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

RSA-466-2013 (O&M)
Reserved on : 4.7.2023
Date of Decision:- 23.8.2023

Gurdev Singh Sehmbay

... Appellant

Versus

Ludhiana Improvement Trust, Ludhiana through its Chairman.

... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :- Mr. S.S.Kamboj, Advocate,
for the appellant.

Mr. Sandeep Khunger, Advocate,
for the respondent.

KARAMJIT SINGH, J.

The appellant/plaintiff has filed this appeal against the judgment and decree dated 6.9.2012 passed by the Court of learned Additional District Judge, Ludhiana, whereby the appeal filed by respondent-Improvement Trust was allowed and ex-parte judgment and decree dated 18.12.2008 passed by the Court of Additional Civil Judge (Senior Division), Ludhiana in favour of appellant/plaintiff was set aside and the suit of the appellant/plaintiff has been dismissed.

2. The brief facts of the case of the appellant/plaintiff are that the Deputy Secretary, Local Government, Punjab vide letter No.1837 (M) 26-11-83/19380 dated 6.10.1983 conveyed the approval of the Punjab Government under Rule 7 (B) of the Utilization of land and allotment of

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plots by Improvement Trust's Rules 1975 to the Administrator, Improvement Trust, Ludhaina for allotment of a residential plot measuring 500 square yard in any development scheme at reserve price to the appellant/plaintiff out of Government's discretionary quota. In response to the said letter, the Administrator, Ludhiana Improvement Trust vide letter No.1686 dated 12.12.1983 informed the appellant/plaintiff that one plot measuring 500 square yards has been reserved for him in 475 acres scheme for its allotment to appellant/plaintiff. It was also informed that regular allotment would be made after demarcation of the plots at the spot. Thereafter appellant/plaintiff time and again approached the respondent and had also written several letters dated 3.4.1989, 12.6.1989, 2.8.1996 and 3.12.1996 to allot him a plot in the light of the intimation already given to him by the respondent vide letter dated 12.12.1983. The appellant/plaintiff also gave representation to the Minister of State, Local Government, Punjab in this regard but the respondent failed to take any action in the matter. The respondent has already allotted plots under discretionary quota to Dr. H.K. Verma and Sh.K.K. Garg, Registrar of the High Court and likewise it should also allot one such plot to the appellant/plaintiff out of discretionary quota. That notice dated 12.1.2002 under Section 98 of Punjab Town Improvement Act was served to the respondent but the respondent failed to respond to the said notice. Then, the appellant filed suit for mandatory injunction directing the respondent to allot him a residential plot measuring 500 square yards in 475 Acre Scheme out of Government discretionary quota.

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3. Notice of the suit was served upon the respondent, but no one put in appearance on behalf of the respondent in the learned trial Court and resultantly respondent was proceeded against ex-parte.

4. The appellant/plaintiff himself appeared in the witness box as PW-1 and produced copy of letter dated 6.10.1983 Ex.P1 sent by Deputy Secretary, Local Government, Punjab, copy of letter sent by Administrator, Improvement Trust Ludhiana dated 12.12.1983 Ex.P2, letter dated 30.8.1990 Ex.P3 sent by the respondent whereby appellant was asked to furnish affidavit, copies of several letters Mark A to Mark D, whereby repeated requests were made for allotment of a plot to the appellant, copy of reply sent by Minister of State Local Government Punjab Ex.P4, copy of letter written to Secretary, Government of Punjab, Department of Local Government and Urban Development Ex.P5, copy of letter dated 21.6.2000 Mark E written to Local Government Minister, Punjab, copy of legal notice Ex.P6 served to the respondent and postal receipt Ex.P7 and finally appellant closed his ex-parte evidence.

5. The learned trial Court after hearing the counsel for the appellant and taking into consideration various documents relied upon by the appellant, passed ex-parte judgment and decree for mandatory injunction as prayed for in favour of the appellant and against the respondent and the respondent was directed to allot a residential plot measuring 500 square yards to the appellant out of discretionary quota of the Government, in 475 acres scheme.

6. Being aggrieved by the ex-parte judgment and decree dated 18.12.2008 passed by the learned trial Court, the respondent filed an appeal and along with the appeal an application was also filed under Section 5 of

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Limitation Act seeking condonation of delay in filing the appeal. The said application was allowed by the Court of learned Additional District Judge, Ludhiana vide order dated 9.12.2011 and the revision petition filed against the said order was dismissed by this Court vide order dated 22.5.2012.

7. The Court of Additional District Judge, Ludhiana heard counsel for both the parties and accepted the appeal filed by the respondent-Improvement Trust vide judgment dated 6.9.2012 while holding that the suit of the appellant was hopelessly time barred and even otherwise documents Ex.P1 to Ex.P5 cannot be looked into as the same were not proved by the appellant in accordance to law, and that the appellant failed to examine any official of the respondent-Improvement Trust/State Government in order to prove the said documents. The 1st Appellate Court while passing the impugned judgment further observed that the appellant/plaintiff has to stand on his own legs and cannot take the benefit of the weakness of the respondent's/defendant's case.

