(1989) 05 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1636 of 1987

Bhatia Furniture Mart APPELLANT

Vs

Globe Engineering Works and anr. RESPONDENT

Date of Decision : 09-05-1989

Acts Referred:

Citation : (1989) PLJ 647 : (1990) 1 RRR 124

Hon'ble Judges : J.V.Gupta, J

Advocate : Ashok Kumar, Senior Advocate., Advocates for appearing Parties

Judgement

J.V. Gupta, J.

1. This is defendant''s second appeal against whom suit for declaration and permanent injunction was dismissed by trial Court but was decreed in appeal.

2. The plaintiff M/s. Globe Engineering Works filed a suit seeking a decree for declaration to the effect, that the plaintiff alone is entitled for allotment of plot No. 87, Sector 24, Faridabad, and the order for allotment, dated 9.8.1985 passed in favour of defendant No. 2 i.e., M/s. Bhatia Furniture Mart, Faridabad by the official of defendant No. 1. namely, the Haryana Urban Development Authority (hereinafter referred to as the Authority) was illegal. unjust, arbitrary and beyond, the competence of defendant No. 1 and as such allotment in favour of defendant No. 2 was liable to be stuck down as bad in law and not binding on the rights of the plaintiff. He further prayed for a decree for mandatory injunction to allot the plot in question in his favour and for injunction restraining defendant No. 1 from granting possession of the plot in favour of defendant No. 2.

3. The brief and relevant facts, according to the plaintiff are that the plaintiff is the sole proprietary firm of Shri Azzimudin under the name and style of M/s. Globe Engineering Works, Faridabad and is engaged in the manufacture of tractor parts and fabrication works. On the application by the plaintiff dated 19.4.1982 the Chairman of the Authority allotted Plot No. 87, Sector 14, Faridabad to the plaintiff subject to the condition of approval of the project report by be

department of industries. Consequently, the plaintiff submitted a scheme and provisional registration of the plaintiff firm as small scale unit. The requisite formalities were completed and ultimately the Director of Industries informed the Estate Officer of the Authority by a letter dated 4.10.1982 to the effect that the scheme submitted by the plaintiff has been found to be technically feasible and that it had been approved. It was, however, pointed out that the plaintiff requirement would be met by even of land measuring 1/4 acre. The plaintiff did not see eye to eye with this approval of the Director Of Industries and then again a reference was made. Ultimately, the Director of Industries recommended half acre of land for the said project. It was also pleaded that the plaintiff completed all the formalities required under the law and he became eligible for allotment of plot No. 87, Sector 24, Faridabad. It was further averred that defendant No. 2 `tried to'' get the plot in question allotted in his name despite the fact that he was already allotted industrial plot Nos. 23 and 24 in Sector 5, Faridabad. According to the plaintiffs defendant No. 2 had no right to be allotted the said plot. The plaintiff had applied for allotment of the plot first in point of time and offer for the allotment was made by the Chairman of the Authority. Thus, defendant No. 1 was bound to issue the letter of allotment and to hand over actual physical possession of the plot to the plaintiff. It was also alleged that during the pendency of the proceedings defendant No. 2 in collusion with the officials of defendant No. 1 got allotment of plot No. 87 in an indecent haste on 9.8.1985. The said Allotment is arbitrary, mala fide, illegal and as such not binding on the rights of the plaintiff. Thus `with these'' averments the present suit was filed.

4. Defendant No. 1 resisted the suit, inter alia on the grounds of maintainability, locus standi, jurisdiction and also contended that the plot in question was never allotted to the plaintiff. There was only proposal to allot the said plot to him subject to the approval of the project report by the industries department. Defendant No. 1 has admitted the making of the application by the plaintiff to the Chairman of the Authority. It is also admitted that the scheme of the project was submitted by the plaintiff and the same was forwarded to the Director of Industries. The approval given by the Director is also admitted. However, it was contended that the present suit was not maintainable as no notice under Section 80 of the Code of Civil Procedure was given.

