



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

RSA-2051-1997 (O&M)

Date of decision:-19.12.2025

Inderpal Kaur (Since deceased) through LRs

... Appellant

Versus

Improvement Trust, Patiala through Its Chairman/Executive Officer

... Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Sandeep Khunger, Advocate
for the appellant.

Mr. Ashish Verma, Advocate
for the respondent.

VIRINDER AGGARWAL, J.

1. The appellant/plaintiff, being aggrieved by the judgment and decree dated 13.01.1997 passed by the learned District Judge, Patiala whereby the well-reasoned judgment and decree dated 03.05.1994 of the learned Sub-Judge Ist Class, Patiala was unjustifiably overturned, most respectfully invoke the appellate jurisdiction of this Court through the present Regular Second Appeal (for short "RSA"). The appellants seek restoration of the decree rightly granted by the Trial Court and appropriate redress for the substantial miscarriage of justice that has resulted.

1.1. It is most respectfully submitted that the impugned judgment and decree are vitiated by manifest perversity, substantial errors of law, and a fundamentally flawed appreciation of the evidentiary record, culminating in a grave miscarriage of justice. The appellant therefore earnestly pray that



this Court be pleased to set aside the impugned judgment and decree and to reinstate the lawful and well-reasoned decree rendered by the learned Trial Court.

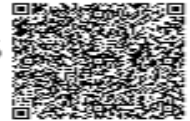
2. The circumstances precipitating the present appeal may be succinctly stated thus:-

“The plaintiff seeks a decree of permanent injunction restraining the defendant, Patiala Improvement Trust, from forfeiting the earnest money deposited and from cancelling or resuming residential Plot No. 1082 allotted to her through draw of lots in Shaheed Sewa Singh Thikriwala Nagar, Patiala.

The defendant had invited applications for allotment of residential plots vide advertisement dated 20.04.1988, pursuant to which the plaintiff deposited ₹4,000/- as earnest money for a 200 sq. yards plot. Although the plaintiff was assured due intimation of the draw, no such notice was ever issued. The plaintiff subsequently learnt that the draw had already been conducted and that Plot No. 1082 stood allotted to her. Upon acquiring such knowledge, she immediately tendered the balance sale consideration, which was unjustifiably refused.

The plaintiff contends that in the absence of any notice or opportunity, the defendant lacks authority to forfeit the earnest money or cancel the allotment, and that any such action would be arbitrary, illegal, and violative of the principles of natural justice. Hence the suit.”

3. The defendant, upon appearance, filed a written statement asserting due intimation of the allotment to the plaintiff at her recorded address vide letter dated 08.03.1989 which was admittedly not acted upon.



It was denied that the plaintiff's husband ever visited the defendant's office, and it was contended that the plaintiff was aware of the draw but wilfully failed to comply with the payment schedule.

3.1. Reliance was placed on Clause 5 of the allotment letter dated 08.03.1989, stipulating that non-completion of formalities within 30 days would entail cancellation of the allotment, pursuant to which the Trust lawfully resumed the plot. A general notice of the draw was also stated to have been published in 'Jagbani Newspaper' dated 10.03.1989. The defendant justified forfeiture of earnest money and resumption of the plot as valid and lawful, and further raised a preliminary objection to the maintainability of the suit for want of exemption under Section 98(4) of the Punjab Town Improvement Act, while denying all other averments in the plaint.

4. Upon a thorough examination of the pleadings, documents, and submissions of both parties, the Court framed the following issues for adjudication, with a view to securing a precise and comprehensive determination of their respective claims and defences, as set out below:-

1. *Whether the plaintiff is entitled to the decree of injunction as prayed for? OPP*
2. *Whether the suit is not maintainable? OPD*
3. *Relief..*

5. Both parties were provided adequate and meaningful opportunity to adduce evidence in support of their respective claims. Upon conclusion of the trial and after hearing the submissions of learned counsel for both sides, the learned Trial Court proceeded to pass the decree in favour of the plaintiff with the following observations:-

"In view of the findings recorded on the issues here-in-
above, the suit of the plaintiff is decreed. A decree of permanent

2025.12.23 16:08
 I attest to the accuracy and
 integrity of this document



injunction is hereby passed in favour of the plaintiff and against the defendant, restraining the defendant from forfeiting the earnest money deposited by the plaintiff and from cancelling or resuming residential Plot No. 1082 allotted to her through draw of lots, situated in Shaheed Sewa Singh Thikriwala Nagar, Patiala–Rajpura Road, Patiala. The parties shall bear their own costs.”

