

RSA-891-2023 (O&M)

104

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-891-2023 (O&M)

Date of decision: May 08, 2023

The Chandigarh Administration/ State of U.T., Chandigarh
and others

....Appellants

versus

Aarti Devi (since deceased) through LRs

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Lokesh Chander Aggarwal, Additional Standing Counsel with
Mr. Shobit Phutela, Junior Panel counsel for appellants.

ARUN MONGA, J. (ORAL)

CM-3429-C-2023

For the reasons stated in application, same is allowed. Delay of 76 days
in filing appeal is condoned, subject to all just exceptions.

CM-3430-C-2023

This is an application filed by appellants under Order 41 Rule 27 CPC
for permission to place on record letter dated 13.10.2015 (Annexure A-1) by way of
additional evidence.

No grounds are made out to allow appellants to adduce additional
evidence at this belated stage.

Dismissed.

Main case (O&M)

For convenience, parties herein are addressed as per the recitals before
learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below,
appellant/defendants are in second appeal before this Court assailing learned trial
Court judgment and decree dated 18.11.2009, as upheld by learned First Appellate
Court vide its judgment and decree dated 24.08.2022, whereby suit of the respondent-

RSA-891-2023 (O&M)

plaintiff was decreed and defendants were directed to issue allotment letter as well as to handover possession of Plinth Site No.1800, Sector 25, Chandigarh to plaintiff which was allotted to her in a draw of lot against her Jhuggi No.69/1, Janta Labour Colony, Sector 25, Chandigarh under the Rehabilitation Scheme known as licensing of tenements and sites and services in Chandigarh Scheme 199 subsequently amended in the year 1997, within a period of two months from the date of receipt of certified copy of judgment.

3. Briefly stated, facts, as noticed by learned Courts, are as below:

“In nutshell, the facts of the present suit are that plaintiff along with his family had been residing in Sector 25, Chandigarh since long. The Chandigarh Administration framed a scheme namely 'Licensing of Tenement and Sites and Services Scheme 1979' for rehabilitation of Jhuggi Dwellers. Admittedly, various persons have been rehabilitated under the said scheme time to time. In pursuance to said scheme, the administration carried out the process of rehabilitation of the dwellers of Janta Labour Colony, Sector 25, Chandigarh.

2. It is averred in the suit that the basic scheme/notification issued by the Chandigarh Administration is dated 24.08.1979 and the same was amended as Licensing of Tenement and Sites and Services in Chandigarh Scheme 1979 in the year of 1997. It is averred that as per said scheme, the eligibility criteria for allotment of plinth/site against the jhuggi was primarily that "all persons who are bonafide residents of Labour Colonies and whose names are included in the voters list in force, on the date of election to the Municipal Corporation, Chandigarh, shall be eligible for allotment of site and tenement." It is further averred in the suit that the plaintiff along with her family had been residing in Sector 25, Chandigarh since long, being eligible plaintiff applied for allotment of side against his respective jhuggi under the rehabilitation scheme. Since the applicant was eligible, accordingly, Plinth Site No.1800, Sector 25, Chandigarh was allotted to her in a draw of lot. Thereafter, an allotment related letter dated 22.03.2014 was issued to the plaintiff and plaintiff was asked by the defendants to complete the formalities which were completed by the plaintiff. However, no allotment and possession letter has so far been issued and no possession of plinth handed over to the plaintiff despite repeated visits and requests to the concerned officials of the defendants.

3. It is averred in the suit that the plaintiff has been pursuing for getting allotment and possession since long but the defendants neither handed over the possession nor communicated/make available any concrete reason for not handing over the allotment letter and possession till date but putting off the matter on one pretext of the other. Hence, it has been established that there is apparent lapse on the part of defendants regarding non-handing over the possession and the

poor plaintiff is suffering without any fault of her. That, on the one hand defendant had not handed over the possession of plinth site to the plaintiff and on the other hand the defendants have removed the colony including jhuggi of the plaintiff due to which poor plaintiff is passing the time here and there. When the plaintiff did not find any relief from the defendant then plaintiff filed a petition before Permanent Lok Adalat, but said petition was disposed of in the month of March, 2016 in terms of notification dated 02.02.2016. When the petition was disposed of by the Permanent Lok Adalat then there was no remedy to the plaintiff except by filing the present suit for the relief claimed. Hence, the present has been filed.”