5. Defendant No. 2 i.e., M/s. Bhatia Furniture Mart resisted the suit inter alia , on the ground of locus standi, maintainability jurisdiction and misjoinder of parties. It was also pleaded that the plaint does not disclose any cause of action. The plaintiff has no right or title to any legal character or to any right as to the property. Thus the present suit is bad in law. It was denied that the plaintiff applied to the then Chairman of the Authority or submitted any application dated 19.4.1982 to the Chairman. According to this defendant the allotment made in his favour is valid and, therefore, he was entitled to its, possession. He is a bona fide transferee for valuable consideration. The plaintiff never applied for the said plot to defendant No. 1 and hence this suit merits dismissal.

6. The learned trial Court framed the following issues :

(1) Whether defendant No. 2, has got no right to be allotted the plot in suit ? OPP

(2) Whether the plot in suit has been offered for allotment to the plaintiff ? OPP

(3) Whether the defendant No. 1 is estopped from allotting the plot in dispute to anyone except the plaintiff ? OPP

(4) Whether the plaintiff has got cause of action ? OPP

(5) Whether this Court has no jurisdiction ? OPD

(6) Whether the suit is bad for nonjoinder and misjoinder of necessary parties ? OPD

(7) Whether the suit is bad for notice under Section 80 C.P.C. ? OPD

(8) Whether the suit is not maintainable ? OPD,

On 4.10.1986 the trial Court also framed the following additional issues: "Whether the allotment letter dated 9.2.1985 is illegal, unjust arbitrary and beyond the powers of defendant No. 1 and not binding on the plaintiff ? OPP. Relief".

7. The trial Court while discussing issues Nos. 1, 2 and the additional issue together came to the conclusion that defendant No. 2 had completed the formalities of deposit of the earnest money and of making the application and the case of the defendant is on a better footing as compared to the case of the plaintiff. It was further held that the order of the Finance Minister is not even an offer for allotment of the plot and the same is only a recommendation for the plot in question. The impugned order of allotment of the plot does not suffer from any infirmity. It was, therefore, ultimately held that these issues are not proved and are answered against the plaintiff and in favour of the defendants. Under issue No. 3 it was held that defendant No. 1 was not estopped from allotting the plot in dispute to any one except the plaintiff. According to the finding of the trial Court, the order of the Finance Minister does not amount to any such promise. Under issue No. 4, the Court found that the Plaintiff has the cause of action to file the present suit. In view of these findings on the material issues ultimately the suit was dismissed vide order dated 26.11.1986.

8. In Appeal, the learned Additional District Judge reversed the said finding of the trial Court though no findings were given by him issue wise. The case was generally discussed. It was found that the plaintiff only has the preferential right for the allotment of the plot. Before August, 1982, the defendant No. 2 was not in picture for that allotment of this plot not his case was, being examined/ considered by the HUDA or the Industries Department with reference to plot No. 81. He was allotted other two plots and was also asked to deposit 25% price thereof after conveying him that the plots Nos. 23 and 24, had been earmarked for allotment in his favour. What development took place later on is not known

and the Chief Administrator, HUDA, Chandigarh then wrote to Estate Officer, that plot No. 87 be allotted to defendant No. 2. There are no grounds for that preference nor there were any circumstances for that favour". The lower appellate Court further found that "the application filed by the plaintiff to the Minister ultimately reached the Estate Officer and so that becomes an application to the Estate Officer and the department considered that such application was valid and proper. Thus, there was also promissory, estoppel". The lower appellate Court also considered, that after the orders of the Chairman of the Authority and the letter written by the Chief Administrator, the plaintiff had become certain that on the approval of his project scheme, the formal allotment would be issued in his favour. He made efforts At the cost of time and money and took other steps as well in pursuant of those orders, which according to the learned District Judge amounts to promissory estoppel. It was further found that defendant, No. 2 has no right for getting the plot allotted as it was offered for allotment to the plaintiff and defendant No. I was estopped from allotting the said plot to any one else except to the plaintiff. In view of these findings, the plaintiff''s suit was decreed to the effect that the plaintiff is entitled for allotment of plot No. 87, Sector 24, Faridabad and the allotment in favour of defendant No. 2 is illegal, unjust and arbitrary which was struck down. For mandatory injunction, the lower appellate Court directed defendant No. 1 to allot the plot in question in favour of the plaintiff, and delivering the possession thereof to the plaintiff on receipt of the price of the Plot as fixed by the competent authority.