6. Aggrieved by the judgment and decree, the respondent–appellant filed an appeal before the learned First Appellate Court, which allowed the appeal and consequently dismissed the plaintiff’s suit, recording the following observations:-

“Consequently, the appeal is allowed with costs. The judgment and decree dated 03.05.1994 passed by the learned Trial Court are set aside, and the suit of the plaintiff stands dismissed with costs. Decree sheet be drawn accordingly and the record be consigned to the record room.”

6.1. Dissenting from the findings of the learned First Appellate Court, the appellant–plaintiff has preferred the present appeal. Upon admission, notices were issued, whereupon the contesting respondent appeared and opposed the appeal. The records of the Courts below were subsequently requisitioned for detailed examination and adjudication.

7. I have heard learned counsel for the parties and perused their submissions in conjunction with the pleadings, evidence, and the findings recorded by the learned Courts below. The record has been meticulously examined to determine ‘*whether the impugned judgment and decree are vitiated by any legal infirmity or error warranting interference by this Court*’?



8. The instant appeal presents the following significant question of law, a *quaestio juris substantialis*, for the considered determination of this Court:-

- “i. Whether the learned First Appellate Court was right in raising presumption of due service of notice under Section 27 of General Clauses Act?*
- ii. Whether the allotment in favour of appellant-plaintiff stood cancelled as admitted by attorney of the plaintiff?”*

9. Learned counsel for the appellant contended that the learned First Appellate Court erred in its appreciation of law as well as the evidence on record. It is submitted that the First Appellate Court erroneously presumed due service of notice under Section 27 of the General Clauses Act. Further, the Court misrecorded that the attorney of the plaintiff had admitted during cross-examination that he came to know of the cancellation of allotment on 09.08.1980. In fact, the appellant’s counsel emphasized that the attorney of the plaintiff had made no such statement or admission at any stage of his cross-examination.

10. Learned counsel for the respondent–defendant, on the other hand, submitted that there is no illegality or infirmity in the findings recorded by the learned First Appellate Court. It was contended that the First Appellate Court rightly invoked the presumption of due service of notice under Section 27 of the General Clauses Act, as the notice was sent to the appellant at the correct address, notwithstanding minor discrepancies therein. Further, it was submitted that since the allotment stood duly cancelled in accordance with the terms of the allotment letter, the suit for permanent injunction was not maintainable and the First Appellate Court’s dismissal of the suit was entirely justified.



11. The learned First Appellate Court has recorded a finding that the notice was duly served upon the appellant–plaintiff. It was held that the onus lay upon the plaintiff to prove non-receipt of the notice; however, she did not appear in the witness box to discharge this burden. For reference, Section 27 of the General Clauses Act, 1897 provides as follows:-

27. “Meaning of service by post

Where any [Central Act]/*Substituted by A.O.1937, for " Act of the Governor General-in-Council.*]or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

12. A plain reading of Section 27 of the General Clauses Act, 1897 makes it clear that, in order to raise a presumption of due service of notice, the party seeking such presumption must prove that the notice was properly addressed, prepaid, and dispatched by registered post. Proper addressing of the notice is thus a fundamental precondition for invoking the presumption under Section 27.

12.1. In the present case, it is an admitted fact that the notice marked as Ex.D3 was not addressed to the appellant–plaintiff at her correct address. In the plaint, the appellant–plaintiff has stated her address as House No. B-II/264, Gali No. 1, College Colony, Barnala, District Sangrur. However, the copy of the notice on record shows it was sent to House No. 264, Gali No. 1, College Road, Barnala. Similarly, the copy of the allotment letter, i.e., Ex.D3, records the house number incorrectly as XI/264, Gali No. 1, College Road,



Barnala, instead of the correct House No. B-II/264, Gali No. 1, College Colony, Barnala.

