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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: May 02, 2023

Haryana Urban Development Authority

....Appellant

versus

Lal Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Anil Chawla, Advocate for appellant.

Mr. Sanjiv Ghai, Advocate,

Mr. Shubham Chaudhary, Advocate for respondent.

ARUN MONGA, J. (ORAL)**CM-6167-C-2013**

Despite availing several opportunities, no reply has been filed by respondent to the application. For the reasons stated in application, same is allowed and delay of 414 days in filing the appeal is condoned, subject to all just exceptions.

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/defendant is in second appeal before this Court assailing learned trial Court judgment and decree dated 22.11.2010, as upheld by learned First Appellate Court vide its judgment and decree dated 24.11.2011, decreeing suit of plaintiff for declaration to the effect that plaintiff is entitled for allotment of plot No.1271-P situated in Sector-18, Part-II, Jagadhri and restraining defendant from making/ effecting allotment of said plot to any other person.

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

“Plaintiff Lal Singh has filed the present for declaration as well as permanent injunction against defendant alleging that 90% land of him and his father Sawarn Singh has been acquired by the defendant but no plot under Oustees policy, has been allotted/ offered to him or his father anywhere in Haryana, except the plot in question bearing No. 1271-P, situated in Sector 18, Part-II, Jagadhri, which has been allotted to him pursuant to the application submitted by him as defendant had invited applications from the owners whose land has been acquired in Sector-18, Part-II, Jagadhri and his land bearing Khewat Nos.196,197,207,208,209 and 212 situated in Mouza Gobindpura, was acquired for development of that Sector. Stated that after draw of the plot in question in his name, defendant asked him to produce the 'no objection' from the other co-sharers named in para No.8 of the plaint, which is illegal, arbitrary and in contradiction to the eligibility criteria for allotment of plots under Oustees Policy. Prayed for declaration to the effect that he alone is entitled to the allotment of plot No. 1271-P situated in Sector18, part-II, Jagadhri, and also for restraining the defendant from making/effecting allotment of said plot to any other person except him.”

4. Upon notice, defendant appeared and filed written statement taking preliminary objections that civil Court had no jurisdiction to hear and decide the suit; suit was bad for mis-joinder and non-joinder of parties; Court fees on the market value of the plot in question had not been affixed on the plaint; etc.

4.1. On merits, it was admitted that land of plaintiff and other co-sharers had been acquired for development of Section 18, Part-II, Jagadhri, and plot in question was allotted to plaintiff under Oustees Policy. It was admitted that plaintiff was asked to complete formalities regarding no objection of other co-sharers by filing their affidavits duly attested by Executive Magistrate alongwith photographs, but plaintiff did not care for the same and so, plot could not have been allotted to him. At last, prayer for dismissal of present suit was made.

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

- “1. *Whether plaintiff is entitled to allotment of plot No. 1271-P, Sector 18 Part-II, HUDA, Jagadhri, on the grounds mentioned in the plaintiff.*
2. *Whether plaintiff is entitled to decree for permanent injunction as prayed for on the grounds mentioned in the plaint? OPP.*
3. *Whether suit is bad for mis-joinder of proper parties? OPD*

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4. *Whether civil court has no jurisdiction to try and decide the present suit? OPD.*
5. *Whether suit is not properly valued for the purposes of court fee? OPD.*
6. *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 issues No.1 and 2 in favour of plaintiff. Issues No.3 to 5 were decided against defendants. Consequently, suit filed by the plaintiff was *inter alia* decreed to the effect that plaintiff is entitled for allotment of plot No.1271-P situated in Sector-18, Part-II, Jagadhri.