9. The learned counsel for the defendant appellant submitted that the whole approach of the lower appellate Court, was wrong, illegal and misconceived. The finding arrived at by the trial Court were perfectly valid on the evidence on record. Admittedly the plaintiff never made any formal application as required under the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978. Not only that the plaintiff had never or tendered Or paid 10% of the price as required under subrule (2) of Regulation 5. Thus, argued the learned counsel, that even if it be assumed that application was submitted by the plaintiff to the Minister who was the Chairman of the Authority, it was of no consequence and it did not vest him with any indefeasible right as to enforce the same by way of a civil suit. According to the learned counsel, the principle of first come first serve did not apply to the allotment of industrial land. The said rule was provided under subrule(3) of Regulation 5, which related to residential plots/ buildings. Moreover, even the order passed by the Minister did not amount to allotment of plot No. 87 in favour of the plaintiff. At the most it was in the nature of recommendation to the Authority under the Haryana Urban Development Authority Act, 1977.

10. On the other hand, learned counsel for the plaintiffrespondent submitted that on the principle of first come first serve the plaintiff was entitled to the allotment of plot for his project through the Minister who was the chairman of the Authority and once the case was recommended by him and subsequently approved by the industries department, the plaintiff was entitled to its allotment. According to the

learned counsel, the recommendation of the Minister as Chairman, of the Authority, vested him with a right for allotment of the plot. Moreover, argued the learned counsel, the allotment in favour of the defendant was based on discrimination and arbitrariness and therefore, the same was. liable to be set aside. According to the learned the counsel, once recommendation was made by the Chairman of the Estate Officer could not withhold the allotment. In any case, the case was of a promissory estoppel and once the plaintiff was offered this plot, then the same offer could not be withdrawn, subsequently. In any case, argued the learned counsel, the right of allotment did accrue to the plaintiff in equity and he has been treated, unequally and discriminately while allotting the said plot to defendant No 2 who had no better right as regards the plaintiff. He also cited two judgments to contend that the civil suit, as such, was maintainable, to enforce this right. Reference was made to H.C. Darbara Singh v. The Punjab State, 1967PLR 179 and Rao Manohar Singh and others v. State of Rajasthan, AIR 1954 Rajasthan 85.

11. After hearing the learned counsel for the parties and going through the case law cited at the Bar, I am of the considered view that whole approach of the lower appellate Court was wholly wrong, illegal and misconceived whereas the approach of the trial Court it this behalf was perfectly valid. The plaintiff had no legal right for allotment of the plot in dispute in his favour as he never made any application to the Authority under the foresaid Regulation of 1978. Section 15 of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the Act) provides the procedure for disposal of land. It reads as under

"15 Disposal of land (1) Subject to any directions given by the State Government under this Act and to the provisions of subsection (5), the Authority may dispose of

(a) any land acquired by it or transferred to it by the State Government without undertaking or carrying out any development thereon; or

(b) any such land, after undertaking or carrying out such development as it thinks fit; to such persons, in such manner and subject to such terms and conditions, as it considers expedient for securing development.

(2) Nothing in this Act shall be construed as enabling the Authority to dispose of land by way of gift, but subject to this condition, reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any casement right or privilege or otherwise.

