

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

(210)

Neutral Citation No.2023:PHHC:087922-DB

CWP-1042-2018

Decided on : 13.07.2023

Jaideep Singh and another

.....Petitioner(s)

Versus

State of Punjab and another

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr. S.S. Salar, Advocate for the petitioners.

Mr. V.G. Jauhar, Addl. AG, Punjab.

Mr. G.S. Khokhar, Advocate for respondent No.2.

G.S. Sandhawalia, J.

Challenge in the present petition filed under Article 226/227 of the Constitution of India is to the order dated 09.12.2016 (Annexure P-19) wherein the respondent-Ludhiana Improvement Trust (hereinafter referred to as 'Trust') came to the conclusion that the applicant was not the owner for two years at the time of the initiation of acquisition and, therefore, his request for the allotment of the plot on account of being local displaced person could not be considered and his representation was rejected.

2. Similarly, challenge is also raised to the order dated 13.12.2017 (Annexure P-20), which was a speaking order passed by respondent No.2-Chairman of the Trust. The same was in pursuance of the directions issued by this Court in CWP No.2699 of 2017 since legal

notice dated 07.04.2016 was sought to be decided. Respondent No.2 had relied upon the judgment of the Apex Court passed in **Baljit Singh Vs. Ludhiana Improvement Trust, 2009 (1) RCR (Civil) 743**, wherein it had been held that if the plot had been cancelled on account of mistake, the subsequent purchaser gets no right since the original allottee did not have any vested right. Resultantly, it was noticed that allotment in the name of Amar Singh, the original allottee was itself illegal and against the rules and, therefore, the request made for the issuance of the No Objection Certificate (NOC) by petitioner No.1-Jaideep Singh was without any cause.

3. Counsel for the petitioner has tried to convince us on the strength of the judgment of the Coordinate Bench passed in **Haryana Urban Development Authority & others Vs. Sandeep & others, 2012 (67) RCR (Civil) 691** to submit that the right of consideration should be seen on the date of Section 4 notification and the eligibility cannot be denied on account of the fact that the ownership was not for a period of two years which is required as per The Utilization of Land and Allotment of Plots by the Improvement Trust Rules.

4. Rule 2 (2) (a) and Rule 7(ii) of the then Improvement Trust Rules, 1975 which would be applicable reads as under:-

“2. These shall come into force at once.

(2) Definition —In these rules, unless the context otherwise requires, —

(a) ‘local displaced person’ means a person who is the owner of a property acquired by the Trust for the execution of a Scheme and has been such owner for a continuous period of two years immediately before the

first publication of the Scheme by the Trust under Section 36 of the Punjab Town Improvement Act 1922.

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7. Reservation of plots and tenements

(i) xxxx

(ii) A local displaced person may be allotted a plot upto the size of 500 sq.yards, on free hold basis, on reserve price calculated on the basis of the formula in the Annexure, if the area of the land owned by him and acquired by the Trust is more than 500 sq.yards. If the area of the acquired land is less than 500 sq.yards, the local displaced persons shall be entitled to allotment of plot, which is nearest in size, next below the area of his land, which has come under acquisition.”

5. The rules were replaced by The Punjab Town Improvement (Utilization of Land and Allotment of Plots) Rules, 1983, whereby the definition was then provided under Rule 2 (d) but the eligibility criteria remained the same. The right of reservation was then provided under Rule 4, wherein the right to have a plot of 500 square yards was to be the entitlement of the person whose area of acquired land exceeds 5 acres.

6. It is not disputed that the petitioner’s right as such accrues from an allotment which was made to one Amar Singh on 19.01.1989 (Annexure P-1) as a local displaced person who was allotted Plot No.63-B, measuring 500 square yards in Bhai Randhir Singh Nagar, Ludhiana. Apparently, Amar Singh had purchased the land measuring 544 sq.yards in question only on 28/30.07.1975, whereas Section 36 notification under the Punjab Town Improvement Act, 1922 (for short ‘1922 Act’) was issued on 17.12.1976. He was, thus, apparently not the owner of the plot for a period of two years prior to the Section 36 notification as provided under the rules in question and was not eligible for allotment. The petitioner-

Jaideep Singh gets his right from the said allotment made in favour of Amar Singh which is subject matter of consideration. The plot had been transferred in favour of the petitioner No.1 on 08.06.1989 (Annexure P-3) and on 14.08.1989 (Annexure P-4) the allotment was cancelled, since it had been made by the Executive Officer at his own level without being competent and without having jurisdiction and authority.

7. The case of the petitioner No.1 is that it was re-allotted to him on 24.01.1990 (Annexure P-5) on his representation as per the terms and conditions also contained in the allotment letter dated 08.06.1989 (Annexure P-3). On 18.05.1998 he was also put to notice as to why the said allotment be not cancelled and on the request the restoration is alleged to have been done on 09.05.2002 (Annexure P-8). The petitioner's effort to get a NOC issued led to the matter being put up before the Trust as such for consideration and eventually the impugned order was passed on 09.02.2016 (Annexure P-19) rejecting his prayer on the ground that Amar Singh was not the owner of the land for two years prior to the acquisition.