12.2. These discrepancies establish that the notice was not properly addressed. Consequently, the learned Additional District Judge erred in presuming service of notice upon the appellant–plaintiff. The onus was squarely on the respondent–defendant to prove that, in accordance with the terms of the allotment letter (Ex.D3), the notice regarding successful allotment and the requirement to deposit 25% of the plot value as earnest money was duly served upon the appellant. The evidence on record, however, clearly demonstrates that no such notice was served at the correct address of the appellant–plaintiff, and therefore, the statutory requirement under the allotment letter to furnish notice for payment of the balance earnest money within thirty days was not fulfilled.

13. With regard to the alleged cancellation of the allotment, the learned First Appellate Court, in paragraph 18 of its judgment, recorded that PW-1, Mukhtiar Singh, had admitted the cancellation. The relevant portion of paragraph 18 is reproduced below for reference:-

18. “It was not held by the learned trial court that the suit is maintainable in the present form and rather it held that the same appears to be quite maintainable in the present definite form. The trial finding about court was supposed to the maintainability or return non- maintainability of the suit. From the evidence produced on record it can safely be concluded that the allotment in favour of the plaintiff has been cancelled and the plot has been resumed. It was stated by the defendant in the written statement itself that after the plaintiff failed to complete with the requisite formalities within the specified period he was left with no other alternative but to resume the plot and that plot has already been resumed. That plea of the defendant was not denied specifically or by necessary



implication by the plaintiff in the replication and so the same is deemed to have been admitted. It was stated by Pawan Kumar, D.W.1. that been the plot In question has re-auctioned. That clearly implies the cancellation of the allotment in favour of the plaintiff and resumption of the plot. According to Mukhtiar Singh P.W.1 the factum of cancellation of allotment was never conveyed to them before 9.8.1990. Thus according to him also the allotment of plot had been cancelled by the defendant. He came to know about that cancellation on 9.8.90. and the present suit was filed/ on 18.12.90. Thus, the plaintiff had already come to know that the allotment of plot in her favour had been cancelled. In these circumstances, she was to apply for the restoration of the plot as per clause No.4 of letter Ex.0.3. After the cancellation of the allotment this suit for permanent Injunction, restraining the defendant from cancelling that allotment was not maintainable. In the result, the finding of the Id.trial court on this issue is also reversed and the same is decided against the plaintiff and in favour of the defendant.”

14. A perusal of the cross-examination of PW-1, Mukhtiar Singh, demonstrates that the learned First Appellate Court has misconstrued his testimony. PW-1 has not deposed that he became aware of the cancellation of the allotment on 09.08.1990; rather, he specifically deposed that he came to know of the allotment of the plot on that date. Consequently, the finding recorded by the learned First Appellate Court is premised on a misreading and misinterpretation of the testimony of PW-1, who is the attorney of the plaintiff.

15. The respondent–defendant, being a statutory body, is obligated to act through formal orders to effectuate any administrative decision, including the purported cancellation of an allotted plot. In the present case, the respondent–defendant has ~~not~~ been placed on record nor adduced any



evidence of a formal order cancelling the plot allotted to the appellant–plaintiff. In the absence of such authoritative proof, it cannot be held that the allotment in favour of the appellant–plaintiff was lawfully or validly cancelled. Consequently, the findings recorded by the learned First Appellate Court are unsustainable in law. In view of the foregoing, the appeal of the appellant is allowed, the judgment and decree of the learned First Appellate Court are set aside, and the decree passed by the learned Trial Court is accordingly restored.

16. In view of the principal appeal having been finally adjudicated and disposed of on merits, all ancillary, interlocutory, or other pending applications, if any, that may subsist on the record shall, by necessary implication, stand disposed of. No separate or further orders are required in respect thereof.

19.12.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

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