4. Upon notice, defendants appeared and filed written statement raising preliminary objections with respect to jurisdiction to be barred under Section 19 of the Capital of Punjab (Development & Regulation) Act, 1952 (for short ‘Act’), non-service of notice under Section 80 of CPC. It was submitted that a person, who owns more than one house in any Labour Colony in his own name or in the name of any dependent member of his family, shall be entitled to the allotment of only one tenement or residential site as of only one tenement or residential site, as the case may be under this Scheme. It was submitted that all the persons whose names appear in any of the voter lists between 1990 and date of election of Municipal Corporation i.e. 8th December, 1996 and provide to be continuous *bonafide* resident from the date of entry in the said electoral list till date, shall be eligible for rehabilitation.

4.1. It was further submitted that plaintiff Smt. Aarti Devi (since deceased) wife of Sh. Darshan Lal, applied for the allotment of alternative site against her Jhuggi No.69/1, Janta Colony, Sector 25, Chandigarh under the scheme called as “Licensing of Tenements and Sites and Service in Chandigarh Scheme 1979”. Defendants distributed Form "A" to plaintiff. Thereafter, plaintiff filled Form "A" and submitted the same along with affidavit. The Plinth Site No.1800, Sector 25, was provisionally allocated to the applicant Smt. Aarti Devi (since deceased), wife of Sh. Darshan Lal was second voter list for the year 1993 and her husband had not applied for allotment and also she had not attached Election Identity Card. It was also submitted that the vote in the said jhuggi for 08.12.1996 election was the mandatory pre-requisite

RSA-891-2023 (O&M)

condition for the allotment under the above said scheme in terms of clause 7 of the Scheme.

4.2. On merits, it was further submitted that Smt. Aarti Devi (since deceased), wife of Sh.Darshan Lal was second voter in the voter list for the year 1993 and her husband had not applied for allotment and election identity card was not supplied by plaintiff along with the application form. Accordingly, she was rightly held not eligible for the allotment of plinth site under the Scheme 1979. Plaintiff was provisionally allocated the Plinth Site No.1800, Sector 25, Chandigarh with the condition to verify eligibility criteria through Screening Committee. Plaintiff had filed petition before Permanent Lok Adalat, who disposed of the same in terms of the notification dated 02.02.2016. Rest of the contents of the plaint were denied and prayed for dismissal of the same.

5. Based on the rival pleadings, following issues were framed:

- “1. *Whether plaintiff is entitled for mandatory injunction as prayed for? OPP*
2. *Whether this Court has no jurisdiction to entertain the present suit? OPD*
3. *Whether no notice under Section 80 CPC has been served? OPD*
4. *Whether present suit is not maintainable? OPD*
5. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issue No.1 in favour of plaintiff. Issues No.2 to 4 were decided against defendants. Consequently, suit filed by plaintiff was decreed and defendants were directed to issue allotment letter as well as to handover possession of Plinth Site No.1800, Sector 25, Chandigarh to plaintiff which was allotted to her in a draw of lot against her Jhuggi No.69/1, Janta Labour Colony, Sector 25, Chandigarh under the Rehabilitation Scheme known as licensing of tenements and sites and services in Chandigarh

RSA-891-2023 (O&M)

Scheme 199 subsequently amended in the year 1997, within a period of two months from the date of receipt of certified copy of judgment.

8. Feeling aggrieved against the said judgment and decree dated 18.11.2019, appellant/defendants preferred first appeal.

9. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

10. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“13. Section 19 of the Capital of Punjab (Development & Regulation) Act, 1952 though bars the jurisdiction of the civil court to entertain any suit or proceedings, however, the following grounds are included under the said Section which bar the jurisdiction of the civil court:-

- (i) In respect of the recovery of any arrears or penalty under Section 8 of the Act.
- (ii) In respect of the resumption of any site or building, or both under Section 8-A.
- (iii) For the forfeiture of any money under Section 8-A.
- (iv) In respect of any order made, by the Central Government or any other authority in exercise of any power conferred by or under this Act.

