

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2514 of 2014 (O&M)
Date of decision: 20.09.2022

Babu Singh and another

..Petitioners

Versus

Jalandhar Improvement Trust and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anurag Arora, Advocate,
for the petitioners.

Mr. G.S.Attariwala, Sr. Advocate with
Mr. Vansh Chawla, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

C.M.No.10832-CII-2022

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just exceptions. The legal representatives of late Sh. Babu singh, petitioner no.1, mentioned in paragraph 3 of the application are brought on record.

The amended memorandum of parties is taken on record.

MAIN

1. This revision petition has been filed assailing the correctness of the order passed by the Executing Court on 08.01.2014.
2. An application filed by the petitioners under Order XXI Rule 32 CPC as well as the execution petition have been dismissed on the ground that they were filed beyond the period of limitation.
3. Some peculiar facts are required to be noticed.
4. The Chairman of the Jalandhar Improvement Trust (hereinafter referred to as 'the Trust') allotted two plots to the petitioners in the year

1988. In order to pay the price of the plots, the petitioners sent two demand drafts of Rs.20,000/- and Rs.15,000/- to the Trust. The Trust, which is a public body, cancelled the allotment on the ground that the Chairman had no jurisdiction, in the absence of a resolution of the Trust, to allot the plot. This led to the petitioners' filing a civil suit for grant of the following reliefs:-

“Suit for declaration to the effect that cancellation of allotment exemption of the plot no.30 and portion of plot no.31 as per defendant letter no.JIT/471 dated 29.07.1993, is illegal, void, wrong, unilateral, unconstitutional and is not binding upon the plaintiff and the plaintiffs are entitled for exemption of the area as per plan attached with the plaint.

AND

Suit for mandatory injunction to comply with the orders passed by defendant no.1 as per letter no. JIT/5702 dated 18.02.1988

AND

Suit for permanent injunction restraining the defendant from demolishing the building and to interfere in the possession of the plaintiffs as defendants have no right to take possession even otherwise until a provision for the same is made in favour of the plaintiffs for rehousing.”

5. The civil suit was dismissed on 19.01.2001. However, in the first appeal, filed by the petitioners, the court accepted the appeal vide judgment dated 06.01.2005, while observing as under:-

“Cancellation of the plots allotted to the appellants is unjustified and is against the principle of natural justice. Absolutely, no ground is made out for the cancellation of the plots as long as the plaintiffs are not paid their dues for the raised construction, considering all the aspects of the case from every angle, I find that the cancellation of the allotment of the plot no.30 and sum portion of plot no.31 by the respondents as per letter dated 29.07.1993 Ex.D1 is illegal, wrong and which is not binding upon the plaintiffs. I also find the appellants entitled for the mandatory injunction to be issued against the respondents directing them to comply with the order passed by the defendant no.1 as per order No.JIT-5702

dated 13.2.1988. The plaintiffs are also held entitled for the discretionary relief of injunction to be issued against the respondents restraining them from demolishing building and to interfere in the possession of the plaintiffs till the compensation of the raised construction is assessed and is paid to the appellants. Accordingly I revered the findings given by the trial court on issues 3, 4 and 5 and decide the same in favour of the appellants. The appeal is accepted. The suit of the plaintiffs as prayed for is decreed with no order as to costs. Decree sheet be prepared. File be consigned."

6. Thereafter, the petitioners again slept over the matter. They filed an execution petition on 12.08.2010, alleging that the drafts sent in the year 1988 for payment of the price of the property have been returned by the Trust in the year 2009. In the execution petition, the petitioners filed application under Order XXI Rule 32 CPC, on 12.08.2011, which has been dismissed for being barred by time.

7. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

8. On the one hand, the learned counsel representing the petitioners contends that the limitation for filing an application under Order XXI Rule 32 CPC is 12 years, whereas, on the other hand, learned counsel representing respondent no.1 contends that the petitioners are sitting over the public property without payment of the price for the last 34 years.

9. The revisional jurisdiction of this Court has been invoked by the petitioners. In the present case, no doubt, the First Appellate Court declared that the cancellation of the allotment is illegal. A decree for mandatory injunction was also passed. However, that does not absolve the petitioners from paying the price of the plots which were allegedly allotted to them. The respondent-Trust is a public body. It is managing public property for the benefit of the public, at large. In the present case, it is evident that

despite getting decree of declaration from the First Appellate Court on 06.01.2005, the petitioners never offered to pay the price of the plots. In 2009, the Trust had only returned the drafts which were deposited by the petitioners in the year 1988. There is no correspondence between the petitioners and the Trust from January, 2005 till the drafts were returned in the year 2009. Moreover, the powers under Order XXI Rule 32 CPC are required to be exercised only if the Judgment Debtor wilfully fails to obey the decree.

10. Keeping in view the aforesaid facts, without going into the question of limitation, the revision petition is dismissed with the observation that the conduct of the petitioners disentitle them from the discretionary relief.

11. All the pending miscellaneous applications, if any, are also disposed of.

September 20, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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