

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

132

RSA-737-1990(O&M)

Date of Decision : March 07, 2023

AMAR JEET

.....Appellant

VERSUS

THE CHIEF ADMINISTRATOR, HUDA & OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Ms.Mehak Sawhney, Advocate for the appellant.

Mr.S.S.Pannu, Advocate, for the respondents.

KULDEEP TIWARI. J.(Oral)

1. Learned counsel for the respondents submits that in compliance of the order dated 13.04.2023, the respondent-department has deposited the costs as imposed upon them, and has placed on record photocopies of the receipts.

2. The plaintiff-appellant has thrown challenge to the concurrent findings recorded by the Courts below, i.e. vide judgement and decree dated 26.04.1989, whereby, the suit for mandatory injunction preferred by the plaintiff was dismissed, and the first appeal preferred against the aforesaid judgment, and decree (*supra*), was also dismissed vide judgement and decree dated 21.03.1990.

3. The concurrent finding so recorded by the Courts below, has been assailed on the ground that the evidence so adduced to prove the

claim of the plaintiff/appellant, was not appreciated in its right perspective and there is a perversity in recording the factual aspects which caused prejudice to the claim of the plaintiff/appellant.

4. Learned counsel for the appellant/plaintiff, submits that there are enough evidence which has not been considered by the Courts below, while deciding the issues. Therefore, both the judgments and decrees require interference by this Court.

5. She further submits that during the pendency of the instant regular second appeal, an application under Order 41 Rule 27 read with Section 151 of the CPC, was filed for bringing on record the reply to the RTI application moved by the applicant/appellant.

6. She further submits that the appellant/plaintiff could not have access to such information, which in fact is the official record of the HUDA, as the RTI Act, came into effect in the year 2005. Therefore, despite due diligence the record could not have been produced before the learned trial Court concerned.

7. Before this Court advert to the submissions made by learned counsel for the appellant/plaintiff, it is appropriate to deal with the facts of the present matter.

8. The plaintiff/appellant, had filed a suit for mandatory injunction for issuance of a direction upon the defendants (respondents herein) to allot a plot, out of the plots as mentioned in paragraph no.8 of the plaint, on the basis of 'first come first serve', in the Urban Estate, Rohtak.

9. In the pleading, it was averred that the plaintiff filed an application for allotment of a 6 marla residential plot in Sector-1, of Urban Estate, Rohtak on dated 06.01.1988. Alongwith the application, a cheque of Rs.8,750/- of even date i.e. dated 06.01.1988, as 25% cost of the plot, was also submitted.

10. It was further pleaded that the application was duly received on dated 07.01.1988, and on that day, plot no.268, 269, 1322, 1323 and 1324, were lying vacant for allotment. According to the policy, respondents/ defendants were required to allot the plot on the 'first come first serve' basis, but respondents/defendants did not honour the policy/procedure, and allotted those plots to other persons who had applied much after the plaintiff/appellant.

11. Upon making an application by the plaintiff/appellant to the respondents/defendants regarding allotment of a 6 marla plot to him, the latter vide letter dated 28.01.1988, declined to allot the plot to the plaintiff/appellant, on the ground that there are no plots lying vacant in the Urban Estate concerned.

12. The suit was opposed by the defendant/respondent, by filing a written statement, wherein, the receipt of the application on dated 07.01.1988, was specifically denied, rather it was averred that the application of the plaintiff was received on dated 13.01.1988, whereas, all the five plots mentioned in the plaint, were allotted on or before dated 12.01.1988. Therefore, on the day when the application was received no plot was lying vacant.

13. The learned trial Court concerned, after completion of pleadings, framed the following issues:-

1. Whether the plaintiff is entitled to get allotted a plot as alleged?OPP.
2. Whether the act of the defendants not allotting any lot to the plaintiff is illegal and discriminatory as alleged?OPP.
3. Whether the plaintiff is entitled to the injunction as prayed for?OPP.
4. Whether this court has no jurisdiction to try this suit?OPD.
5. Whether no cause of action had accrued to the plaintiff to file the present suit?OPD.
6. Whether the plaintiff has no *locus-standi* to file this suit as alleged?OPD.
7. Whether the suit is not maintainable in the present form as alleged?OPD.
8. Relief.

14. The proceedings before the learned trial Court concerned, the respondents/defendants were proceeded against *ex parte*.

