
(2009) 04 P&H CK 0246
In the Punjab And Haryana At Chandigarh

Devi Dayal

APPELLANT

Vs

Rajesh Kumar Duggal and Others

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Haryana Urban Development Authority Act, 1977 — Section 50

Citation : (2009) 154 PLR 621

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—This regular second appeal is directed against the judgment and decree dated 25.10.2008 passed by the learned Courts below vide which the suit for declaration with consequential relief of permanent injunction filed by the respondent/plaintiff stands decreed.

2. The plaintiff brought a suit on the pleadings that he was running business in the name and style of M/s Rajesh Corporation and was in the business of agriculture implements and machines etc. The plaintiff in pursuance to the offer made, applied for allotment of industrial plot in Sector 37, Pace City-I, Gurgaon. He deposited the earnest money of the tentative price of the industrial plot to be allotted. The plaintiff was interviewed at Panchkula, where he submitted his project report, and the allotment committee on 20.11.2003 recommended the allotment of industrial plot No. 61, Sector 37, Pace City-I, Gurgaon. The plaintiffs name appeared at serial No. 26 of the list of persons recommended for allotment.

3. In spite of recommendation for allotment, the plaintiff was not issued allotment letter on one pretext or the other. It was on 28.1.2004 when the plaintiff/respondent visited the office of the Estate Officer, HUDA that he was surprised to find out that the plot recommended for allotment to him has been re-allotted to one Devi Dayal (appellant herein) on 4.12.2003. On enquiry, it was revealed that the plot was allotted to the defendant/appellant in lieu of original

plot No. 742-B, Sector 37, Pace City-II, Gurgaon, measuring 450 sq. mtrs.

4. It was also pleaded that it was with mala fide intention and connivance of the officials of defendant No. 1, that the appellant/defendant was able to get the plot exchanged.

5. The suit was contested by raising preliminary objections qua jurisdiction, locus standi and even on merits by taking a plea that the plaintiff/respondent did not have any right of allotment.

6. The learned Courts below on the basis of evidence on record, have recorded a concurrent finding of fact that the exchange of plot was bad in law and outcome of malice. The learned Courts below also held that the Civil Court had the jurisdiction, as action of the officials of respondents was mala fide and arbitrary and in violation of principles of natural justice.

7. The finding recorded by the learned lower appellate Court reads as under:

In the above discussed facts and circumstances of the case, learned trial court is held to have rightly drawn support from observations made in captain J.S. Gosal's case (supra), to the agitated claim of Rajesh Kumar, respondent-plaintiff in the suit, it was held therein that once a decision taken to allot a plot to petitioner and complies with all the formalities and paid money, then it was unfair for authorities to deny petitioner the plot. Further, when the estate officer, HUDA, Gurgaon was proved to have acted in an arbitrary manner while ordering exchange of two plots as per letter Ex.D5, by no law or prescribed rules the jurisdiction of civil court can be said to be ousted to avail appropriate remedy in the form of the suit (culminating into instant appeal) by Rajesh Kumar, respondent-plaintiff. As already observed, principles of natural justice have grossly been violated in this case. To support the findings, arrived at on the subject, we may apply ratio held in M/s K.K. Industries' case and Charon Dass' case (both supra) to the set up case of Rajesh Kumar, respondent plaintiff.

8. Mr. Nitin Grover, learned Counsel appearing on behalf of the appellant, contends that this appeal raises the following substantial questions of law:

1. Whether the Civil Court had the jurisdiction to entertain and try the suit?
2. Whether the plaintiff/respondent had locus standi to maintain the suit?

9. In support of first substantial question of law, the learned Counsel for the appellant contends that in view of Section 50 of the Haryana Urban Development Authority Act, 1977, the Civil Court jurisdiction is barred. In support of this contention, the learned Counsel for the appellant placed reliance on the judgment of this Court in East India Cotton Mfg. Co. Limited Vs. Haryana Urban Development Authority and Others, wherein this Court has been pleased to lay down as under:

At the outset, it may be relevant to notice that under the provisions of Section 50(2) of the Act, the jurisdiction of the civil Court was barred. Although, a

specific objection was taken by defendant No. 1 and 2 in their written statement but the learned trial court decided the aforesaid issue in favour of the plaintiff by holding that the defendants did not press the same at the time of arguments. The aforesaid observations made by the learned trial court are erroneous on the face of it. If there was specific bar created by a statute to the jurisdiction of the civil Court, then the same was liable to be decided by the Courts on merits. Any concession given by defendants No. 1 and 2 could not have been taken into consideration to give the aforesaid findings in favour of the plaintiffs. A conclusion could not have conferred jurisdiction in a Court, where it had none.

10. On consideration, I find no force in the contention raised by the learned Counsel for the appellant. It is well settled law that when the authorities act in violation of principles of natural justice or in violation of provisions of the Act, the jurisdiction of the Civil Court is not barred, as the authorities under the Act cannot be allowed to violate the provisions of the Act.

11. Otherwise also, it is not a matter falling out of action taken under the Act, but is a mala fide action taken by the official without issuance of notice to the plaintiff/respondent, therefore, the learned Courts below, were right in rejecting the plea, that the Civil Court jurisdiction was barred.

12. In support of the second substantial question of law, the learned Counsel for the appellant contends that plaintiff/respondent did not have any right in the plot as it was merely recommendation, which did not give locus standi to the plaintiff/respondent to maintain the suit.

13. This plea of the learned Counsel for the appellant also cannot be accepted. It is not in dispute that in pursuance to the application, the allotment was recommended and in pursuance thereto, the plaintiff/respondent had paid 10% of the plot price, and the authorities thereafter were bound to issue allotment letter in absence of any bar or default on part of plaintiff/respondent. The authorities cannot take benefit of their own wrong to claim, that merely because of non-issuance of allotment letter, the plaintiff had no locus standi.

14. The rights of the plaintiff/respondent are sought to be defeated by mala fide actions of the officials, therefore, the plaintiff/respondent had locus standi to maintain the suit, as held.

15. The substantial questions of law raised are answered against the appellant.

No merit.

Dismissed.