

**(2008) 10 P&H CK 0105**  
**In the Punjab And Haryana At Chandigarh**

Estate Officer, Haryana Urban Development Authority and  
Others

APPELLANT

Vs

Hem Raj

RESPONDENT

---

**Date of Decision :** 17-10-2008

**Acts Referred:**

**Citation :** (2008) 152 PLR 610

**Hon'ble Judges :** Rakesh Kumar Garg, J

**Bench :** Single Bench

**Final Decision :** Dismissed

---

## Judgement

Rakesh Kumar Garg, J.—This is defendant's second appeal challenging the judgment and decrees of the courts below whereby suit of the plaintiff-respondent for mandatory injunction directing the defendants to allot free hold residential developed plot measuring 250 sq. yards in the name of plaintiff in pursuance of policy dated 18.3.1992 has been decreed.

2. Briefly stated the facts of the case are .that the plaintiff-respondent was the absolute owner in possession to the extent of 39 marlas of land as detailed in the plaint. The said land was acquired by the appellants in the year 1992 for development of Sector 19 and 20 of Urban Estate, Kaithal. It is further averred mat in pursuance of policy dated 18.3.1992, the plaintiff-respondent applied for the release of free hold residential developed plot as an oustee of the land. However, the appellants failed to take any action for release of the said land. Plaintiff-respondent represented the appellants many times but the appellants failed to take any action and finally refused to release a free hold residential plot to him. Hence this suit.

3. The suit was contested by the appellants stating in the written statement that the plaintiff-respondent never deposited earnest money along with his application which was mandatory as per the brochure issued by HUDA for inviting the application for allotment of residential plots to the oustees. It was further

averred that the policy dated 18.3.1992 was partially modified in the year 1993 and the benefit under oustees policy was restricted to one plot according to the size of holding irrespective of the number of co-sharers, which was to be given to successful oustees as per HUDA policy dated 18.3.1992 partially modified on 12.3.1993. With these pleadings, the appellants prayed for dismissal of the suit.

4. Both the parties led evidence in support of their case. The trial Court after hearing both the sides and going through the evidence available on record decreed the suit of the plaintiff-respondent.

5. Feeling aggrieved thereby, the defendants filed an appeal before the lower Appellate Court. The said appeal was filed after a delay of 19 days after expiry of the limitation period. No application for condonation of delay was filed along with this appeal nor any explanation was given for filing the appeal beyond the period of limitation. The Additional District Judge, Kaithal vide impugned judgment and decree dated 26.5.2008 dismissed the aforesaid appeal on merits as well as being barred by time.

6. Still not satisfied, the defendants have filed the instant appeal challenging the judgment and decrees of the courts below.

7. Learned Counsel for the appellant has vehemently argued that the courts below fell into an error in decreeing the suit of the plaintiff-respondent which was barred by limitation as the land of the plaintiff-respondent was acquired in the year 1991-92 and the applications for allotment of plots to the oustees as well as to the general public were also invited in the same year and as per this advertisement, the applicant was required to submit an application along with earnest money whereas the present suit was filed only on 7.2.2006. It was further argued that the policy of 1992 was amended vide policy dated 12.3.1993 and therefore, the case of the plaintiff-respondent could be considered only under the policy of 1993. Learned Counsel also argued that the lower appellate court acted illegally in dismissing the appeal being time barred overlooking the fact that the appellant is an instrumentality of the State and before filing the appeal, the files has to be processed through different departments/branches and it was on this account that the delay had occurred which was on account of administrative reasons. The court should have taken a liberal approach and should have condoned the delay in filing the appeal if any. Thus, on the basis of these arguments, the Counsel for the appellants has sought to raise the following substantial question of law, which according to him arises in the instant appeal.

(a) Whether the Civil Court was well within its rights to entertain and adjudicate upon the suit in view of specific bar as has been contained in Section 50 of the HUDA Act?

(b) Whether the Courts below acted on surmises and conjectures in holding that there is no requirement for an oustee to deposit amount of 10% as earnest money while applying for the plot under oustees quota?

(c) Whether the Courts below were right in their approach in entertaining the suit of the plaintiff and further decreeing the same, when the same was out rightly barred by limitation?

(d) Whether the courts below were right in rendering the finding to the effect that the oustees Policy dated 12.3.93 is not applicable to facts of the present case?

(e) Whether the learned First Appellate Court was right in its approach in not deciding the first appeal on merits and in dismissing the appeal on mere delay on 19 days in filing the first appeal.

8. I have heard learned Counsel for the appellants and I find no force in the contentions raised by him. Admittedly, the first appeal filed by the appellants before the lower appellate Court was barred by time and neither application for condonation of delay was filed by the appellants nor any explanation for filing the appeal beyond the period of limitation was furnished. In view of these undisputed facts, the first appellate Court was right in law in dismissing the appeal of the appellants as time barred. Even in the instant appeal, no explanation has been furnished to show the sufficient reasons because of which the department could not file the appeal before the first Appellate court within limitation except raising a ground in this regard. Not only this the appeal filed by the appellant-department has been dismissed by the lower Appellate court. Following the law laid down by the Apex Court in SLP No. 7273 of 2005 - Estate Officers, HUDA v. Kavinder Parkash in which policy dated 18.3.1992 of the respondent-department has been upheld and it has been directed that co-sharers shall be given plot separately in proportion to their entire land. It is not disputed that at the time of acquisition of land of the respondent, the policy of 1992 was applicable. Learned Counsel for the appellant was also unable to state how the policy of 1993 will be applicable in the present case.

9. For the reasons recorded above, I find no merit in the appeal. No substantial questions of law arises.

Dismissed.