

(2001) 01 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : C.R. 3095 of 1994

Amritsar Improvement Trust

APPELLANT

Vs

Amritsar District Court's Advocates Co-op. House Building
Society

RESPONDENT

Date of Decision : 05-01-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, 151
Punjab Town Improvement (Utilisation of Lands and Allotment of Plots) Rules, 1983 — Rule 10(3)

Citation : AIR 2001 P&H 209 : (2001) 3 RCR(Civil) 528

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Mr. B.S. Bedi, for the Appellant; Mr. Sudeep Mahajan, for the Respondent

Judgement

M.L. Singhal, J.—This is revision against the order dated 10.5.94, of Sub- Judge First Class. Amritsar whereby he has directed the Amritsar Improvement Trust, Amritsar (in short "the Trust") to allot plot to Shri T.S. Virk, Advocate. District Courts Amritsar as per resolution No-401 dated 18.9.92 of the Trust.

facts :

2. At Amritsar, there is The Amritsar District Courts Advocates Cooperative House Building Society Ltd., Amritsar (hereinafter referred to as Society). Shri D.S. Pheruman, Advocate is the president of the society. Advocates practising at Amritsar, who do not own any residential accommodation within the urban area of Amritsar, floated this society. This society was got duly registered with the Registrar, Cooperative Societies on 7.1.81. After the society had been got duly registered, it came to know that some plots in Complex A and R which had been previously allotted to social workers etc. by the Trust had been cancelled as the government had declined to accord its sanction for such allotments and as such those plots were free for allotment to the members of the society. Vide letter

dated 4.2.81, the society made an application for allotment of requisite number of plots to its members in view of the recommendations made by the Chief Minister and the Commissioner-cum- Secretary to the Govt. of Punjab. Department of Local Bodies. A meeting of the Trust was held under the chairmanship of its Administrator. A proposal was sent to the government that it may consider to grant sanction for allotment of 5 acres of land earmarked for special purpose to the society at reserve price. Vide memo dated 14.7.83, the State Govt. sanctioned the allotment of plots and it was directed that the members of the society may be allotted plots of] 50 sq. yards each and the price will be 1-1/2 times the reserve price as the advocates were accommodated en-block. The trust was also directed to prepare a detailed planning. Trust was also directed to process the case according to the sanction. On receipt of intimation that govt. had accorded sanction for allotment of the plots to the plaintiff society, a letter was written to the trust that a notice of demand for depositing the amount as required for execution of the agreement may be issued to the members-Thereafter. the correspondence was exchanged between the parties. Chairman of the trust visited the Bar Association on 24.3.87 and gave an assurance to look into the long standing demand of the society. Society was also intimated by the trust that plots will be allotted to its members. On 3,6,87. the members of the society personally sought an interview with the Chairman of the Trust and requested that the clause of payment in lump sum which had been newly added should be deleted. Chairman accepted the request and agreed to receive payment in instalments. No allotment was made to the genuine members of the society add the trust ultimately refused to honour its commitment regarding the allotment of the plots to the genuine members of the society.

3. The society filed suit for mandatory injunction against the trust directing the latter to make allotment of plots to the members of the society as per sanction granted by the State Govt. vide memo No. 867-144-C11-83 dated 14.7.83 in the Ajnala Road Development Scheme of the Trust. It was Civil Suit No. 34 of 3.3.88. This suit was decreed on 11.3.91 for mandatory injunction directing the Trust to consider the case of the genuine members of society for allotment of plots 150 sq. yards each in the Ajnala Road Development scheme subject to the availability of the plots of this size in the said scheme and further subject to the completion of all the formalities laid down under the Punjab Town Development (Utilization of Land and Allotment of Plots) Rules, 1983 in letter No. 867-144C-II dated 14.7.83 issued by the Punjab Govt, Four months time was allowed for the completion of the formalities by the genuine members of the society. It was directed that thereafter the trust shall consider the question of allotment of plots to them. Trust won in appeal which was dismissed by Additional District Judge. Amritsar vide order dated 28.2.1992.

4. Shri T.S. Virk, Advocate, District Courts, Amritsar made an application under Order 21 Rule 32 read with Section 151 CPC for allotment of plot to him as per the entitlement under the decree of Sub Judge First Class, Amritsar dated 11.3.1991 affirmed in appeal by Additional District Judge, Amritsar vide order

