

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 933 of 2000 (O&M)

Date of decision : 14.2.2023

...

M/s Nirmal Singh and Son's

.....Appellant

vs.

Haryana Urban Development Authority,
Panchkula and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: None

...

H. S. Madaan, J.

1. As per report by the Registry, both the counsel for the parties have been informed, but they have not turned up. Since the appeal relates to the year 2000, I do not find it proper and appropriate to adjourn it further and I proceed to decide it, after going through the record.

2. Briefly stated, facts of the case are that, plaintiff – N.K. Sharma, had brought a suit against Haryana Urban Development Authority, through its Chief Administrator Haryana Urban Development Authority, Mani Majra, Panchkula as well as, The Chief Administrator, Haryana Urban Development Authority, Mani Majra, Panchkula and The Estate Officer, Haryana Urban Development Authority, Sector 14, Gurgaon, seeking a declaration that letter bearing Memo No. 5458 dated 31.8.1992, issued by the defendant regarding resumption of the industrial plot No. 114, at

Rojka Mco, is illegal, void, unlawful, arbitrary and not binding upon the rights of the plaintiff, besides seeking a decree for permanent injunction restraining the defendants from allotting the plot to anybody else, further claiming a decree for mandatory injunction for cancelling the re-allotment and so also seeking possession of the plot in question.

3. According to the case of the plaintiff, he was allotted Industrial plot No. 114, situated at Rojka Mco, Sub Tehsil Sohna, District Gurgaon by the defendants vide allotment letter bearing No. 2264 dated 26.9.1985. Thereafter, the plaintiff took up the matter with the defendants for handing over the possession of that plot to him, but it was not so done. Rather the defendants issued a notice to the plaintiff on 30.7.1992, vide memo No. 4343 asking him to go to the office of Chairman, Single Window Service, (for short SWA), Mehrauli Road. The plaintiff went there. He was asked to fill up certain proforma. His case was heard on 11.8.1992. However, physical possession of the plot was not given to him. Ultimately, the plot was resumed by the defendants. The plaintiff pleaded that the action of the defendants is illegal, null and void. Feeling aggrieved, he had filed the suit.

4. On getting notice, the respondents had appeared and filed a written statement, raising various legal objections, on merits contending that the plaintiff had failed to comply with the terms and conditions of allotment, therefore, the plot was resumed vide order dated 31.8.1992. The possession of the plot had in fact been given to the plaintiff on 20.11.1984, therefore, there was no

question of delivery of possession to the plaintiff again. The correspondence made by the plaintiff was unnecessary. The plaintiff was not serious to raise construction, which he was required to do within two years and after issuance of legal notice under Section 17 of HUDA Act, 1977 and vide notice, the plaintiff was directed to appear before SWA to examine the position of the plaintiff whether he was able to raise construction over the plot in question. Thereafter resumption order was passed and no illegality can be found with the same. The defendants sought dismissal of the suit.

5. No replication was filed by the plaintiff. From the pleadings of the parties, following issues were framed by the trial court of Civil Judge (Junior Division), Gurgaon, vide order dated 28.4.1994:-

1. Whether the impugned order issued by defendants vide memo No. 5458 dated 31.8.1992 resuming the plot of the plaintiff is null, void, illegal, arbitrary and not binding on the rights of the plaintiff? OPP
1. Whether the civil court has no jurisdiction to undertake the present suit? OPD
2. Whether the plaintiff has no cause of action to file the present suit? OPD
3. Whether the plaintiff has not come to the court with clean hands? OPD
4. Whether the suit is maintainable in the present form?
OPD

5. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

6. Whether the suit is bad for non-serving of notice u/s 80 CPC? OPD

7. Whether the plaintiff failed to comply the terms and conditions of the allotment, if so to what effect? OPD

8. Relief.

6. Parties were afforded adequate opportunity to lead evidence in support of their respective claims. During the course of evidence of plaintiff, he got his own statement recorded as PW-1 and repeated on oath the averments as given in the plaint. In rebuttal, the defendant examined Devdutt, Clerk, Estate Officer, HAD as DW-1 and Sh. G.P. Sharma as DW-2.