(3) Subject to the provisions hereinbefore contained the Authority may, sell, lease, or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to it on such terms and conditions as it may, by regulations, provide.

(4) The consideration money for any transfer under subsection (1) shall be paid

to the Authority in such manner as may be provided by regulations.

(5) Notwithstanding anything contained in any other law, for the time being in force, any land or building or both, as both as the case may be, shall continue to belong to the Authority until the entire consideration money together with interest and other amount if any due to the Authority, on account of the sale of such land or building or both is paid.

(6) Until the conditions provided in the regulations are fulfilled the transferee shall not transfer his rights in the land or building except with the previous permission of the Authority, which may be granted on such terms and conditions, as the Authority may deem fit."

The `Authority'' under the Act has been defined under clause (b) of Section 2. It means the Haryana Urban Development Authority constituted under subsection. (1) of Section 3. Section 54 thereof provides that the Authority may, with the previous approval of the State Government, make regulations consistent with this Act, and the rule made thereunder to carry out the purposes of this Act, and without prejudice to the generality of this power such regulations. Consequently, in exercise of powers conferred by Section 54 of the Act the Regulation known as the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978, were made. Regulation 5 thereof provides the procedure in case of sale or lease of land or building by allotment. It reads as under :

(1) In the case of sale or lease of residential and industrial land or building by allotment, the intending purchaser shall make an application to the Estate Officer concerned in the prescribed form (annexed to these regulations) as given in forms `A'' land `B'' respectively.

(2) No application under subregulation (1) shall be valid unless it is accompanied by such amount as may be determined by the Authority, which shall not be less than ten present of the price/premium in the form of a demand draft payable to the Estate Officer, and drawn on any scheduled Bank situated at the local place of the Estate Officer concerned or any other such place as the Estate Officer may specify.

(3) In the case of residential plot/building when the application has been so: tendered the Estate Officer or such other Officer as may be empowered, shall subject to such directions as may be issued by the Authority in this behalf, consider the applicant for allotment of a plot or building of the size applied for. The allotment may be on "first come first serve" basis or by draw of lots, is may be determined by the Authority and the successful applicant (s) shall be sent allotment letter in form `C'' or `CI'' by registered post provided that for the purpose of proper planning and development of an urban estate, land or building may be reserved for groups or individual or for persons practising any profession or carrying on any occupation, trade or business or for such other category of person, Government Department and Institutions, charitable institutions and other organisations of public welfare, as may be decided by the Authority from

time to time.

(4) In the case of industrial land or building, allotment shall be made in accordance with the recommendation of the Directorate of Industries as to the genuineness of the party, priority of the industry, the area required for the industry etc.

(5) The application to whom the land/building has been allotted shall communicate his acceptance or refusal in writing within 30 days of the date of allotment, by registered post of the Estate Officer. In case of acceptance, the letter shall be accompanied by such amount as intimated to him in the allotment letter. In case of refusal he shall be entitled to the refund of the money tendered with the application. In case he fails to either accept or refuse within the stipulated period allotment shall be deemed to be cancelled and the deposit made under subregulation (2) may be forfeited to the Authority and the applicant shall have no claim for damages (6) and (7)

12. From the persual of the said regulation, it is quite evident that no application shall be valid unless it is accompanied by such amount as may be determined by the Authority which shall not be less than 10% of the price. Admittedly no such application was ever filed by the plaintiff to the Authority. Subrule (3) thereof, which contemplates the principle of first come first serve, is not applicable to the present suit as it relates to the industrial plot and whereas subrule (3) deals with the residential plots only. Under subrule (4) in the case of the industrial land, allotment shall be made in accordance with the recommendation of the Directorate of Industries as to the genuineness of the party priority of the industry, the area required for the industry etc. The case of the plaintiff that since his case was duly recommended by the Director of Industries and, therefore, he was entitled to its allotment could not be accepted as subrule (4) is subject to rule 2. Since the plaintiff never made an application in the prescribed form accompanied by an amount of not less than 10% of the price, he had no vested right as such under the Act or regulation made thereunder, to claim allotment of the plot in dispute. The allotment of sites came up for consideration before, the Full Bench of this Court reported as Surjit Singh and others v. State of Punjab and others, 1979 PLR 413. That was a case of Punjab Urban Estates (Sale of Sites) Rules, 1965. There was subrule (3) of Rule 5 which has been reproduced in paragraph 9 thereof. It requires, that when 10% of the price had been tendered, the State Government of such Authority as it may appoint in this behalf may allot a site of the size applied for.

