



112 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1582 of 2019 (O&M)
Date of decision : 17.07.2024

ESTATE OFFICER HARYANA URBAN DEVELOPMENT AUTHORITY
KAITHAL AND OTHERSAppellants

Versus

KRISHAN KUMAR AND ANRRespondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Anil Chawla, Advocate
for the appellants.

PANKAJ JAIN, J. (ORAL)

Challenge is to the judgment and decree passed by Additional Civil Judge (Senior Division), Kaithal which stands affirmed in appeal by Additional District Judge, Kaithal.

2. For convenience, parties herein after are referred to by their original position in the suit i.e. the appellants as defendants and respondent as the plaintiff.

3. Plaintiff filed suit seeking permanent injunction in form of restrain order against the defendant from changing/tampering with final survey list of allotment of shops in Transport Nagar, Kaithal and further sought decree for declaration that the plaintiff being eligible is entitled for allotment of site.

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4. As per the case the plaintiff he was in possession of a shop in Transport Nagar, Kaithal and working as a motor mechanic. In the year, 2009, defendant-HUDA (now known as HSVP) took a policy decision to allot plots in Transport Nagar and Auto Markets. In order to evaluate the eligibility, survey was conducted and all those persons who were running shops prior to 31st of December, 2007, were prescribed in the policy decision to be eligible for allotment of such site. As per the plaintiff, when the survey was undertaken he was found to be in possession of Shop No.521 carrying out his profession and was thus eligible for the same.

4. Suit of the plaintiff was resisted by the defendants admitting that so far as initial survey is concerned, the plaintiff was indeed found in possession of the shop. However, specific stand was taken that later on all the persons found eligible in survey were asked to substantiate their possession by submitting documents but the plaintiff failed to submit any cogent document to substantiate his possession.

5. On the basis of the pleadings, Trial Court framed the following issues :

- “1. Whether plaintiff is entitled to relief of declaration as prayed for? OPP
- 2 Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
- 3 Whether the suit is not maintainable?OPD
- 4 Whether the plaintiff has no locus-standi to file the present suit?OPD

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- 5 Whether this court has no jurisdiction to try and entertain the present suit?OPD
- 6 Whether the plaintiff has estopped to file the present suit by his own act and conduct?OPD
- 7 Relief”

6. By way of interim order during the pendency of the suit, Trial Court directed the defendants to evaluate the right of the plaintiff. The defendants reiterated their stand in the written statement and claimed that the documents submitted by the plaintiff cannot be held to be sufficient requirement of the policy. The plaintiff was declared to be ineligible by the defendants on the following counts :

- “1 No document is produced in support of continuous possession of applicant on the shop in question and no document is submitted to prove running of his business over there since the year, 2007.
- 2 Photocopy of rent note produced by the applicant is not legible. Moreover, it is not an authentic document/rent note. No rent receipt is submitted.
3. No documentary proof of ownership of shop showing Bachan Lal's ownership over the shop is produced with application.”

7. Trial Court after analysing evidence on record came to the conclusion that all the three reasons assigned by the defendants were unsustainable in law. Plaintiff proved on record rent deed dated 24th of September, 2005 to show that he continued to be the tenant in the shop

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which admittedly was part of the area wherein survey was conducted that too from 24th of September, 2005 i.e. when HUDA Policy Guidelines of the year 2009 were not even in existence. Even the landlord stepped into the witness-box to prove rent receipts Exhibits PA, PB and PC to prove that indeed the plaintiff was a tenant in the Shop No.521 situated in Transport Nagar. The plaintiff even produced Exhibit PD showing that he was contributing towards Transport Nagar Welfare Association.

8. In view of the aforesaid overwhelming evidence on record, Trial Court found that the plaintiff was being non-suited wrongly by the defendant/authority and thus decreed the suit filed by the plaintiff. In appeal preferred by the authority, the said findings stand affirmed

9. Mr. Chawla, Counsel for the appellants has not been able to show any legal infirmity or perversity in the pure findings of fact recorded by Courts below. However, submits that in terms of Section 50 of the HUDA Act, 1977, jurisdiction of Civil Court is barred. Trial Court framed the issue on the same and specifically returned the finding holding that where the procedure as contemplated under the law has been violated, the jurisdiction of the Civil Court cannot be held to be barred. Same is the ratio of law laid down by the Supreme Court in the case of **Dhulabhai etc. vs. State of M.P. and anr, 1969 AIR (Supreme Court) 78** wherein Apex Court held as under :

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“32. xxxxx. The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

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- (4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.
- (5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.
- (6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.
- (7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply. ”

10. Keeping in view the aforesaid facts, this Court does not find any reason to interfere in the well reasoned judgement and decree passed by the Courts below. Consequently, the instant second appeal is dismissed.

July 17, 2024

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No