15. The issues no.1 to 3, were recorded against the plaintiff by the learned trial Court concerned, and issues no.4 to 7 were decided against the defendants/respondents, because of them being proceeded against *ex parte*. Finally, the suit was dismissed vide judgement and decree dated 26.04.1989.

16. While deciding the issues no.1 to 3, the learned trial Court has observed that there is cutting in certificate Ex.P3, which could prove that the application was infact received by the defendant/respondent-department concerned on dated 07.01.1988, as pleaded by the plaintiff. It was also observed that the plaintiff miserably failed to prove that the plots were allotted to the persons, who had applied after him, and no evidence whatsoever, was brought on record that who were the persons, to whom those plots were allotted, and what were the dates on

applications as submitted by them. The plaintiff also failed to prove that who were the persons, who applied after the plaintiff, and were allotted plots by the defendant/respondent-department concerned. Consequently, the suit was dismissed.

17. On first statutory appeal so preferred by the plaintiff/appellant, though the finding regarding non-acceptance of Ex.P-3, was reversed, and decided in favour of the plaintiff/appellant, and it was held that the application was received by the defendants/respondents-department concerned on dated 07.01.1988. However, the appellant Court has maintained the findings of the learned trial Court concerned, that no evidence was brought on record by the plaintiff/appellant, that in whose favour the plots were allotted, those who had applied after him. In the absence of evidence, the findings recorded by the learned trial Court concerned, was affirmed *qua* issues no.1 to 3.

18. So far as issue no.4 is concerned, the finding was also reversed by the first appellate Court concerned, on the ground that no illegality and irregularity has been committed by the defendants/respondents-department, in allotment of the plot. Therefore, by virtue of Section 50 of the HUDA Act, 1977, the Civil Court has no jurisdiction to try the present suit.

19. This Court has considered the submissions made by learned counsel for the parties, and also perused the lower Court record, alongwith, the entire case file, and finds no illegality and perversity in the concurrent findings as recorded by the both the Courts below. Therefore, the instant appeal deserves to be dismissed on the findings recorded

hereinbelow:-

i. First of all, it transpires from the pleading itself that the claim of the plaintiff/appellant for the allotment of the plot has been declined vide letter dated 28.01.1988. However, the plaintiff has not challenged the legality of that letter. Therefore, until and unless the letter, through which the claim of the plaintiff/appellant was declined by the defendants/respondents-department, has not been challenged, and the same has attained finality, the simpliciter suit for mandatory injunction is not maintainable.

ii. The fulcrum of the entire issue hinges upon the pleading that the persons who applied subsequent to the plaintiff, were allotted plot in defy to the policy adopted by HUDA, on 'first come first serve' basis. However, there is nothing on record, or no endeavour has been made by the plaintiff/appellant to establish that who were those persons, who applied later to the plaintiff, and were allotted 6 marla plots in Sector-1, Urban Estate, Rohtak. In the absence of such evidence, the finding *qua* this issue by the learned Courts below is absolutely correct and deserves no intervention.

iii. So far as the issue of the additional evidence is concerned, which the plaintiff/appellant has filed before this Court, it would be relevant to point out that the plaintiff/appellant only wanted to place on record the information received under RTI Act. There is no request under this application for calling the relevant record from the department concerned, so as to establish the authenticity of the information so received under RTI Act. It is not under dispute that the information so received under RTI Act, was also required to be proved by way

production of evidence. However, no such prayer has been made in the instant application (CRM-3448-C-2015), therefore, the same is not legally sustainable and hereby, dismissed, having bereft of any merits.

iv. Finally, the issue regarding the non-maintainability of a civil suit by virtue of Section 50(2) of the HUDA Act, 1977, is also considered by this Court.

It transpires from the record that respondent-HUDA vide its letter dated 28.01.1988, has declined the application for allotment of the plot and such order could have been challenged under the provisions of the HUDA Act. The submission made by learned counsel for the appellant that there was no remedy available to the appellant, therefore, the civil suit is maintainable, and the bar imposed upon the Civil Court by virtue of Section 50(2) of the *ibid* Act, would not come in the way of appellant, is purely a misconceived argument. In fact, the finding of the appellate Court regarding the non-maintainability of the civil suit, is correct and legally sustainable. The suit preferred by the appellant is infact barred in view of Section 50(2) of the *ibid* Act.

20. In view of the above, there is no illegality and perversity in findings recorded by the Courts below, vide judgments and decrees (*supra*). Hence, the instant appeal is **dismissed**, with no order as to cost.

March 07, 2023
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No