Clause 28 of the Scheme speaks that any person feeling aggrieved by any order passed by the competent authority under this scheme shall be entitled to file an appeal to the Chief Administrator which appeal shall be filed within a period of 30 days from the date of communication of the impugned order.

On the collective study of Section 19 of the Act as well as clause 28 referred above, this Court when gone through the entire case file has not found any speaking order passed by the competent authority which may be found appealable before the Chief Administrator except Ex.D1 for which this Court has already opined that it is neither a speaking order nor even any order in the eyes of law. It is only an office noting.

Further, the case in hand is not related qua the proceedings in respect of recovery of any arrears or penalty under Section 8. Also the case in hand is not related for the resumption of any site or building or both under Section 8-A as no such case has been pleaded by the appellant under Section 8-A. Also the present case is not related with any forfeiture of any money under Section 8-A. Lastly, the present case is again not related in respect of any order made by the Central Government or any other authority in the exercise of any power conferred by or under this Act. In these circumstances, where Ex.D1 is not proved on the record as an order, thus, the suit of the plaintiff is not hit by Section 19 of the Capital of Punjab (Development & Regulation) Act, 1952. Accordingly, the appellant cannot take any support either of Section 19 of the Act or of clause 28 of the Scheme. For the above reasons, the appellant cannot take the support of Punjab State

Electricity Board's case (supra) and of Greater Mohali Area Development Authority's case (supra) though this court has the utmost respect to the law laid down therein.

14. *Much was argued by the learned Govt. Pleader for the appellant that the name of the plaintiff Smt. Arti Devi was not there in the voter list and further she was the second voter where as her husband was the first voter. That way, she was not entitled to be allotted the plinth site in question. These arguments were strongly rebutted on part of the plaintiff.*

In the light of the above rival submissions, this Court has gone through Clause 7 (1) (iv) of the Scheme which speaks as under:-

“All persons whose names appear in any of the voters list between 1990 and the date of election of Municipal Corporation i.e., 8th December, 1996 and proved to be continuous bonafide resident from the date of entry in the said electoral list till date, shall be eligible for rehabilitation”.

Ex.P18 is the voter list of the year 1993 wherein the name of plaintiff Smt.Arti wife of Darshan Lal has been reflected at serial No.543 for the Chandigarh Lok Sabha Election Area, Sector 25 (Janta Labour Colony). When clause No.7(1)(iv) of the Scheme is read with Ex.P18 then this condition of having the name of the plaintiff in the voter list in between 1990 to 8.12.1996 has been fulfilled. Clause No.7 did not speak about either first voter or second voter as has been reflected in Ex.D1. Thus, the rejection of the allotment in favour of the plaintiff on the basis of the objection that she was second voter is also against the mandate of clause 7(1)(iv) and the appellant cannot take any support of this objection.

Further, another objection has been taken through Ex.D1 that the husband of the plaintiff had not applied for the allotment. For this, the appellants have failed to disclose before this Court as from where they have taken the said condition/objection. This condition even is not reflected in Ex.P16 which is the letter dated 22.3.2004 sent by the Estate Office to the plaintiff.

15. *DW1 Sh.Angrej Singh tendered his affidavit Ex.DW1/A. This witness has been examined by the appellant in support of their stand who has categorically stated it as correct that the application of the plaintiff was processed by the department. He also admitted that as per the scheme there was no requirement of any voter card as mentioned in Ex.P1. The husband of the plaintiff had already given his affidavit having no objection if the allotment was made in the name of the plaintiff Arti Devi and in this regard, he proved copy of affidavit Ex.P10. Ex.P10 was executed in the year 2001 i.e. after about two years of submitting Ex.P4. DW1 further admitted that as per scheme Ex.D2, it was specifically mentioned that the repeal relating to Scheme, 1979 will not affect the rights of those persons who were eligible in the scheme and whose names were figured in the electoral roll as on 8.12.1996. He further deposed that there was no dispute relating to the vote of the plaintiff or her husband.*

