
(2001) 07 P&H CK 0223

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 552 of 1985

The Jalandhar Improvement Trust

APPELLANT

Vs

Harbans Kaur

RESPONDENT

Date of Decision : 31-07-2001

Acts Referred:

Jalandhar Improvement Trusts, Land Disposal Rules, 1954 — Rule 18

Punjab Town Improvement Act, 1922 — Section 72

Utilisation of Land and Allotment of Plots by Improvement Trust Rules, 1975 — Rule 7(1)

Citation : (2003) 133 PLR 434

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

Bench : Single Bench

Advocate : Inderjit Malhotra, for the Appellant; H.S. Gill, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—Harbans Kaur wife of Didar Singh resident of House No. E.J.1063 Mohalla Gobind Garh, Jalandhar City filed suit for declaration against Jalandhar Improvement Trust, Jalandhar through its Administrator-cum-Commissioner, Municipal Corporation, Jalandhar to the effect that the cancellation of allotment of plot No. 153 measuring 6 marla in 55 acre development scheme situated on Police Line Road, adjoining the Commissioner's office Jalandhar as a local displaced person to her vide memo No. 12240 dated 17.3.81 by the latter is illegal, ultra-vires, arbitrary, mala fide, without jurisdiction and not binding upon her. By way of consequential relief, she sought permanent injunction restraining the latter from interfering in her peaceful possession of the said plot. It is alleged in the plaint that Jalandhar Improvement Trust, Jalandhar proposed a "55 acre development scheme" on Police Lines Road, adjoining the Commissioner's Office, Jalandhar and acquired the said plot. Plaintiff was owner in possession of some land included in the said plot which had been acquired by the Jalandhar Improvement Trust, Jalandhar. She approached

the Trust for the allotment of a plot for her rehabilitation as a "local displaced person". Jalandhar Improvement Trust, Jalandhar allotted her plot No. 153 measuring 6 marla vide resolution No. 488 dated 6.3.80. Under the orders of the Trust, she deposited Rs. 3300/- as 1/4th price of the plot vide receipt No. 29 dated 19.3.80 in the coffers of the Trust. Vide memo No. 12240 dated 19.3.81, the plot allotted to her was cancelled. It is alleged in the plaint that the Trust, had no right or authority to cancel the plot allotted to her as the plot was allotted to her as a "local displaced person" in "55 acre development scheme" in which she had some share.

2. Defendant Trust contested the suit of the plaintiff urging that she had no right or title to the plot or its allotment. It was denied that she was owner in possession of some land in the "55 acre development scheme" on Police Lines road adjoining the Commissioner's Office, Jalandhar. She should have disclosed khasra number or boundaries of the land of her ownership in the said scheme so that Trust could make specific reply whether she was or was not owning any share in the land known as "55 acre development scheme" on Police lines road adjoining Commissioner's office, Jalandhar. It was denied that she was a "local displaced person" as defined in the relevant rules. She was not and could not be categorised as a "local displaced person". As such, the alleged allotment was illegal, against facts and the relevant rules.

3. On the pleadings of the parties, the following issues were framed by the learned trial court:-

1. Whether the plaintiff is a locally displaced person or alleged? OPP
2. Whether the order cancelling the allotment of the plot in question is illegal?
3. Whether the plaintiff is entitled to the declaration prayed for?
4. Relief.

4. At the conclusion of the trial of the suit, Subordinate judge First Class, Jalandhar vide order dated 23.5.83 decreed the plaintiffs suit for declaration declaring the cancellation of plot No. 153 measuring 6 marlas in "55 acre development scheme" on Police Lines Road adjoining the Commissioner's office, Jalandhar was illegal, ultra-vires and without jurisdiction and for permanent injunction restraining the Trust from interfering in her possession of the said plot in view of her finding that she was a "local displaced person" and as local displaced person, she was entitled to plot in the scheme in which she was holding land from which she was displaced in view of the Jalandhar Improvement Trust, Land Disposal Rules, 1954. It was found that no opportunity was given to her before the plot allotted to her was cancelled and there was thus negation of the principles of natural justice which lay down that no one shall be condemned unheard.

5. Jalandhar Improvement Trust, Jalandhar went in appeal which was dismissed by learned District Judge, Jalandhar vide order dated 1.9.84. Still not satisfied,

Jalandhar Improvement Trust, Jalandhar has come up in further appeal to this court.

6. I have heard the learned counsel for the parties and have gone through the record.

7. In this appeal, following substantial questions of law involving public importance, arise:-

(1) Whether the provisional allotment made by the Improvement Trust could take effect despite the fact that it never fructified into permanent allotment?

(2) Whether the allotment in question is against the express provisions of the Jalandhar Improvement Trust, Land Disposal Rules, 1954?

