

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

RSA No.4321 of 2010 (O&M)
Date of decision: 31st January, 2020

Lt. Col. (Retd.) G.S. Ghuman

... Appellant

Versus

Amritsar Improvement Trust, Amritsar

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vikas Bahl, Senior Advocate with
Ms. Priyanka Kansal, Advocate for the appellant.
Mr. K.S. Dadwal and Ms. Neha, Advocates
for the respondent.

FATEH DEEP SINGH, J.

The facts that have come to be essential to highlight for the judicious adjudication of the present regular second appeal by the plaintiff-appellant Col. (Retd.) G.S. Ghuman who has filed instant suit for mandatory injunction against respondent defendant Amritsar Improvement Trust, Amritsar (in short, 'the Trust') for allotment to the plaintiff plot No.E-17 in the Ajnala Road Expansion Scheme, Amritsar (in short, 'the Ajnala Road Scheme') are as follows:-

The Trust in its Ajnala Road Scheme invited applications from eligible persons for allotment of plots measuring 500 square yards each under various categories including the reserved category of defence

employees. This scheme was framed under the Punjab Town Improvement (Utilization of land and allotment of plots) Rules, 1993 (in short, 'the Rules'). The undisputed stand of the plaintiff is that in pursuance of this invitation, he applied under Defence Category and deposited a sum of ₹ 10,000/- with the defendant vide receipt No.41518 dated 15.04.1985. As per the terms laid down, the allotment was to be made on the basis of draw of lots. The plaintiff claims that in the draw of lots, plot No.E-17 was shown to have come to the plaintiff and which was intimated to him by the defendant Trust through letter No.AIT/SS-11/6969 ASR dated 19.12.1986. The plaintiff claims that as required, he complied with the said letter and fulfilled all the terms and conditions and an agreement was executed between the plaintiff and the defendant Trust. It is thereafter, when the plaintiff failed to get possession of the plot and assuming others were allotted so, the plaintiff instituted the present suit on 18.05.1996 seeking directions against the defendant praying for a decree of mandatory injunction for directing defendant Trust to complete all the formalities regarding allotment of the plot in favour of the plaintiff.

The defendant in its stand taken in the written statement, has set up the plea that at the time of framing of the scheme it was subject to the approval of the State Government. The defendant accepts that draw of

lots was taken out on 21.10.1986 and the result was communicated to the plaintiff on 19.12.1986 but the Government in its communication bearing No.1191/1C-II-87-6901 dated 09.06.1987 had communicated the decision of the Government to the Trust that in the exercise of its powers under Section 72-E of the Punjab Town Improvement Act, 1922 (in short, 'the Act') no approval could be given and had rejected the result of the draw of lots so made by the Trust. In the light of the same, the defendant claimed that due intimation of this fact was made to the applicants including the plaintiff and therefore, mere draw of lots does not bestow upon the plaintiff any right, title or interest nor it vests upon him any claim to that effect. The plaintiff was called upon to receive his deposit of the amount so made. It is the stand of the defendant that in the year 1984 vide memo No.2378-3C2-84/17316 dated 28.11.1984, the Government had laid down a policy that the Trust can allot reserved plots to the eligible persons under the provisions of the Act but with the prior approval of the State Government from time to time and since no due approval was given to the scheme of allotment by the State Government, which vide memo No.6901 dated 09.06.1987 cancelled all these draws and thus, there was no cause of any allotment of the plot to the plaintiff and the Trust at no point of time ever passed any resolution for allotment of such plots to anyone as claimed by the plaintiff. The defendant termed

the claim of the plaintiff to be wholly misconceived, false, twisted, and legally not sustainable and sought dismissal of the suit.

After usual denial and replication by the plaintiff, the trial Court framed following issues:-

1. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP
2. Whether the suit is within time? OPP
3. Relief.

The plaintiff examined himself as PW-1 and reiterated his case proving documents Ex.P1 to Ex.P12. The plaintiff thereafter examined PW-2 (wrongly denoted as PW-1) Pushkar Clerk Amritsar Improvement Trust who proved documents Ex.P15 to Ex.P23 and in his cross-examination was confronted with documents of the Trust Ex.DX-1 to Ex.DX-10. After tendering orders passed in CWP No.6329 of 2002 Ex.P21, the plaintiff closed his evidence.

On behalf of the defendant, no evidence was led except the documents which were proved in the statement of PW-2.

The Court of learned Civil Judge (Junior Division), Amritsar vide judgment and decree dated 28.02.2008 dismissed the suit of the plaintiff with costs. The unsuccessful plaintiff chose to impugn the same before the first appellate Court which vide impugned judgment and

decree dated 30.04.2010 dismissed the appeal. The same is subject matter of challenge in the present regular second appeal.