13. While interpreting this clause, it was observed by the Full Bench that the subrule referred to above only provides that when 10% of the price had been tendered the State Government or such authority as it may appoint in this behalf may allot a site of the size applied for. But the language of the rule does not suggest that the principal of first come first served has to be adopted nor does it exclude the adoption of the method of drawing lots as has been done in the instant case. The words may allot a site cannot read to mean `shall allot a site''

as that, in a given situation, can create such complications which may not be remediable. By filing an application in accordance with law, the applicant only gets a right of consideration of his application, but he does not get a vested right for allotment of the plot. The conditions laid down in the first scheme or the provision for rule 5(3) do not give any right to the applicant to claim allotment of plots as a matter of right. There is nothing in the scheme or the Act or the Rules which requires the adoption of the principal of `first come first served'' at the time of allotment, or debars the Government from adopting the method of drawing lots. The petitioners have not been able to lay foundation for establishing their right which could legally be enforced and the petitioners have failed to make out a case for the exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India.

14. Following the judgment of the Full Bench, it was held by this Court in Punjab State and another v. Tara Chand, 1985 RRR 407 (P&H) : 1985 Revenue Law Reporter 98, that by filing an application in accordance with law, the applicant gots only right of consideration for allotment of plot. It was observed in parag. Thereof that "there was no question of any contract as such. The plot was to be allotted to the plaintiff under the Act and Rules framed thereunder It is rule 5 which provides the filing of application for sale by allotment. Subrule (3) thereof provides that when 10 per cent of the price is tendered the State Government may allot any site of the size applied for."

15. Faced with this situation, the learned counsel for the plaintiff submitted that Section 15 of the Act was subject to any direction given by the State Government under this Act and since the Minister who was Chairman of the Authority and was State Government, according to the learned counsel, has recommended his case for allotment of the plot, in dispute, the same was binding on the authorities concerned. This contention has to be rejected in view of the Division Bench judgment of this Court in Shri S.R. Dass, Head Master, Lawrence School Sanawar (Shimla Hills) v. State of Haryana through the Secretary, Department of Town and Country Planning, Government of Haryana, Chandigarh and others, 1988(1) PLR 430, where the Government had taken a formal decision and it was conveyed to the Authority. It was held therein that the Authority is a statutory body and before issuing the letters of cancellation, it was incumbent upon it to have taken a formal decision. It was incumbent for the Authority (HUDA) to have applied its mind before issuing the letters of cancellation in compliance with the orders of the Goverment. That being so, even be assaulted for the sake of arguments that the Minister had recommended the case of the plaintiff for the allotment of the plot in dispute, that by its elf did not give any right to the plaintiff unless the procedure prescribed under the Act and the Regulation made thereunder was followed. As observed earlier, even if that procedure was followed even then the plaintiff was not entitled to the allotment of any particular plot as such. At the most that would have given him a right for considering his application under the Regulation. Since in the present case, the plaintiff never made any application under the Regulation prescribed for the

allotment of plot, he had not a right of consideration for allotment either. As a matter of fact any order passed by the Minister had no statutory binding much less to be enforced by the Courts in civil suit. The Authority under the Act could not be directed by way of a civil Court decree to allot the said plot to the plaintiff simply on the ground because the Minister in charge had recommended his case for allotment. It will also be irrelevant if his case was further recommended by the Director of Industries as to the genuineness priority of industry and the area required for the industry etc. Thus, viewed from any angle, the plaintiff had no vested right as such, which was enforceable in a Court or law.