DW1 also stated it as correct that as per their record, allotment letter in the name of plaintiff and her husband is there and said allotment letter bears the signatures of the plaintiff and her husband and the same is Ex.P14. On perusal of Ex.P14 which has been admitted by DW1 its own witness of the appellant, bears the joint photograph of Arti Devi (plaintiff) and Darshan Lal. Further, as per admission of DW1,

this document bears the signatures of the plaintiff and her husband. However, there is a cross line on the said document which also bears the seal of the Estate Officer/competent authority. Ex.P14 is related with the allotment of plinth site No.1800, Sector 25 on license hold basis wherein a reference of the application of the plaintiff dated 3.11.1999 bearing No.69/1 has been given with the averments to have been allotted a constructed site upto plinth level to the plaintiff bearing No.1800, Sector 25, Chandigarh. DW1 thus, has clearly admitted the case of the plaintiff.

PW2 Sh.Sunil Kumar was summoned by the plaintiff from the office of the appellant and he had brought the record of allotment of plinth No.1800. He admitted that as per their record, the application for allotment of plinth No.1800 was against jhuggi No.69/1, Sector 25, Chandigarh and was given by Smt.Arti w/o Darshan Lal on 3.11.1999. In this regard, he proved Ex.P4 which application was also supported with affidavit Ex.P5. PW2 made it clear that as per their record, plaintiff Arti Devi had further supplied the required documents vide application dated 29.3.2004 and in this regard he proved Ex.P6 to Ex.P9. He further deposed that even her husband had given no objection if allotment was made of the said plinth to the plaintiff. To this effect, he proved Ex.P10. As per their record, plaintiff Arti Devi was found eligible for the allotment in the draw of lots. The copy of slip Ex.P11 was duly signed by different officers of the Estate Office, Chandigarh. As per record the plinth No.1800, Sector 25, Chandigarh was given to plaintiff Arti Devi and relevant slip showing the plinth No.1800 was also signed by the officers of the Estate Office. To this effect, he proved Ex.P12. He also admitted that as per their record the allotment letter duly stamped complete in all respect is lying in their record, however, the signatures of the competent authority are not there. He admitted the signatures of plaintiff and her husband on the allotment letter. From the evidence of PW2, it is thus proved that the case of the plaintiff for the allotment of the plinth site No.1800, Sector 25, Chandigarh was processed by the office of the appellant upto the level of issuance of allotment letter and even it was got signed by the plaintiff and her husband on calling them in their office. Thus, it is proved on the record again that the case of the plaintiff was even found genuine and without having any objection and that is why, the plaintiff and her husband were called by the appellant in its office and their signatures were obtained. The only requirement left in the process of allotment was that it was only to be signed by the competent authority. There is no reason mentioned by the appellant as why the said allotment letter despite the receipt of the signatures of the plaintiff and her husband was not signed by the competent authority. The objections raised through Ex.D1, thus, stand nowhere in the eyes of law.

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Thus, in the light of the above discussion based on the evidence both documentary as well as oral, this Court has reached at the conclusion that the learned Trial Court has rightly decided issue No.1 in favour of the plaintiff. Further, issue No.3 regarding issuance of notice under Section 80 CPC is also decided rightly against the appellant for the reason that necessary permission was granted to the plaintiff to entertain her suit without issuance prior notice under Section 80(2) CPC.”

RSA-891-2023 (O&M)

11. Learned counsel for appellants would contend that plaintiff applied for allotment of an alternative site against her *Jhuggi* under the scheme called as “Licensing of Tenements and Sites and Services in Chandigarh Scheme 1979”, which was repealed on 28.08.2003 and a new Scheme framed as “The Chandigarh Small Flats Scheme, 2006”. He would further submit that Plinth Site No.1800, Sector-25, Chandigarh was provisionally allocated, but after scrutiny of Form “A” submitted, some discrepancies were found in it. Plaintiff was found to be ineligible by the Screening Committee since plaintiff was 2nd in the voter list of the year 1993 and her husband had not applied for allotment. Further plaintiff had also failed to attach the Election Identity Card. Vote for 08.12.1996 in the said *Jhuggi* was mandatory pre-requisite condition for allotment.

11.1. He would further canvass that any person in order to be eligible under the Scheme ought to have his or her name appeared in the voter list issued between 1990 and date of election i.e., 08.12.1996. Name of plaintiff’s husband was first in the voter list and her name was 2nd. Her husband had never applied for allotment. Plaintiff also did not attach her election card, which was vital.