8. Feeling aggrieved against the said judgment and decree dated 22.11.2010, appellant-defendant preferred first appeal.

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

10. Succinctly, contentions raised before me are that:

- (a) The plaintiff is a co-sharer alongwith other persons. As per HUDA policy applicable to him, he is entitled to one plot only alongwith other co-sharers and had been rightly asked to submit the no objection certificate from other co-sharers but he failed submit the same.
- (b) The allotment of a plot in the name of one co-sharer alone (the plaintiff) would defeat the judgment of a Division Bench of this Court in **Haryana Urban Development Authority & ors v. Sandeep and ors¹**.

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

“16. *On the other hand, learned counsel for the respondent-plaintiff has argued that the plaintiff is entitled to the benefit under the*

*oustees policy. The policy of allotment to an oustees, is in fact reservation of plots to such class of eligible erstwhile land owners. If the oustees do not form a class entitled to reservation of plots, the scheme itself would be hit by the doctrine of equality enshrined by Article 14 of the Constitution of India. Therefore, the policy contemplating the plots for oustees is nothing but a reservation of plots for such class. Reference was made to a full benefit judgment of our own Hon'ble High Court reported as **Jarnail Singh and others Vs. State of Punjab and others, 2010 P.L.R. (Vol. CLXI) 214** wherein it has been held that restriction of allotment of one plot to a joint khata holder is unreasonable and arbitrary as each of the land owner is entitled to rehabilitation in his individual right. Restricting the allotment of one plot to all co-owners is irrational, arbitrary and with no reasonable nexus with the objective to be achieved and thus, not sustainable. Further reference was also made to a judgment passed by the Hon'ble High Court in LPA No. 251 of 2007, decided on 18.8.2008 titled as **Haryana Urban Development Authority and another Vs. Baljeet Singh** and the judgment passed by the Hon'ble High Court in CWP No. 15724 of 2008, decided on 27.10.2009 titled **Jaswant Rai Vs. State of Haryana and others.***

17. From the bare perusal of the policy, reproduced above, it is clear that under the oustees policy, the allotment has to be made to each co-sharer respectively as per his/her share in the joint holding out of the land acquired by the authority. It is not a disputed fact that the plaintiff was recorded as co-sharer, therefore, he being co-sharer has independent right to seek for the allotment of a plot to him. Furthermore, it is an admitted case that no other co-sharer has ever applied for allotment of the plot, therefore, the plaintiff is entitled for allotment of the plot in question under the oustees scheme. Hence, there is no ambiguity in the findings recorded by the learned lower court in the impugned judgment and decree and the same do not call for any interference.”

12. 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 returned 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.

12.1. The object and intent underlying the policy of appellant-authority to seek ‘No Objection Certificate’ (NOC) from other co-sharers seems to be to obviate possibility of any litigation subsequently on the ground that co-sharers’

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right have been usurped by another co-sharer, HUDA had been insisting seeking NOC from all other co-sharers in the event of allotment of land as an oustee to one of the co-sharers as per policy applicable. The condition of insisting on NOC from other co-sharers was, in any case, done away after a Full Bench judgment rendered in **Jarnail Singh and others versus State of Punjab and others**², and thereafter, claim of the respondent is to be considered on the basis of his being a co-sharer in the land holding.

12.2. Be that as it may, it is borne out from the record that respondent-plaintiff was having more than 600 sq. yards of total land in his individual capacity as a co-sharer.

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

14. 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.

15. 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.

16. 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.

17. In the parting, however, I may hasten to add that, in case, HUDA is still apprehensive that other co-sharers, who despite lapse of inordinate time period as well as the prolonged litigation already going on between the plaintiff and HUDA, have though not come forward to join the *lis* but hereafter can still raise

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any claim on the plot in question, it may, in order to secure its own interest, seek an indemnity bond from respondent-plaintiff that, in future, if any of the co-sharers stake claim on the plot allotted to him, respondent-plaintiff shall solely be responsible for the risk and consequences arising therefrom.

- 18. Pending application(s), if any, shall also stand disposed of.
- 19. No order as to costs.

(ARUN MONGA)
JUDGE

May 02, 2023
mahavir

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