In view of the recent pronouncement in '**Kirodi (since deceased) through his LR vs. Ram Parkash & others**' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Heard Mr. Vikas Bahl, Senior Advocate assisted by Ms.Priyanka Kansal, Advocate for the appellant; Mr. K.S. Dadwal and Ms. Neha, Advocates representing the respondent and perused the records of the case.

It is not the case of the plaintiff in his pleadings which form the very foundation of his case that he was actually allotted the plot under the discretionary quota by the defendant Trust and as has come in his own evidence as PW-1 the plaintiff accepts that after the draw of lots, the same was cancelled by the State Government and which fact in the light of the arguments of Mr.Dadwal on behalf of the respondent was duly intimated to the plaintiff. The arguments that have come about on behalf of the plaintiff appellant by his counsel Mr. Vikas Bahl, Senior Advocate assisted by Ms.Priyanka Kansal, Advocate that the plaintiff was never

intimated, is falsified by his own admission in his cross-examination where he accepts that the address detailed in the letter Ex.P1/D1 is his correct address and therefore, nullifies this argument by the own evidence of the plaintiff in terms of Section 27 of the General Clauses Act where the procedure is prescribed that service is deemed to have been effected upon the addressee by properly addressing, pre-paying and posting by registered post, a letter containing the documents, unless contrary of the same is proved, and therefore, this statement of Mr. Bahl do not come to the rescue of the appellant.

The most vociferous submission that has come from the appellant side is that the State Government was not authorized to cancel the decision of the defendant Trust, has been rightly displaced by Mr.Dadwal on behalf of the respondent by seeking support from the provisions of Section 72-E (2) of the Act which ensures power of annulment of such acts of the Trust for which, if convinced that the rules of fairness describe it so the State Government is well within its powers to annul such act of the Trust. Learned counsel for the appellant could not convince this Court how the rules of fairness have been thrown off to the winds by setting aside the stand of the Improvement Trust and therefore, is another distressing feature for the appellant. Though learned counsel for the appellant has sought to place reliance on **‘Subedar Anokh Singh vs. State of Punjab’ 1998 (3) RCR(Civil) 206; ‘K.C. Sharma vs.**

Union of India’ 1997 AIR (SC) 3588; ‘Dhiraj Singh (D) Th. LRs etc. vs. Haryana State and others’ 2015(1) SCC (Civil) 236; ‘H. Siddiqui (D) By LRs vs. A. Ramalingam’ 2011(4) SCC 240; and ‘Smt. Harjit Grewal and others vs. Dr. Vinod Kumar Batra and others’ 2010(5) RCR (Civil) 340, however in view of factual disparity the cited ratios do not come to the aid of the appellant. On the other hand, learned counsel for the respondent to enliven his arguments has relied upon ‘M/s Vishal Properties Pvt. Ltd. vs. State of U.P. & others’ 2008(2) RCR (Civil) 700; ‘Jalandhar Improvement Trust vs. Sampuran Singh etc.’ 1999(2) RCR (Civil) 568; and ‘State of Punjab and others vs. Gurdev Singh Ashok Kumar’ AIR 1991 SC 2219(1).

The plaintiff appellant at no point of time has ever sought declaration of his right to get the plot allotted under the said scheme and category as well as the act of the respondent Trust and the State Government in cancelling the scheme which has been set into motion. Thus, a mere simplicitor suit for mandatory injunction would not be legally sustainable under the law for which this Court seeks support from **‘Samir Narain Bhojwani vs. Aurora Properties and Investments and others’ 2019(1) SCJ 261** wherein the Hon’ble Supreme Court has held that decree for mandatory injunction can be granted only to restore the status quo and not to establish a new set of things differing from the state which existed at the date when the suit was instituted, and therefore, is more by way of preserving and restoring the status quo of the situation

which precedes the controversy. More so, the alleged cancellation of this scheme was made on 09.06.1987 and the suit has been filed on 20.05.1996 after almost a decade, is another substantial feature that undermines the case of the plaintiff having not come to the Court within the prescribed period of limitation and on account of inordinate laches on his part. No right has ever crystallized in favour of the plaintiff to get a plot in that scheme under the category he claims.

Thus, the two courts below have rightly returned the findings on the issues and which two findings being concurrent and in legally correct appreciation of the evidence and law, had been judiciously arrived at and do not call for any interference. Therefore, in the light of these discussions, there is no subsisting right and cause of action in the plaintiff to file a suit by way of mandatory injunction and is by no means entitled to any relief. The findings of the two courts below are upheld and the instant appeal being hopelessly without merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

January 31, 2020

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No