16. The argument of the learned counsel for the plaintiffrespondent that on the principle of promissory estoppel he was entitled to enforce his right of allotment is misconceived. The question of promissory estoppel as such did not arise in his case. It was discussed in M/s. Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh and others, AIR 1979 Supreme Court 62 1. According to the said judgment the true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted on by the other party to whom the promise is made, the promise would be binding upon the party making it and he would not be entitled to go back upon it, to let him to do so having regard to the deal which has taken place between the parties and this would be so irrespective of whether there is any preexisting relationship between the parties or not. There is, nothing to suggest that there was any clear or unequivocal promise made to the plaintiff intending to create any legal relationship between him and defendant No. 1 the Authority under the Act. The principle of estoppel is contained in Section 115 of the Evidence Act, 1872. It provides that when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. In the present case there is nothing that on the recommendation, if any, made by the Minister, the plaintiff acted upon that belief to his determinant. Not only that he even did not make any formal application after the said recommendation was made in his favour by the Minister as provided under the Regulation. Thus the question, of promissory estoppel does not arise, at all, as regards the facts of the present case concerned.

17. As regards discrimination alleged by the plaintiff in allotting the plot to defendant No. 2, the same is not relevant at all. The plaintiff can succeed in this suit if he had any right for allotment of the plot in dispute in his favour. If the plaintiff had no vested or legal right enforceable in the Court of law, then the mere fact that the same has been allotted to defendant No. 2 arbitrarily, was of no consequence. As a matter of fact, the evidence on record fully proves that the defendant No. 2 applied for the allotment of plots Nos. 23 and 24 in Sector 5. Faridabad, but it was vide order dated 11.8.1982 Exhibit D2, that he was allotted

plot No. 87 in lieu thereof and he was required to deposit a sum of Rs. 12,000/ by way of earnest money. The defendant immediately on 29.9.1982 vide receipt Exhibit D3 deposited the sum of Rs. 12,000/ with respect to plot No. 87. Not only that he also gave an undertaking vide Exhibit D5 dated 29.9.1982 that he will abide by all the terms and conditions enforced on the said plot and accepts the rate of the said plot as and when decided by the Financial Committee. Exhibit D2 is a latter from the Chief Administrator of the Authority to the Estate Officer, HUDA, Faridabad wherein it was stated that in supersession of this office letter dated 8.6.1982 M/s. Bhatia Furniture Mart be allotted plot No. 87 in Sector 24, Faridabad in place of plots Nos. 23 and 24, Sector 5 Faridabad. Fresh letter of intent be issued. Thus, it could not be successfully argued on behalf of the plaintiffs that the plot in dispute was allotted to defendant No. 2 arbitrarily or without following any procedure.

18. As observed earlier the approach of the lower Appellate Court was wholly wrong when it observed that "so, it has to be seen keeping in view all the facts and circumstances of the case or both the parties as to which of them has a better claim for the allotment under rules and who applied first for the plot and who shall be prejudiced or suffer loss, in case of nonallotment of the disputed plot to him. The question in the present case to be determined was not as to who was better entitled to the allotment of the plot in dispute. This is a matter to be considered by the Authority under the Act. The primary question to be determined in the suit is as to whether the plaintiff has legal or vested right enforceable in Court of law for the allotment of the plot in dispute in his favour or not.

19. Since the plaintiff has failed to prove any legal or vested right in his favour, his suit is liable to be dismissed on that score alone. Consequently, the result of the above discussion is that this appeal is accepted, the judgment and decree of the lower appellate Court is set aside and that of the trial Court dismissing the plaintiff''s suit is restored, with costs.