8. The appellant being not satisfied has filed the present appeal against the judgment and decree dated 6.9.2012 passed by the Court of Additional District Judge, Ludhiana.

9. I have heard the counsel for the parties and gone through the entire record.

10. The counsel for the appellant has *inter alia* submitted that the State Government gave its permission to the respondent to allot a residential plot out of the Government's discretionary quota to the appellant vide letter dated 6.10.1983 Ex.P1 and in pursuance to the same, intimation was given to the appellant by the respondent vide letter dated 12.12.1983 Ex.P2 with assurance that regular allotment of plot would be made after

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demarcation of the plots at the spot. The counsel for the appellant has further contended that vide letter dated 30.8.1990 Ex.P3, appellant was requested to furnish one affidavit, so that further necessary action be taken by the Improvement Trust. That in compliance of the said letter, requisite affidavit was furnished by the appellant but even thereafter the respondent failed to take any further action in the matter. It has been further contended that the appellant time and again made requests to the respondent and other Government Authorities to do the needful and the copies of the concerned correspondence are Ex.P5 and Mark A to Mark D. That in response to the aforesaid letters written by appellant, office of Finance Minister Punjab sent reply dated 23.4.1992 Ex.P4 to the effect that matter has been referred to Director Local Government Punjab for necessary action. The counsel for the appellant has further contended that despite all this, no plot was allotted to the appellant and finally appellant served notice under Section 98 of the Punjab Town Improvement Act dated 12.1.2002 Ex.P6 to the respondent to take necessary action failing which the appellant would be constrained to take legal action. However, despite this the respondent did not allot any plot to the appellant and finally the civil suit was filed seeking necessary directions to the respondents. The counsel for the appellant has further argued that the respondent was properly served in the civil suit but intentionally avoided its appearance before the learned trial Court and was proceeded against ex-parte and thereafter the learned trial Court rightly passed ex-parte judgment and decree in favour of the appellant after evaluating the entire evidence led by the appellant.

11. The counsel for the appellant has further submitted that the impugned judgment dated 6.9.2012 passed by the Court of Additional

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District Judge is not sustainable. That the 1st Appellate Court wrongly came to the conclusion that the suit is time barred. It has been further submitted that the civil suit was filed on 22.4.2002 immediately after the expiry of the period of notice Ex.P6. It has been further submitted that from the perusal of Ex.P1 to Ex.P5 and Mark A to Mark D, it is evident that even prior to service of notice Ex.P6 all possible efforts were made by the appellant to get allotment of one plot in his favour. That in the given circumstances it stands proved that the suit was filed within a period of limitation.

12. The counsel for the appellant has further argued that documents Ex.P1 to Ex.P5 and Mark A to Mark E were admitted in evidence without there being any objection to the same by the trial Court or other party and as such the objection raised with regard to their admissibility at the belated stage cannot be considered and thus there was no occasion or reason for the 1st Appellate Court to ignore the said documents on the ground that they were not proved in accordance with law.

13. The counsel for the appellant has further argued that from the perusal of documents Ex.P1 to Ex.P4 it stands fully proved that the State Government gave its approval to allot one plot to the appellant out of discretionary quota in 475 acres scheme floated by respondent-Improvement Trust. The counsel for the appellant while concluding his arguments has submitted that the impugned judgment and decree passed by the Court of Additional District Judge, Ludhiana dated 6.9.2012 deserves to be set aside.

14. On the other hand the counsel for the respondent while supporting the judgment dated 6.9.2012 has submitted that appellant filed suit for mandatory injunction on the basis of alleged letters Ex.P1 and

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Ex.P2 dated 6.10.1983 and 12.12.1983 and the said suit was filed in the year 2002 i.e. after gap of about 20 years and thus trial Court rightly held that the suit of the appellant was time barred. The counsel for the respondent has further submitted that documents Ex.P1 to Ex.P5 and Mark A to Mark E were tendered by the appellant in his own deposition and he failed to examine any official witness in order to prove the said document as per the provisions of Evidence Act and thus the 1st Appellate Court rightly discarded the said documents while passing the impugned judgment and decree.

15. The counsel for the respondent has further contended that the suit filed by the appellant for grant of mandatory injunction was not maintainable in the present form seeking a direction to respondent-Improvement Trust to allot him a plot out of discretionary quota. The counsel for the respondent has further argued that the 1st Appellate Court rightly non-suited the appellant on this ground while placing reliance on the decision of this Court in **State of Haryana v. Dr. Prem Singh Mann, 1996(3) PLR 799**.

16. The counsel for the respondent has further contended that the Full Bench of this Court in **Dr. Amar Singh and Ors. v. State of Punjab and Another, 2003(4) RCR (Civil) 146** has deprecated allotment of plots by the State Government out of its discretionary quota to private persons and allotment of such plots was cancelled.