7. After hearing the arguments, the trial court decided issue No.1 in favour of the plaintiff and against the defendants, holding that the impugned order dated 31.8.1992 resuming plot of the plaintiff was illegal, null, void and arbitrary. Whereas issue No. 8 was decided against the defendants and in favour of the plaintiff, holding that no demarcation of the plot of the plaintiff was done and he was not given physical possession and the possession was given in papers only. In that way, the physical possession was yet to be handed over. Therefore, in absence of demarcation of the plot, plaintiff was not in a position to raise construction and condition 18 mentioned in the allotment letter was not applicable.

8. Vide judgment dated 31.3.1999, the suit of the plaintiff was decreed and impugned letter issued by the defendants dated

31.8.1992, regarding resumption of the industrial plot in question was declared illegal, void, unlawful, arbitrary and not binding on the rights of the plaintiff. The defendants were directed to restore the plot in dispute in favour of the plaintiff, within a period of one month by way of decree for permanent injunction. The defendants were restrained from allotting the plot in dispute to anybody else. It was further directed that plaintiff would complete the construction within a period of two years from the date of physical possession delivered to him without seeking further extension of time and in case plaintiff failed to complete the construction on the plot in dispute, the defendants would be at liberty to proceed against him in accordance with law.

9. Feeling aggrieved by the said judgment and decree passed by the trial Court, the defendants had preferred an appeal before the District Judge, Gurgaon, which was assigned to Additional District Judge, Gurgaon, who vide judgment dated 9.12.1999, accepted the appeal, setting aside the judgment and decree passed by the trial Court, holding that the plaintiff had failed to comply with the terms and conditions of allotment and reluctantly, resumption was validly and legally made. As a consequence of acceptance of appeal, the suit filed by the plaintiff was dismissed.

10. Now it was the plaintiff, who felt dissatisfied and he had approached this Court by way of filing the present regular second appeal, notice of which was given to the respondents, who had put in appearance. Subsequently, both the parties have stopped

putting in appearance in the court.

11. After going through the record, I find that the main thing to be seen in this case is as to whether the plaintiff had failed to comply with the terms and conditions of the allotment letter, resulting in cancellation of the allotment or not. Learned Additional District Judge, Gurgaon, has dealt with the matter in very detailed and analytical manner, observing that the plaintiff had challenged the resumption order by way of filing appeal before the Administrator, HUDA, Gurgaon (exercising the power of the Chief Administrator). That appeal was dismissed vide order dated 15.12.1992. In para No. 13 of the judgment, it has been noticed that the defendants had informed that the plaintiff regarding demarcation of the plot, but he neither attended nor raised the construction. A show cause notice was issued to him on 13.6.1990, asking him to show cause within 30 days as to why the order of resumption of site be not made. It was followed by another show cause notice dated 30.7.1992. An opportunity of being heard was also given to him and thereafter order of resumption was made on 31.8.1992. Appeal preferred by him to the Administrator, HUDA, Gurgaon (exercising the power of the Chief Administrator), made on 28.9.1992, was rejected on 15.12.1992. Therefore, it comes out that plaintiff himself was indulging in dilatory tactics and was blaming the defendants without any reason. This aspect has been dealt with in detail and then a conclusion was drawn that plaintiff himself was to be blamed in not complying with the terms and conditions of the allotment and the plot was validly resumed. No

fault can be found with such inference arrived at by the Ist Appellate Court.

12. On the other hand, judgment passed by the trial Court comes out to be the result of inability to marshal the facts of the case properly, analyze the evidence adduced by the parties in appropriate manner. The law on the subject has not been applied properly. The trial Court fell in error in decreeing the suit of the plaintiff, which error was rectified by the Ist Appellate Court of Additional District Judge, Gurgaon, by proper appraisal and appreciation of evidence and correct interpretation of law, resultantly, dismissing the suit of the plaintiff. The regular second appeal filed by the plaintiff lacks merit.

13. No substantial question of law arises in the present appeal.

14. The appeal is found to be without any merit and the same stands dismissed accordingly.

15. The interim order passed on 10.9.2002 directing the respondents not to allot industrial plot No. 114, situated at Rojka Mco, Sub Tehsil Sohna, District Gurgaon, to anybody, thus comes to an end.

14.2.2023 chugh	(H.S. Madaan)	
	Judge	
	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No