8. The term of local displaced person as defined in the rules was subject matter of consideration in the judgment passed in **Jalandhar Improvement Trust Vs. Sampuran Singh etc., 1999 (2) RCR (Civil) 568** by the Apex Court. In the said case it was held that a person whose land was acquired for the purpose of acquisition schemes is not entitled to take benefit of the preferential reservation as a local displaced person unless and until he qualifies to be a local displaced person. The relevant portion as such of the said judgment reads as under:-

“12. The High Court as well as the lower appellate court also relied upon the fact that the Trust had made similar

preferential allotments as local displaced person in favour of other persons. Therefore, the courts below came to the conclusion that even the plaintiffs-respondents were entitled to such allotment. In our opinion, before coming to this conclusion the courts below should have first decided the question whether the allotment in favour of those persons was within the scope of the Rules applicable. If it was not within the scope of the Rules then even those allotments in favour of other persons will not create a right in the respondents to claim equality with them; may be, if the allotments were made wrongly in favour of those persons, the same may become liable for cancellation, if permissible in law, but that will not create an enforceable right on the respondents to claim similar wrongful allotments in their favour. In our opinion, even this ground relied upon by the High Court as well as the lower appellate court is unsustainable. The courts below next relied upon the fact that in regard to some of the respondents, the Trust itself at a point of time made allotments and accepted initial deposits towards the consideration of the plot which was subsequently cancelled. Based on those facts, the courts below held that the Trust having once allotted the plots and having collected part of the consideration, it could not have cancelled the allotments, probably basing the respondents' case on the principle of promissory estoppel. Here the courts below have failed to notice the legal principle that there is no estoppel against law. The allotment of plots by the Trust is controlled by the statutory Rules. Any allotment contrary to those Rules will be against the law. Since the allotments made in favour of some of the respondents was based on wrong application of the reservation made for "local displaced person" those allotments were contrary to law. Hence, the principle of promissory/equitable estoppel cannot be invoked to protect such illegal allotments. In the said view of the matter, we are unable to sustain the judgments and decrees impugned in these appeals."

9. Apparently, as per the rules itself the petitioner's predecessor-in-interest suffers from a disqualification not being owner of 544 square yard for two years prior to the Section 36 notification. Therefore the right

as such of the petitioner to seek consideration for allotment would be only on the strength of a absolute title in favour of Amar Singh. In **Baljit Singh (supra)** similar issue had arisen that there was no independent right on the plot and there was only a right of the transferor or the original allottee. It was also noticed that the allotment was cancelled in favour of the original transferor and, therefore, this Court had dismissed the writ petition which order was upheld. The only difference was that there was a transfer effected in the appellant's favour with the approval of the Trust before the allotment was cancelled and reconsideration was ordered for a fresh allotment.

10. Reliance upon the judgment passed in **Sandeep and others (supra)** would be of no help as such to the petitioners since the said case pertains to policy formation which had been varying regarding the right of the oustees. Resultantly the Coordinate Bench had held that eligibility should be seen on the date of the notification and not the ownership rights which had been varied from 2 to 5 years as per the various policies. In the present case the rule is in place which is not subject matter of challenge and in such circumstances the petitioner and his predecessor-in-interest were governed by the said rules. Section 72-E of the 1922 Act provides that the proceedings of trusts shall be in conformity with law which is to bind the State Government and the Deputy Commissioners. The power of the State Government is there to nullify or modify any proceeding which are not in conformity to such rule and an order could be passed by Deputy Commissioner under Section 72-B.

11. Section 72-E of the 1922 Act reads as under:-

“72-E. Power of State Government and its officers over trusts.- (1) The State Government and Deputy Commissioners acting under the orders of the State Government, shall be bound to require that the proceedings of trusts shall be in conformity with law and with the rules in force under any enactment for the time being applicable to Punjab generally or the areas over which the trusts have authority.

(2) The State Government may exercise all powers necessary for the performance of this duty and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons, which would in its opinion justify an order by the Deputy Commissioner under section 72-B.

(3) The Deputy Commissioner may, within his jurisdiction for the same purpose, exercise such powers as may be conferred upon him by rules made in this behalf by the State Government.”

12. The argument raised that similarly situated persons were granted the benefit vide Annexure P-21 colly. by the Government while allowing appeals would be of no help to the petitioner. The benefit granted to such persons on the strength of an agreement to sell for the purpose of qualifying the said period cannot override the rule as such and, therefore, on the ground of equality of that persons who did not have the requisite two years and were granted the benefit by the Government would not improve the case of the petitioner in any way. It is settled principle of law that Article 14 cannot be applied in the negative and if the statutory condition was not being fulfilled, a writ of mandamus cannot be issued to direct the allotment of the plot by overlooking the eligibility criteria. Reliance can be placed upon the judgment of the Apex Court passed in **Shanti Sports Club & another Vs. Union of India & others, (2009) 15**

SCC 705 and R. Muthukumar & others Vs. The Chairman and Managing Director Tangedco and others, 2022 Live Law (SC) 140.

13. Keeping in view the above, we are of the considered opinion that even any subsequent re-allotment in favour of the petitioners would not give them a right as their right would only depend as to whether Amar Singh had a clear title or allotment in his favour which had to be as per the statutory rules. Not having the statutory two years period ownership, the claim for getting a No Objection Certificate has been rightly declined.

14. Resultantly, we do not find any infirmity in the orders passed by the authority below which would persuade us to exercise our extraordinary writ jurisdiction. The writ petition stands dismissed, accordingly.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

13.07.2023
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	