

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

RSA No. 187 of 2021(O&M)

Date of Decision: April 01 , 2021.

Kulwant Kaur

..... PETITIONER

Versus

Punjab Urban Development Authority and another

..... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. G.C.Shahpuri, Advocate
for the appellant.

Ms. Anu Chatrath, Senior Advocate with
Mr. Nishant Maini, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Appellant/plaintiff is aggrieved of judgments and decrees dated 18.01.2017 and 03.02.2020 passed by the learned Civil Judge (Junior Division), Bathinda and the learned Additional District Judge, Bathinda, respectively.

Appellant/plaintiff filed a suit for permanent injunction seeking restraint against the respondents/defendants – Punjab Urban Development Authority (for short, 'PUDA') and the Estate Officer, PUDA from dispossessing her illegally and forcibly from Quarter bearing MIG No.646, Model Town, Bathinda. She also sought mandatory injunction with a direction to the defendants

to withdraw cancellation of allotment of the said premises vide order dated 27.02.2004. It is pleaded by the plaintiff that said quarter was allotted to her vide allotment letter dated 27.08.2001 on hire-purchase basis under 192 MIG Scheme, Bathinda on the basis of her application dated 25.07.2021. Appellant/plaintiff claimed to be a riot affected victim and in peaceful possession of the premises as an allottee. Total tentative price of the quarter is Rs.1,66,480/-, out of which 25% was to be paid by the plaintiff within 60 days from the date of allotment. Remaining amount was to be paid in installments which were due on 10th of every month. Installments were claimed to be paid upto February, 2004. Thereafter, it is pleaded that due to unavoidable circumstances, plaintiff could not deposit the same. Father-in-law of the plaintiff and her son are stated to have fallen ill, due to which installments could not be deposited. Show-cause notice was issued to the appellant/plaintiff. Allotment was thereafter cancelled vide order dated 27.02.2004. Appeal filed by the present appellant was dismissed by the Additional Chief Administrator, PUDA on 05.04.2004. Revision petition was preferred by the appellant and a conditional order was passed by the Revisional Authority that in case a sum of Rs.73,145/- is deposited within 60 days from the date of passing of its order dated 13.09.2005, cancellation of allotment would stand quashed. In case she failed to make the payment, cancellation order would stand revived. The appellant pleaded that she was in possession of two quarters and she had to pay the installments in respect of both and moreover excess of Rs.23,000/- was being demanded by the authorities. The amount in question as per order of the Revisional Authority was admittedly not paid. Appellant filed CWP No.18532 of 2006, but the same was dismissed as well by a Division Bench of this High Court. It is pleaded that the appellant's counsel did not inform her about dismissal of the said writ petition on 15.12.2006 and ultimately, appellant

filed present civil suit on 07.11.2014 while pleading that she is still ready and willing to pay the amount in question and that the order of cancellation be set aside. Appellant also sought mandatory injunction restraining respondents from dispossessing her from said quarter.

Suit was contested by the respondents. While taking various preliminary objections, averments on merits were controverted in the written statement filed by them. Following issues were framed by the learned trial court, on the basis of pleadings of the parties:-

1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
2. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP
3. Whether the suit is maintainable? OPP
4. Whether the plaintiff has locus standi or cause of action to file the present suit? OPP
5. Whether the plaintiff has concealed the material facts. If so, its affect? OPD
6. Whether the plaintiff is estopped by her act and conduct from filing the suit? OPD
7. Whether jurisdiction of civil Court is barred u/174 of PUDA Act? OPD
8. Relief.

Evidence was led by both the parties in order to substantiate their claims.

Learned trial court on considering the evidence on record, facts and circumstances of the case concluded that cancellation of allotment of the premises in question was upheld right upto the High Court and that the suit was barred by limitation with cancellation of allotment being done on 05.04.2004 and having attained finality on 15.12.2006, mandatory injunction directing the defendants to

re-allot the premises in question was not made out. It is further held that permanent injunction against a true owner could not be issued. Suit was accordingly dismissed. Appeal preferred by the appellant/plaintiff was also dismissed by the learned Additional District Judge, Bathinda vide judgment and decree dated 03.02.2020.

