(1985) 01 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 2084 of 1984

Shri Tara Chand APPELLANT

Vs

Punjab State and another RESPONDENT

Date of Decision : 15-01-1985

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1985) 01 P&H CK 0002

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

Bench : Single Bench

Advocate : S.S. Shergill, A.A.G. Pb, for the Appellant; Satya Parkash Jain, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This is Defendant''s second appeal against whom suit for mandatory injunction has been decreed by both the Courts below.

2. Tara Chand Plaintiff applied to the Urban Estate Department, Punjab on 23rd January, 1973 for the allotment of a plot measuring one Kanal at Jullundur, The Urban Estate Department had invited applications for the allotments of plot. The Plaintiff paid a sum of Rs 1500/- along with application. On 5th March, 1974 the said department offered him to allot a plot on priority basis on payment of the entire sale consideration in lump sum. In the year 1980 he was again offered a plot in the urban estate Jullundur on the payment of Rs. 26,000/- vide letter Exhibit P. 2 He was also required to produce a certificate about his belonging to the schedule caste community He was further asked to deposit the entire amount in the bank along with certificate on 31st October, 1980. Thereafter he approached the said department for the allotment of the plot. However, according to the Plaintiff he was being put off on one execuse or the other On 11th June, 1981, he was informed that the amount paid by him will be treated as earnest money and the plot would be allotted to him as per the revised policy keeping in view the socio-economic groups and the plot will be given to him in

open auction. On receipt of this intimation, the Plaintiff served a notice u/s 80 C P C requiring then to allot the plot in question and on expiry of the period of notice the present suit was filed on 7th November.

3. In the written statement of State of Punjab took objection as to the maintainability of the suit in the Civil Court in view of the provision of Section 10 of the Punjab Urban Estates (Development and Regulation) Act, 1964, (hereinafter referred to as the ''Act''). On merits it was pleaded that they had given an offer to the Plaintiff to the allotment of a plot on priority basis on payment of the entire sale consideration in lump sum. However, it was mentioned by them that this was simply an offer and the Government was under no obligation to allot him a plot. It was maintained by them that in view of the revised policy of the Government, only a plot measuring 200 yards can be allotted to the Plaintiff The main controversy between the parties in the trial Court was as to whether the Plaintiff was entitled to the allotment of one Kanal plot as alleged.

4. The trial Court found that since the Plaintiff had paid the entire sale money a completed contract came into existence between the parties before the policy was revised and, therefore, the Defendant cannot get out of their obligation under the contract It was further found that time was never the essence of the contract and acceptance of money beyond the stipulated period of is days and calling of amended certificate clearly shows that the Defendant honoured the contract and the same was binding upon them. Consequently, the Plaintiff''s suit was decreed.

5. In appeal the Additional District Judge affirmed the said finding of the trial Court and thus maintained the decree passed in favour of the Plaintiff Dissatisfied with the same the State Punjab has filed this second appeal in this Court.

6. At the time of motion hearing this Court vide order dated 27th August, 1984 directed that the Estate Officer, Urban Estates, Jullundur, should return the price over and above the price of 200 sq. yards with 18 per cent interest to the Plaintiff The said amount was received by the Plaintiff However, vide this Court''s order dated 5th November. 1984 it was observed that the receipt by the Plaintiff of the amount deposited shall not be construed to bis prejudice in this appeal.

7. The Learned Counsel for the Appellant contended that before any allotment could be made in favour of the Plaintiff, the policy was revised and, therefore, the department was under no legal obligation to make the allotment of one Kanal plot even if the Plaintiff had paid the sale price in lump sum. According to the Learned Counsel under tub-rule (3) of Rule 5 of the Punjab Urban Estates (Sale of Sites) Rules, 1965 (hereinafter referred to as the ''Rules''), when 10 per cent of the price has been tendered the State Government might allot a site of the size applied for and the word ''may allot a site'' occurirg therein cannot be read to mean ''shall allot a site'' as in a given situation reading so could create such

complications which may not be remediable. In support of this submission reference was made to the Full Bench judgment of this Court reported in Surjit Singh and Ors. v. State of Punjab and others (1979) 81 P. L. R 413. It was further contended that in principle it does not make any difference even if the whole price was paid in lump sum, because in that situation also the allotment can be made only under the said sub rule. In support of the second cantention reference was made to a Division Bench judgment of this Court in CWP. No. 4222 of 1981 passed on 15-9-81 at the time of motion hearing. In that writ petition one of the contention raised was whether the Respondents are not bound by the principle of promisory estoppel and are not bound to allot plot measering one Kanal i.e. 500 yards to the Petitioner for the sum of Rs. 27,500/-, which amount has already been received by them. The Division Bench dismissed the said writ petition with the observations that the Petitioner had merely put an application with the requisite amount of money for consideration Mean-while the Respondent-State changed its policy with regard to the size of plot for allotment. Then reliance was placed on the said Full Bench judgment in which it was held that no vested right accrues merely by mating an application for allotment, it has been picture squely held that ''may allot'' under the statutory provisions does not amount to ''shall allot''.

8. On the other hand the Learned Counsel for the Plaintiff contended that once the full price is paid in lump sum the co tract was complete, and, therefore, the Plaintiff was entitled to the allotment of one Kanal plot. Reference was made to Smt. Durga Devi v. The Amritsar Improvement Trust (1974)76 P.L.R. 1S.N. : 1974 Rev. L. R. 100.

9. After hearing the Learned Counsel for the parties, I am of the considered view that the whole approach of the Courts below is wholly wrong and illegal and misconceived. 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. Sub-rule 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. This sub-rule came for interpretation before the Full Bench of this Court in Surjit Singh''s case (supra) and it was held therein that the words ''may allot the site'' cannot be real to mean ''shall allot the site''. By filing applications in accordance with law the applicants only get the right of consideration of their application but they do not get vested right for allotment of a plot The condition laid down in the first scheme or the provisions of Rule 5(3) do not give any right to the applicants to claim allotment of plots as a matter of right.

10. In view of this authoritative pronouncement it could not be sucessfuly argued on behalf of the Plaintiff-Respondent that since the Plaintiff had paid the full price, therefore, he was entitled to the allotment of one Kanal plot. It is not the case of the Plaintiff that plots were allotted to some other persons and it was the Plaintiff who was deprived If after the amount was received by the State the

policy as a whole was revised then in that situation the Plaintiff could not claim as a matter of right the allotment of one Kanal plot simply because he has paid the full price. The only remedy for the Plaintiff was to get that excessive amount for more than 200 square yards with interest for which order had already been passed by this Court on 27th August, 1984. The authority relied upon by the Learned Counsel for the Plaintiff-Respondent has absolutely no applicability to the facts of the present case.

11. Consequently the appeal succeeds and is allowed with no order as to costs. The judgments and decree of the Courts below are set aside and the Plaintiff''s suit is dismissed. However, it may be made clear that in the order dated 27th August, 1984 of this Court it was stated on behalf of the Learned Counsel for the State that as per the revised policy the Estate Officer, Urban Estates Jullundur is prepared to allot a plot measuring 200 square yards to the Plaintiff. Thus the Plaintiff will be entitled to the allotment of a plot measuring 200 square yards it not allotted earlier.