dated 28.2.92. It was alleged in the application that he is a member of the society. An application was moved by him for allotment of plot to the trust along with affidavit as per the entitlement decided under that judgment and decree passed by the Sub Judge 1st Class, Amritsar which was maintained in appeal. Shri Har Bhupinder Singh Nanda, Additional Commissioner, Municipal Corporation, Amritsar, who was one of the trustees, objected to the allotment of plot to him as he was inimical to him because he was counsel in the property dispute against his father and also for taking part against him in the agitation when he was SDO (C), Amritsar. The Chairman of the trust appointed Shri Dharam Singh, Divisional Town Planner as inquiry officer to inquire into the objections raised by Shri Harbhupinder Singh Natida. Shri Dharam Singh reported that he was emitted to the allotment of plot being a founder member of the society. He sent report to the Chairman of the Trust, In the meantime, the government called the file of the applicant to Chandigarh. Trust sent detailed report to the government regarding the eligibility of the applicant being member of the society viz. that he was entitled to the allotment of a plot-No action was, however, taken towards the allotment of the plot to him. As per the report of the trust, he is entitled to the allotment of the plot. Trust is no! making allotment of plot to him and is thus violating the decree. He prayed that necessary orders be issued to the trust to make allotment of plot to him on payment of price by him and also to execute sale deed in his favour. Trust opposed this application urging that the applicant was not a decree holder and as such had no Incus standi to file execution petition. Society was the decree holder at the time of passing of the decree. Subsequently, due to non-functioning, this society came under liquidation and is in the process of winding up and as such there is no legal person recognized by law to file execution application on behalf of the society. Its members cannot legally ask for execution in the court. At the time of passing the decree, no list of advocates was exhibited in the suit and this fact does not find mention in the judgment or decree. As such, this fact was denied whether the applicant was a member of the society or not. Applicant is not legally entitled to the allotment of the plot under the Punjab Town Improvement Act and the rules framed thereunder. It was further urged that the applicant and his wife are owners in possession of Plot No. 196 and 197-B Block Ranjit Avenue. Amritsar. Applicant is estopped by his act and conduct from filing the execution application. A regular inquiry is being held by the Punjab Govt. with regard to the filing of the wrong affidavit by the applicant and the file is with the Punjab Govt. It was admitted that Shri Nanda objected to the allotment of plot to the applicant on the ground that he and his wife are owners in possession of Plot No. 196 and 197-B Block Ranjit Avenue, Amristar. Vide order dated 10.5.94, Sub Judge First Class, Amritsar (executing court) allowed this application and ordered the trust to allot plot to the applicant as per resolution No. 401 dated 18.9.92 of the trust in view of bis finding that executing court could not go behind the decree. Trust has assailed this order through this revision.

5. Learned counsel for the petitioner submitted that the trust was required to

allot plot not to any and every member of the society but only to the genuine members of the society and decree of Sub Judge First Class dated 11.3.91 affirmed in appeal by Additional District Judge, Amritsar directed the trust to consider the cases of only genuine members of the society for allotment of plot measuring 150 sq. yards each in the Ajnala Road Development Scheme subject to the availability of plots of this size in the said scheme and further subject to the completion of all the formalities laid down under the Punjab Town Development (Utilization of Land and Allotment of Plots) Rules, 1983 and in letter No. 867-144CII-83 dated 14.7.83 issued by the Punjab Govt. It was to be examined by the trust whether the applicant was a genuine member of the society and further whether he was eligible for allotment of plot by the trust. Eligibility for allotment has been defined in rule 10(3) of the 1983 rules. Rule 10(3) lays down as follows :-

"Rule 10(3) - Notwithstanding anything contained in sub-rules (1) and (2) no person shall be eligible for allotment of a residential plot or multi-storied house who or whose spouse jointly or severally owns a residential plot or house other than an ancestral house in the Union Territory of Chandigarh or in any Urban Estate declared as such under the provisions of the Punjab Urban Estates (Development and Regulation) Act, 1964 or in any area covered under a scheme framed under the Act or Panchkula in the State of Haryana or who being owner as such has disposed of the residential plot or house before or after the commencement of these rules."

6. It was submitted that the applicant was not a genuine member of the society inasmuch as he and his wife were owners in possession of two plots No. 196 and 197-B Block Ranjit Avenue, Amritsar. As per rule 11 of the rules, a pro forma has been given in the rules itself and accordingly on that preform an affidavit has to be filed by a person who claims a plot to the effect that he or his spouse is not the owner of any other plot. He did not file any such affidavit. Earlier, he had filed an affidavit. On that affidavit, plot was allotted to him. When matter was referred to the Vigilance Department for inquiry on some complaint, he withdrew/ removed that affidavit from the file. He thus knew that he was not a genuine member of the society, it was submitted that since he and his wife owned two plots in B Block. Ranjit Avenue, Amritsar, resolution passed by the trust allotting plot to him was cancelled because under the rules, he could not be treated as a genuine member. It was submitted that in this case, the executing court had directed the trust to allot plot without first deciding the question whether the applicant was a genuine member of the society or not. As such the order of the executing court cannot be sustained. It was submitted that the order of the executing court goes against the order dated 26.4.94 passed in CWPs. No. 3749, 7420 of 1993; 3,939 and 1226 of 1994 filed by the Advocates of Amritsar which reads as follows :-

"We hereby order that the lawyers who have already been declared members, they be allotted plots immediately and rest of the lawyers be granted personal

hearing before accepting or rejecting their claim by a speaking as well reasoned order which be passed by the Improvement Trust. In one of the cases, the legal representative of a member of the bar is the petitioner and her rights be determined by finding out whether her husband was genuine member of the society or not. The necessary allotment be made by the Administrator at the earliest opportunity after determining the rights of the lawyers and in any case the allotments be made within a period of 3 months from the passing of the order."