8. It was a provisional allotment as is suggested by the letter of allotment. Provisional allotment was required to be approved by the Govt. Allotment was cancelled by Administrator, Jalandhar Improvement Trust, Jalandhar in view of the State Govt. having turned down the recommendation of the Ex-Chairman of the Jalandhar Improvement Trust, Jalandhar for the allotment of plot to her out of Govt. quota. It was submitted by the learned counsel for the Jalandhar Improvement Trust, Jalandhar that this allotment was made by the Trust in violation of the utilization of land allotment of plots by Improvement Trust Rules, 1975. Rule 7(I)(b) of 1975 Rules lays down as follows:-

"Such tenements and plots shall be allotted by the Trust at reserved price with the approval of the government."

9. It was submitted by the learned counsel for the appellant that it was not permanent allotment in favour of Harbans Kaur. It was only provisional allotment which could take effect only if the allotment had been approved by the state Govt. In support of this submission, he drew my attention to condition No. 5 in the allotment letter Ex.P3 which lays down that the possession of the plot will be given after obtaining the sanction from the Govt. He drew my attention to resolution Ex.D1 No. 488 of the Trust through which previous resolution No. 328 was amended vide resolution No. 488. It was further resolved that Suit. Harbans Kaur wife of Didar Singh being a "local displaced person", is permitted to be sanctioned a 6 marla plot with the approval of the Punjab Govt. in the 55 acre development scheme. It was submitted that it is abundantly clear from the phraseology of resolution Ex.D1 that this allotment could not take effect unless the same was approved by the Govt. It was submitted that even otherwise, the allotment letter Ex.P3 was not enforceable in view of rules 18 and 21 of the Jalandhar Improvement Trust, Land Disposal Rules, 1954. Rule 18 reads as follows:-

"Rule 18 When the sale or lease has been confirmed by the Trust, the purchaser or lessee, as the case may be, shall be required to pay balance of the purchase price or the premium within 30 days of the receipt of intimation as to such confirmation failing which the earnest money shall be forfeited. Payments by

instalments will not be permitted except in the case of a "local displaced person" or a displaced person from West Pakistan as aforesaid who is unable to pay the whole price of land purchased by him in one lump sum. In such cases, he may be permitted to pay by instalments. Such instalments will not cover a period of more than three years from the date of confirmation of the sale to him by the Trust. Interest at the rate of 6 percent per annum shall be charged in such cases on the outstanding balance." Rule 21 reads as follows:

"Rule 21 In the case of free hold disposal of sites to local displaced persons or displaced person from West Pakistan the sale deed shall be preceded by an agreement for sale in Form "D", which shall provide besides other things, for all the architectural and other conditions that the purchaser has to fulfil and which are not covered by the building by laws. If the building is completed in accordance with the conditions of the agreement for sale and the sale money etc. has been paid in full, the sale deed will be executed."

10. No agreement as required under Rule 21 was executed nor any money as required under Rule 18 was deposited except the earnest money. It was submitted that in view of Rule 7(b)(ii) of the Utilisation of Land and allotment of Plots Rules, 1975 also, she could not be allotted 6 marla plot in that scheme. Rule 7(b)(ii) reads follows:-

"7(b)(ii).- A local displaced person may be allotted a plot upto the size of 500 sq. yards on free hold basis on reserve price calculated on the basis of the formula in the annexure. If the area of the land owned by him and acquired by the trust is more than 500 sq. yds. the local displaced person shall be entitled to allotment of plot which is nearest in size next below the area of his land, which has come under acquisition."

11. She was owning only 21/2 marlas of land in the said scheme. It was submitted that how could she be allotted 6 marla plot when she was only owning 21/2 marlas land in that scheme. She could be allotted one plot if the Trust had acquired more than 500 sq. yards of area belonging to her in that scheme.

12. In my opinion, the stance of the Improvement Trust is correct and should carry weight with the court. It was held in *Nathulal Vs. Phoolchand*, that "where by a statute, property is not transferable without the permission of the authority, an agreement to transfer the property must be deemed subject to the implied condition that the transferor will obtain the sanction of the authority concerned". In *Jalandhar Improvement Trust Vs. Sampuran Singh*, , the Hon"ble Supreme Court held that if allotment was made wrongly in favour of persons, the same may become liable for cancellation if permissible but will not create an enforceable right on the respondent to claim similar wrongful allotments in their favour. There is no estoppel against law. Principle of promissory/equitable estoppel cannot be invoked to protect such illegal allotments. Allotment in favour of the plaintiff being provisional could well be cancelled by the state govt. and the state govt. could refuse approval to this allotment which in its opinion was

illegal."

13. In this case, we have to see whether the action of the State Govt. in refusing to accord approval to the allotment of plot to the respondent was within the ambit of its authority. Action of the State Govt. falls within the ambit of Section 72 of the Act.

