

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

RSA No. 1275 of 1999 (O&M)

Reserved on : 15.05.2023

Date of Pronouncement : 24.05.2023

Amarjit Singh

...Appellant

Versus

Jalandhar Improvement Trust, Jalandhar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Shailendra Sharma, Advocate for the appellant.

Mr. T.V.S. Lehal, Advocate for respondent No. 1.

1. Briefly stated facts of the case are that plaintiff Amarjit Singh, Clerk, Jalandhar Improvement Trust, Jalandhar had brought a suit against defendants i.e. Jalandhar Improvement Trust, Jalandhar through its Chairman and Punjab Vot. through Secretary, Government Punjab Local Self Government, Chandigarh seeking a declaration that show cause notice as well as the order passed by the defendant No. 1 or defendant No. 2 withdrawing allotment of a plot to the plaintiff are illegal null and void further seeking an injunction order against defendants from allotting plot No. 628 measuring 6 marlas situated in the Development Scheme of 143.56 acres to any other person.

2. As per version of the plaintiff, he being an employee of Jalandhar Improvement Trust, Jalandhar had applied for allotment of a plot.

His request was accepted and defendant No. 1 Trust allotted plot No. 628

measuring 6 marlas in the Development Scheme of 143.56 acres vide letter No. JIT/4471 dated 11.2.1998. The plaintiff had submitted a cheque in the sum of Rs.5417/- to the defendant Trust. Subsequently defendants issued a show cause notice to the plaintiff threatening cancellation of the allotment. Later on the plaintiff came to know that defendants had withdrawn the allotment of plot in his favour. This action of defendants left the plaintiff aggrieved and he had approached the Civil Court by way of filing the suit in question inter alia contending that the allotment had been made in his name and it could not have been withdrawn/cancelled arbitrarily.

3. On getting notice of the suit only defendant No. 1 Trust had put in appearance and filed a written statement contesting the suit raising various legal objections contending that suit could not be instituted without service of notice as provided under Section 98 of the Punjab Town Improvement Act and that the Civil Court had got jurisdiction to try the suit and further the suit was not properly valued for the purpose of Court fee and jurisdiction. On merits the answering defendant admitted having allotted a 6 marla plot bearing No. 628 to the plaintiff. However, it was pleaded that the then Chairman while making allotment had exceeded his power inasmuch as only 2% of the total plots available could be allotted to the employees and in scheme in question a total number of 75 plots were available, therefore, only one plot could be allotted to employees of answering defendant. The act of the then Chairman in making allotment to the plaintiff was ultra-vires. Therefore, defendant Trust was not left with any option but to issue the impugned show cause notice which was followed by withdrawal of the allotment. In the end the defendant prayed for dismissal of the suit.

4. Plaintiff filed replication controverting allegations in the written statement whereas reiterating the averments in the plaint. On pleading of the parties following issues were framed :

- i) Whether the plaintiff was required to serve notice u/s 98 of the Town Improvement Act? If so, what is the affect of not serving the notice?OPD
- (ii) Whether the Civil Court has got no jurisdiction to try the present suit?OPD
- (iii) Whether the suit is properly valued for purposes of Court fee and jurisdiction?OPD
- (iv) Whether the plaintiff is entitled to seek the relief of declaration as prayed for?OPP
- (v) Whether the plaintiff is entitled to seek the relief of injunction prayed for?OPP
- (vi) Relief.

5. The parties were given adequate opportunities to lead evidence in support of their respective claims.

6. After hearing arguments the trial Court of Additional Civil Judge, Senior Division, Jalandhar vide judgment dated 7.1.1998 had decreed the suit of the plaintiff to the effect that that show cause notice as well as order withdrawing the allotment from the name of plaintiff passed by defendants No. 1 and 2 are illegal and void and defendants were restrained from making allotment of plot No. 628 to any other person except to the plaintiff. It was further declared that if any allotment has been made during pendency of the suit the same is illegal and void on account of principle of lis pendense.

7. Feeling aggrieved by such judgment and decree defendant No. 1 Jalandhar Improvement Trust, Jalandhar through its Chairman had preferred an appeal before District Judge, Jalandhar which was assigned to Additional District Judge, Jalandhar who vide judgment and decree dated 13.3.1999 accepted the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiff. Now it was turn of the plaintiff to feel aggrieved and he has knocked at the door of this Court by way of filing an appeal, notice of which was given to the respondents. Respondent No.1 had put in appearance through counsel.

8. I have heard learned counsel for the parties and gone through the record.

9. A perusal of the judgment passed by the trial Court goes to show the lack of ability to understand the facts of the case properly and to interpret and apply the law correctly to the facts of the case. Resultantly the trial Court had wrongly decreed the suit of the plaintiff which had resulted into miscarriage of justice however this wrong was undone by learned Additional District Judge, Jalandhar who by properly understanding the facts and circumstances of the case and analysing the evidence brought on record by the parties in a minute and careful manner and applying the law properly has observed that allotment of plot No. 628 by Chairman of Jalandhar Improvement Trust was not legal and had been set aside. For ready reference the relevant para of the judgment is being reproduced as under :

“10. The facts are not in dispute. The Chairman vide Ext.P1 and P2 allotted plot No. 628 to the plaintiff. However, vide Ext.D1, the Chairman, Jalandhar Improvement Trust was asked to cancel the allotment because that was against the rules as under

the rule only 2% of the available plots could be allotted to the employees. Under the Scheme there were only 75 plots and, therefore, only two plots could be allotted to the employees but the Chairman allotted plots more than the prescribed quota and, therefore, the Trust was advised to cancel all these allotments after issuing show cause notice. Thereafter show cause notice Ext.P4 was issued to the plaintiff. As already stated above, the plot was allotted to the plaintiff by the Chairman in his official capacity, he has no power to allot the plot because the Trust being Corporation acts through resolution. No resolution ordering allotment of the plot for the plaintiff has been produced. The allotment of plot to the plaintiff is, therefore, void ab-initio. Moreover, under Section 72-B and 72-E of the Punjab Town Improvement Act, the State Government has supervisory powers over the acts of the Trust and under these supervisory powers the Government found that the allotment to be illegal being above the quota prescribed for employees. The State Government, therefore, rightly advised the Trust to cancel the plot after issuing show cause notice to the plaintiff. The show cause notice is, therefore, legal and valid and the learned trial Court has wrongly held the same to be illegal. As regards the resolution Ext.PX, suffice it to say that vide this resolution the Trust decided that the plots allotted to the employees of the Trust be not allotted to anybody and the case be again referred to the Government for approval. Thus vide this resolution the Trust has sought approval of the Government to allot plots to the employees but no approval of the government has been placed on record and as such it cannot be said that the plot stands transferred to the plaintiff. Furthermore, from sale deed Ext.D3 produced by the defendants it is clear that the plot has already been transferred and, therefore, the learned civil Judge has committed material illegality, in granting injunction not to transfer the plot because the plot already stands transferred. The

findings of the trial Court on the issues are, therefore, wrong and are consequently set aside.”

10. The judgment does not suffer from any illegality or infirmity much less having any element of arbitrariness or perversity. I do not find any reason to interfere with the impugned judgment and decree. No substantial question of law arises. The appeal is found to be without merit and is dismissed accordingly.

(H.S. MADAAN)
JUDGE

May 24, 2023
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No