Aggrieved therefrom, present regular second appeal has been filed by the appellant/plaintiff.

Learned counsel for the appellant while not denying that allotment of the house in question was cancelled on 27.02.2004 and that necessary payment was not deposited by the appellant despite a conditional order passed by the Revisional Authority and subsequent dismissal of the appellant's writ petition on 15.12.2006, submits that the appellant is still in possession of the premises in question, therefore, it would be equitable to re-allot the said premises to the appellant, especially when the appellant is ready and willing to pay the present market price of the premises in question. Learned counsel for the appellant further submits that present is a case of a suit simplicitor for permanent injunction, therefore, the appellant cannot be evicted from the quarter in question without following due process of law. It is thus prayed that present appeal be allowed, both the judgments and decrees be set aside and suit filed by the plaintiff be allowed throughout.

Though notice of motion has not been issued, learned counsel for the respondents was called upon to seek certain clarifications. Learned counsel for the respondents, at this stage, has informed that the appellant is being evicted from the premises in question in accordance with law.

I have heard learned counsel for the parties and have gone through the file as well as photocopies of certain documents circulated during the course of

hearing on the WhatsApp group created for the purpose of Video Conferencing.

It is an admitted fact that quarter bearing MIG No.646, Model Town, Bathinda was allotted to the appellant/plaintiff on 27.08.2001 under the 192-MIG Scheme, Bathinda. Allotment in her favour was cancelled vide order dated 27.02.2004 due to non-payment of the installments, despite sufficient time being granted to the appellant. Appellant's appeal was also dismissed by the Additional Chief Administrator, Bathinda vide order dated 05.04.2004. Revision petition filed by the appellant/plaintiff was, however, allowed conditionally to the extent that in case she deposits the amount in question within two months from the date of order dated 13.09.2005, the cancellation order would stand set aside but would stand revived in case she failed to do the needful. Appellant/plaintiff admittedly did not deposit the amount due and filed CWP No.18532 of 2006. It is a matter of record that notice of motion in CWP No.18532 of 2006 was issued while noticing contention of learned counsel for the present appellant that she is ready to deposit all outstanding dues in two installments within a period of two months. Said writ petition was dismissed on 15.12.2006 while noticing the continued default of the present appellant. Cancellation of allotment, thus, attained finality.

The appellant however managed to remain in possession of the quarter in question and after nearly eight years, filed the present civil suit on 07.11.2014, seeking permanent and mandatory injunction for restraining the defendants from illegally and forcibly dispossessing her as well as setting aside cancellation of allotment of quarter or in the alternate sought reallocation of the quarter.

In my considered opinion, both the learned courts below have rightly dismissed the suit filed by the appellant. Conduct of the appellant wherein continued default is apparent on the face of it, does not call for any interference in

this regular second appeal. Argument that appellant was not informed about decision dated 15.12.2006 in CWP No.18532 of 2006 by her counsel, is totally unsubstantiated by any evidence on record. Learned counsel is unable to point out any evidence on record to indicate that appellant had even attempted to deposit the amount in question since February, 2004. Bald assertion on her part clearly cannot indicate *bonafides* of the appellant, who as per her own case was in possession of two quarters. I do not find any ground, whatsoever, for setting aside order of cancellation of allotment, the same having attained finality on 15.12.2006 itself or for grant of permanent injunction.

In the given factual matrix as above, both the learned courts below have returned correct concurrent findings of fact after proper appreciation of the evidence on record. Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 18.01.2017 and 03.02.2020 passed by the learned Civil Judge (Junior Division), Bathinda and the learned Additional District Judge, Bathinda, respectively, which warrant any interference by this Court.

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

(LISA GILL)
JUDGE

April 01 , 2021.
'om'

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