14. Section 72-E of the Punjab Town Improvements Act, 1922 lays down that:-

72-E Power of State Government and its officers over trusts.- (1) The State Government and Deputy Commissioners acting under the orders of the State Government, shall be bound to require that the proceedings of trusts shall be in conformity with law and with the rules in force under any enactment for the item being applicable to Punjab generally or the areas over which the trusts have authority. The State Government may exercise all powers necessary for the performance of this duty and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons, which would in its opinion justify an order by the Deputy Commissioner u/s 72-B.

The Deputy Commissioner may, within his jurisdiction for the same purpose, exercise such powers as may be conferred upon him by rules made in this behalf by the state Government.

15. In this case, the recommendation of allotment of plot to the plaintiff by the Trust was turned down by the government. It may be mentioned here that this allotment by the Trust was in violation of the said rules. If allotment was in violation of any provision of the Act or the rules framed thereunder, allotment has to fall on the ground. It was held in *Anil Sabharwal Vs. State of Haryana and Others*, that property acquired for public purpose cannot be misused for the benefit of few individuals in the garb of allotment under discretionary quota. There can be no unbridled and unguided discretion to allot plot to any individual according to the whim and fancy of the authority in whom this discretion vests. Discretion of statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant considerations. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless, the decision will be set aside.

16. In *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, , it was observed as follows"-

"In this context, it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined, within clearly defined limits. The rule of law from this point of view means that decisions should be made by the

application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. Discretion means sound discretion guided by law. It must be governed by rule, not humour; it must not be arbitrary, vague and fanciful. Where discretion is absolute, man has always suffered. It is in this sense that the rule of law maybe said to be the sworn enemy of caprice."

17. In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , the Hon"ble Supreme Court observed as follows:-

".....We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the constitutional scheme to accept the argument of exclusion of Art. 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals."

18. In *LIC of India and Anr. v. Consumer Education & Research Centre and Ors.* J.T. 1995(4) S.C. 366, the Hon"ble Supreme Court negatived the claim of immunity of the State action from judicial review in the context of Articles 14 and 21 of the Constitution and observed that:-

"... Every action of the public authority or the person acting in public interest or its acts which give rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element becomes open to challenge. If it is shown that the exercise of the power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, do in the field of private law, Its actions must be based on some rational and relevant principles. It must not be guided by traditional or irrelevant considerations...."

19. It was submitted by the learned counsel for the appellant that no opportunity of hearing was required to be given to the respondent before refusing to accord approval to the allotment of plot to the respondent by the Trust. In support of this submission, he drew my attention to *Balha Ram v. State of Punjab* 1983 P.L.J. 381. It was held that it was not incumbent upon the Director, Local Govt., Punjab to issue notice and afford an opportunity of hearing to the petitioner before annulling the resolution of the Improvement Trust under which allotment has been made in his favour. It was held in *Common Cause, A Registered Society*

Vs. Union of India (UOI) and Others, hat no public servant can arrogate to himself the power to act in a manner which is arbitrary. In pith the argument of the learned counsel for the appellant-Trust was that the Trust had allotted plot to the respondent arbitrarily. Before allotting the plot, it had not framed any guidelines. It had not sought applications from others similarly situated. More so, it was a provisional allotment which could fructify only if it had been approved by the State Govt. State Govt. had refused to approve it in view of the power vesting in it u/s 72 of the Punjab Town improvement Trust Act, 1922 and also that this allotment was in violation of he utilization of land and allotment of plots by Improvement Trust Rules 1975.

20. Learned counsel for the respondent, on the other hand, submitted that State Govt. has given no reason for refusing to accord approval to the allotment of the plot made by the Trust in favour of the plaintiff. It was submitted that exercise of the power by the State Govt. was in the nature of Farmanshai which used to be issued by the sovereign ruler/autocrats. He drew my attention to Balbir Kaur v. State of Punjab and Anr. 1983 P.L.J. 414 where the allotments made by the Amritsar Improvement Trust, Amritsar were restored by this court in CWP No. 611 of 1982 decided on 24.5.83 which had been cancelled by the State Govt. through a blanket order. Impugned order passed by the State Govt. runs as under: -

"All recommendations made by former Chairmen of Improvement Trusts in allotment of plots to various persons out of Govt. quota have been considered and rejected by the Govt. This will be applicable to all categories of plots of all Improvement Trusts which arc yet to be allottee out of Govt. quota. In was in pursuance of this order that the Improvement Trust, Amritsar issued individual letters to the petitioners conveying the cancellation of allotments in their favour."

21. It was laid down in Balbir Kaur v. State of Punjab etc, (supra) that allotment to be effective must have approval of the Slate Govt.

22. In the case in hand, State Govt. was justified in refusing to accord approval to the allotment of plot to the respondent as allotment was arbitrary.

23. In view of what I have said above, this appeal succeeds and is accordingly allowed in view of the decision of both the substantial questions of law involving public importance, having gone in favour of the appellant. In consequence, the judgments and decrees of both the courts below are set aside and the plaint is dismissed. No order as to costs.