7. It was submitted that the question of allotment of the plot to the applicant depended upon the fact whether he was or he was not a genuine member of the scheme. It was submitted that specific objection was raised before the executing court that he was not a genuine member of the society and as such had no locus standi to file execution petition and as also he was not a decree holder and secondly he was holding two plots in a trust scheme one in the name of his wife and one in his own name and as such was not eligible to the allotment of any plot. Executing court did not consider any of these objections, as such the order of the executing court is bad.

8. Vide resolution No. 326 dated 20.5.92, the trust decided to allot 52 plots measuring 150 sq. yards each in Ajnala Road Development Scheme to this society whereas trust was to allot 74 plots to the society as per list supplied by the society. Five members of the society had left Amritsar and had settled at Chandigarh or abroad. Shri T.S. Virk, who was one of the members of the society, approached the trust for the allotment of plot as the society did not include his name in the list of the members. The matter was referred to the society and the society informed this office that Shri T.S. Virk was a founder member of the society against No. 27 and his name could not be included as he was away and remained out of station due to vacations and thereafter in connection with his personal engagements and now he is attending the courts regularly and practising at Amritsar. Plots measuring 150 sq. yards in Ajnala Road Development Scheme, Amritsar are available out of which the following plot may be allotted to him:-17. T.S. Virk, 27 E-495

9. It was submitted by the learned counsel for the petitioner that Shri T.S. Virk applicant was not a genuine member of the society and resolution No. 470 was ordered to be stayed by the State Govt. Inquiry was made regarding whether Shri T.S. Virk was or was not a genuine member of the society. Shri Dharam Singh, Divisional Town Planner, Amritsar made inquiry. He found that Plot No. B-196 Ajnala Road Scheme was allotted in the name of Narinder Nayyar, sale deed had also been executed in his name by the trust. This plot measures 200 sq. yards (60"x30"). He found that this plot had not been allotted to Shri T.S. Virk. As regards Plot No. B-197 Ajnala Road Scheme, he found that this plot had been allotted to one Buaji son of Chunni Lal by the trust and the sale deed dated 5.5.86 had also been executed in his name on behalf of the trust. This plot had thus not been allotted to the applicant. As regards the point raised by Shri H.S.

Nanda. one of the trustees in the meeting of the Amritsar Improvement Trust, Amritsar held on 6.1.93 that Shri T.S. Virk already possessed plots No. B-196 and B-197 measuring 200 sq. yards each in the Ajnala Road Development Scheme, the finding of the inquiry officer Shri Dharam Singh was that these plots stood allotted to Narinder Nayyar and Buaji respectively and there was no weight in the point raised by Shri H.S. Nanda. Regional Deputy Director, Local Bodies, Amritsar reported to the government that the claim of Shri T.S. Virk was perfectly valid and the trust be directed to allot plot bearing No. E-476, Ajnala, Road Development Scheme, Amritsar to Shri T.S. Virk. Vide resolution No. 470, the trust allotted plots of 150 sq. yards in Ajnala road Development scheme to 18 Advocates including the applicant. As regards the applicant, implementation of this resolution was kept in abeyance because of the complaint that he was holding two plots No. B-196 and B-197. He or his wife was not found to be holding any plot in any scheme of the trust. He was one of the registered members of the society, as such, if he was fulfilling the other conditions of eligibility (which he was fulfilling), plot should have been allotted to him.

10. Faced with this position, learned counsel for the petitioner submitted that the impugned order should be set aside and the executing court be directed to determine the eligibility of the applicant for allotment of plot. Suffice it to say, as to whether the applicant was or was not eligible to the allotment of plot, has been gone into by Shri Dharam Singh, Divisional Town Planner, Amritsar, Improvement Trust Amritsar under the orders of the Punjab Govt., whose report was accepted by the Punjab Govt. How can the executing court be directed to determine his eligibility over again now ? Since the applicant has been found to be a genuine member of the society in an inquiry by the Divisional Town Planner, Improvement Trust, Amritsar, whose report was accepted by the govt, there should have been no hitch in the allotment of the plot by the trust to the applicant. Trust will now allot plot to the applicant measuring 150 sq. yards in Ranjit Avenue. Amritsar bearing No. E-476, which had been resolved to be allotted to him vide resolution No. 470 dated 6.1.93,

11. Revision dismissed.