per his own admission contained in his letter dated 05.12.2003. Plaintiff had applied for allotment of plot in Sector-19, Panchkula under the SC category in the year 2003. The plaintiff, it is stated was asked vide letter dated 10.11.2003 to submit the necessary documents i.e., Domicile Certificate of Haryana, Schedule Caste-A Certificate and affidavit to the effect that neither he or his spouse or any of his family members had earlier not been allotted any plot in the urban estate set up by HUDA. Opportunity of hearing was also granted. Plaintiff expressed his inability to produce the SC certificate. He was accordingly informed vide letter dated 01.04.2004 that he was not entitled for allotment. The earnest money was refunded vide cheque no. 179807 dated 16.03.2004. The said amount was received back undelivered. On a representation of the plaintiff, it was decided to refund the amount of earnest money with 7% interest per annum and cheque dated 07.07.2005 was accordingly issued to the plaintiff for ₹25,490/-. It is asserted that the plaintiff never applied under the general category. Allegations of tampering with the documents by the officials is specifically denied. Dismissal of the suit was prayed.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether plaintiff is entitled to a decree for mandatory injunction directing the defendants to allot plot no. 593 Sector-19-Panchkula, measuring 4 Marlas to the plaintiff, as claimed?OPP
2. Whether the plaintiff is entitled for relief of permanent injunction, as prayed for?OPP

3. Whether the suit of the plaintiff is not maintainable in the present form as alleged?OPD
4. Whether the suit of the plaintiff has not come to the court with clean hands?OPD
5. Whether the suit of the plaintiff is not property valued for the purpose of court fee and jurisdiction?OPD
6. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
7. Whether the plaintiff has got any locus standi to file the present suit?OPD
8. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, concluded that the plaintiff has failed to prove that tampering was carried out in the application at the instance of the defendants and the factum of allotment of plot in general category was also not proved. Thus the suit filed by him was dismissed.

Appeal preferred by the plaintiff was dismissed by the learned District Judge, Panchkula, vide impugned judgement and decree dated 09.03.2018.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant vehemently argues that both the learned Courts below have grossly erred in dismissing the suit filed by the appellant. It is submitted that the evidence on record clearly proves that the application form, Ex.PW1/3, submitted by the plaintiff was tampered with, by somebody in the department itself. The appellant, it is submitted applied for the allotment of the plot in question under the general category. There is a cutting in the application and the category is changed to be that of

'S.C-A'. The said cutting, it is submitted was never carried out by the plaintiff as he is a Brahmin. It is further argued that on receipt of notice dated 10.11.2003, Ex.PW1/4, the plaintiff submitted communication dated 05.12.2003 seeking issuance of the allotment letter in respect to the plot in question. Another application, Ex.PW1/6, was also submitted. Learned counsel further refers to the inquiry report, Ex.PW6/1 conducted by the department itself, in respect to the cutting, tampering which was found in the application form submitted by the plaintiff. It is contended that the department has recommended action against their own officials which shows that the tampering of the application form was carried out by the officials of the department themselves. It is thus prayed that this appeal be allowed and the judgements and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the appellant-plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the record which was requisitioned, with his assistance.

At the outset, it is relevant to note that the plaintiff has asserted in his plaint that he was not aware as to whether the draw of lots was held by the authorities. No intimation of the same was ever received by him. Learned counsel for the appellant is unable to deny that in his letter dated 05.12.2003, Ex.PW1/5 as well as letter Ex.PW1/6, plaintiff has categorically stated that after coming to know about the draw of lots through a public notice in the Hindi Newspaper "Dainik Bhaskar", he attended the draw of lots, which was held on the premises of the Estate Office, HUDA, Panchkula. He further stated that he was declared successful in the draw of lots and plot no. 593, Sector-19, Panchkula, measuring 4 Marlas, was

announced in his favour. It is thus apparent that the plaintiff has taken a contradictory stand that is totally opposed to the evidence led by him. Presence of the plaintiff at the time of draw of lots is apparent from his own applications. It is borne out from the evidence on record that the plaintiff was intimated vide communication dated 10.11.2003, Ex.PW1/4 that the plot in question was allotted to him in the draw of lots in the SC-A category. He was asked to submit the domicile certificate of Haryana, Schedule Caste-A certificate and the affidavit in respect to not having been allotted any plot in the urban estate set up by HUDA. The plaintiff was admittedly afforded an opportunity of personal hearing, as well.

Much stress has been laid by learned counsel for the appellant on the enquiry report, Ex.PW6/1, while arguing that the officials of the department were held responsible, therefore, a right accrues to the plaintiff for allotment of the plot in question. The said argument is devoid of any merit as it is borne out from the record that the enquiry was conducted by the authorities in order to fix the responsibility in respect to the allegations of tampering and to obtain an opinion of the FSL and Handwriting Expert as to whether the clerk who was having custody of the file has made the entry of 'SC-A' in CCF office on his own or not. As per the said report, it is mentioned that it was not possible, at that stage, to ascertain as to who had changed the category from 'General to SC-A'. It is however, observed that the dealing assistant and the deputy superintendent, were responsible for gross negligence in the scrutiny of applications as they accepted incomplete applications and did not convey the deficiency before holding draw of lots on 01.10.2003. Thereafter, they caused a financial loss to the authority on

account of litigation and accordingly disciplinary action was recommended. The disciplinary action against the employees of the department, in this manner, does not vest the plaintiff-appellant with any right to allotment of the plot in question. It is rightly held by both the learned Courts below that the commission of negligence and irregularities on the part of the defendants while initiating action against their employees, is not sufficient to grant relief to the plaintiff. It is reiterated that the appellant himself has taken a contradictory stand. The evidence led by him is in complete contravention to the pleadings in the plaint. The plaintiff has indeed failed to prove his case on the basis of the evidence on record.

Learned counsel for the appellant, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings vide impugned judgements, which call for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 13.05.2016 and 09.03.2018 passed by the learned Addl. Civil Judge (Sr. Division) Panchkula and learned District Judge, Panchkula, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

11.07.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.