11.2. Three-fold arguments have been canvassed by learned counsel for appellants i.e.:

- (a) Suit was barred by limitation;
- (b) Civil suit had no jurisdiction under Section 19 of the Capital of Punjab (Development and Regulation) Act, 1952;
- (c) The plaintiff was not eligible as per the claim.

12 Last argument first. I am in agreement with the discussion and the reasoning given by learned First Appellate Court as also learned trial Court that evidence adduced on record clearly reflects that at the relevant time when provisional allocation *qua* the plinth in question was made, husband of plaintiff-widow was alive having a valid voter I.D. Learned counsel for appellants contends that in every family there may be multiple voters, but every voter is not entitled to seek benefit and each family is to be given benefit of only one plinth and since at the time of provisional

RSA-891-2023 (O&M)

allocation, plaintiff-widow did not produce valid voter card, she was rightly held ineligible.

12.1. The argument is unpalatable as it suffers from inherent insipidity in view of affidavit (Exhibit P-10), whereby late husband of plaintiff-widow had conveyed his 'No Objection' in case the allotment was made in her favour. Stand of appellants also flies in the face of the benevolent scheme which envisages that a plinth is to be allocated to every homeless family. It is thus not a case where widow is trying to take advantage of subsequently becoming a voter and on the basis thereof, seeking allocation of a second plinth. It is the same very plinth in question, which was earlier allocated. I see no reason why benefit be not given to the widow after death of her husband, who concededly was alive at the relevant time and had a valid voter I.D. card.

13. *Qua* suit being not maintainable, it is borne out from the record that at first instance, it seems that appellant-Administration realized the fallacy of legal objection taken before learned trial Court and rightly did not press the issue, as has been recorded by learned trial Court. However, subsequently before learned First Appellate Court, it vehemently opposed the jurisdiction of learned trial Court on the ground that any order passed under Section 19 of the Act being appealable under clause 28 of the Licensing of Tenements and Sites and Service in Chandigarh Scheme 1979 (for short "Scheme of 1979"), the suit could not have been entertained. Once again, conduct of appellant-Administration itself flies in the face of U-turn it took before the learned First Appellate Court on opposing the same having first initially submitted to the jurisdiction and inviting the findings of learned trial Court on merits of the case. It appears that having dropped the objection before the learned trial Court about its jurisdiction and suffered adverse findings, the defendants belatedly decided to raise that objection before learned First Appellate Court. Be that as it may, having seen Section 19 of the Act, I am of the view that even on merits, this objection has been rightly rejected by learned First Appellate Court.

RSA-891-2023 (O&M)

13.1. I see no reason to interfere with the aforesaid cogent discussion rendered by learned First Appellate Court based on the record and correct interpretation of Section 19 *ibid*.

14. *Qua* the issue of limitation, neither was any issue framed before learned trial Court nor was any evidence led or canvassed or otherwise argued before learned trial Court/First Appellate Court and it is only for the first time it appears that same is being taken as an objection. No doubt, issue of limitation being question of law can be raised at any stage, but it cannot be overlooked that same also is required to be adjudicated based on the facts of every case and evidence adduced *qua* the same. Both being lacking, I see no reason to interfere on the ground of limitation, at this stage.

15. Having said so, I may hasten to add in the parting that even on merits, it does not appear to be a case which is barred by limitation. On a Court query, learned counsel for appellants informs that there was no formal order passed or conveyed to plaintiff (since deceased and now represented by legal representatives) rejecting her claim on allocation/ allotment of plinth in question. In the absence of any order having been conveyed to her, one wonders from which date limitation would reckon as plaintiff rightly waited for a decision which was never conveyed to her and it thus, was a continuous cause of action and finally having waited for a reasonably long period, she was compelled to file suit. Thus, no grounds are made out for interference on that score either.

16. Having perused the impugned judgments, my considered opinion is that the same submissions made before learned Courts below were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were correctly recorded by giving sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

17. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

RSA-891-2023 (O&M)

18. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.
19. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.
20. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
21. Pending application(s), if any, shall also stand disposed of.
22. No order as to costs.

(ARUN MONGA)
JUDGE

May 08, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No