17. The counsel for the respondent, while summing up his arguments, has made prayer that the appeal filed by appellant deserves to be dismissed being devoid of merits.

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18. In rebuttal, the counsel for the appellant has argued that the respondent cannot take any benefit of the judgment rendered by Full Bench of this Court in **Dr. Amar Singh's** case (supra) as the same was relating to the scheme of year 1989 floated by the State Government for allotment of plots under the discretionary quota. The counsel for the appellant has further submitted that the case of the appellant is covered under the Scheme of 1983 and the said scheme is not covered under the aforecited judgment of Full Bench of this Court. The counsel for the appellant has further contended that the respondent cannot take any benefit of the judgment passed by this Court in **Dr. Prem Singh Mann's** case (supra) as in that case suit for mandatory injunction was filed by the Medical Officer for claiming monetary relief.

19. I have considered the submissions made by counsel for the parties.

20. The appellant has set up his claim on the basis of documents Ex.P1 to Ex.P5 and Mark A to Mark E. Letter Ex.P1 is dated 6.10.1983 written by the State Government to respondent-Improvement Trust whereby Government gave approval for allotment of a residential plot measuring 500 square yards to the appellant out of discretionary quota and in pursuance to the said letter intimation was sent to the appellant by respondent-Improvement Trust vide letter dated 12.12.1983 Ex.P2. It appears that the appellant sent letter Ex.P5 to Secretary, Department of Local Government and Urban Development, Punjab and Ex.P4 is reply dated 23.4.1992 given by the office of Finance Minister, Punjab to the appellant with regard to subject matter in question. Letters Mark A to Mark C, appears to have been written by the appellant to different authorities till

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1996. Thereafter Mark E is letter stated to be written by the appellant to Minister, Local Government Punjab dated 21.6.2000. So it appears that after 1983 one letter ExP3 was written by the Improvement Trust in 1990 to the appellant and thereafter the appellant kept on writing different letters till 1996 to various authorities and finally legal notice Ex.P6 was served to the respondent on 12.1.2002. In the given circumstances, the first appellate court rightly held that the suit filed by the appellant dated 22.4.2002 seeking decree for mandatory injunction, was time barred.

21. Admittedly in the present case, the appellant is seeking allotment of one residential plot out of discretionary quota of the Government. The Full Bench of this Court in **Dr. Amar Singh's** case (supra) dealt issues regarding a matter relating to allotment of residential plots in the area of Khanna, District Ludhiana under discretionary quota as per Punjab Town Improvement (Utilization of Land and Allotment of Plots) Rules, 1983 regarding which advertisement was published by Improvement Trust in December, 1988. Hon'ble Full Bench in **Dr. Amar Singh's** case (supra) observed that there was no justification in carving out a reservation of plots for select categories and declared illegal the allotment of residential plots under such discretionary quota. Even prior to that, Full Bench of this Court in **Anil Sabharwal v. State of Haryana**, 1997 (2) PLR 7, quashed allotment of plots made to different private persons under discretionary quota by Haryana Government. In recent past, Single Judge of this Court in CWP-4743-1991, **Sumer Chand Bhatt v. Haryana Housing Board** decided on 5.8.2014 dismissed the writ petition of the petitioner therein seeking direction to the State Government for allotment of plot under

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discretionary quota while placing reliance on the judgment rendered by Full Bench of this Court in **Anil Sabharwal's** case (supra).

22. Recently, Hon'ble Apex Court in Civil Appeal No.5564 of 2009, **Improvement Trust Ropar v. Shashi Bala** decided on 17.4.2023, has allowed the appeal filed by Improvement Trust in a civil suit filed by the plaintiff therein for allotment of a residential plot under discretionary quota of Government in the area of Ropar. Hon'ble Supreme Court while passing the said judgment took into consideration the judgments of Full Bench of this Court in **Dr. Amar Singh's** case (supra) and **Anil Sabherwal's** case (supra) and held that inchoate allotment of plot in favour of Shashi Bala was rendered redundant and ineffective as only those persons who were really allotted specific plots and had constructed houses/buildings thereon as per sanctioned plans prior to 6th of June, 1996 stood protected by Full Bench and even those allottees who were really allotted plots but had not constructed houses/buildings thereon by the effective date were to be refunded the monies paid by them within a time frame.

23. Now adverting to the facts of the present case, it is evident that no letter with regard to allotment of a residential plot out of discretionary quota was ever issued to the appellant. Thus, it is apparent that no specific plot was ever allotted to the appellant by the respondent and further making it clear that possession of any residential plot was never delivered to the appellant. It is not the case of the appellant that he ever paid any sale consideration for a plot to the Improvement Trust.

24. In view of above discussion and settled position of law, this Court is of the view that there is no illegality or infirmity in the impugned

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judgment and decree passed by the Court of learned Additional District Judge, Ludhiana. No question of law muchless substantial question of law arises for consideration in this regular second appeal.

25. Consequently, the appeal is dismissed being devoid of merits.

23.8.2023
Gaurav Sorot/Paritosh Kumar

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No