

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

R.S.A. No. 3333 of 2007 (O&M)
Date of decision: 31.1.2009

Shikha

....Appellant

Versus

Improvement Trust, Ludhiana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD K. SHARMA

Present: Mr. Sumeet Mahajan, Sr. Advocate,
with Mr. Santosh Sharma, Advocate,
for the appellant.

Mr. C.M. Sharma, Advocate,
for respondent No. 1.

VINOD K. SHARMA, J (ORAL)

This regular second appeal is directed against the judgments and decree dated 31.1.2006 and 15.6.2007 passed by the learned Courts below vide which the suit filed by the plaintiff/appellant seeking permanent injunction against cancellation of plot allotted to her stands dismissed.

The plaintiff brought a suit on the plea that the defendant-Improvement Trust, floated 8.4 acre Development-cum-Housing Accommodation Scheme at Sant Ishar Singh Nagar Pakhowal Road, Ludhiana, and the flats were to be allotted on "first come first serve basis". Plaintiff/appellant got herself registered in Semi-Self Financing

Scheme of two bed rooms four storeyed flat in 8.4 acre Development-cum-Housing Accommodation Scheme at Sant Ishar Singh Nagar Pakhowal Road, Ludhiana, vide registered memo No. LIT/3968 dated 1.8.1990.

In pursuance of her registration, flat No. 22 TF 3rd floor was allotted to her by order of the Chairman "on first come first serve basis". The tentative cost of the flat was fixed at Rs.1.60 lac and the allotment and possession was offered to the plaintiff. She was requested to make the payment as per schedule of the letter of allotment.

The appellant deposited a sum of Rs.64,000/- by accepting the terms and conditions of the allotment and offered a draft for another sum of Rs.12,000/-, which was returned vide memo dated 5.5.1992. Notice dated 17.12.1991 was sent to her alleging that some irregularities were found while making allotment of flat No. 22 TF in her favour by the Chairman.

In the notice, it was pointed out that the Chairman, Improvement Trust, Ludhiana, did not follow the procedure of allotment of flats under Rules 9 and 11 of the Utilisation of the Land and Allotment of Plots Rules, 1983, while making allotment in her favour. The allotment made was in violation of the rules.

The violation pointed out was that the deposit of earnest money was the pre-requisite. The affidavit was also not submitted along with application. It was noticed that the Chairman, Improvement Trust, Ludhiana, was not competent to make such allotment in the manner it was done and, thus, it was alleged that in connivance with the Chairman, unfair means were used by the plaintiff/appellant.

It was alleged against the plaintiff that she had failed to deposit first instalment within stipulated period and also failed to furnish documents required from her within time. She also failed to execute agreement in time.

To the notice of cancellation, detailed reply was sent by the plaintiff. The plaintiff apprehended threat of cancellation, therefore, suit was filed.

The plaintiff claimed in the suit that the notice was illegal as she was allotted the plot under the Scheme "on first come first serve basis" and thus, the rules referred to in the notice were not applicable.

The plea of estoppel was raised on the plea that in view of acceptance of Rs.64,000/-, the Trust was estopped from cancelling the allotment of plot. She also claimed that proof of income and deposit of earnest money had already been sent. It was also pleaded that the Chairman had acted in accordance with rules.

It was also the case set up that if the Chairman acted against the rules, the departmental action could be taken against him, but the plaintiff could not be made to suffer. The plea was also raised that as plaintiff bona fide acted on the representation of the Chairman, therefore, no prejudice could be caused to her due to the act of the Chairman. Plea of violation of principles of natural justice was also taken.

The suit was contested wherein number of objections were taken, including that the suit was not properly signed and verified by the competent person, the suit was bad for want of notice under Section 98 of the Punjab Town Improvement Act, 1922.

On merits, Trust contested the assertion that the application was moved by the plaintiff for registration of 2-bedroom flat in four storeyed building in 8.4 acre Development-cum-Housing Accommodation Scheme at Sant Ishar Singh Nagar Pakhowal Road, Ludhiana.

The factum of Chairman having allotted the flat as per rule was denied. It was asserted in the written statement that the Chairman of the Trust had not followed the rules of "first come first serve basis" and had not obtained sanction from competent authority while allotting flat to the appellant.

The Government found irregularities and illegalities in the allotment of flat, notice under Section 72-E of the Punjab Town Improvement Act, 1992 for cancellation of allotment was issued.

Plea was also taken that plaintiff had not complied with the terms and conditions of notice under Section 72-E of the Punjab Town Improvement Act, 1992 and also failed to fulfil the requirement of schedule of payment as per letter of allotment. Handing over of possession of the flat was denied. The deposit of Rs.64,000/-, as alleged, by the plaintiff was also denied. The plea of estoppel was contested. The cancellation was supported being in violation of rules and regulations and the provisions of the Act. It was denied that the allotment was irrevocable as claimed.

On the pleadings of the parties, the learned trial Court framed the following issues: -

- “1. Whether the suit is not maintainable in the present form? OPD*

2. *Whether the suit is liable to be dismissed for want of notice under Section 98 of Punjab Town Improvement Act, 1992? OPD*
3. *Whether the notice dated 17.12.1991 issued by the defendant is null, void and inoperative against the rights of the plaintiff? OPP*
4. *Whether the plaintiff is entitled to the injunction as prayed for? OPP*
5. *Relief.”*

Issue Nos. 1 and 3 were taken up together and the learned trial Court recorded a finding that the notice challenged by the plaintiff was issued by the Government of Punjab, Department of Local Government under Section 72-E of the Punjab Town Improvement Act, 1992, therefore, the plaintiff was to file a suit against the Government of Punjab. The learned Court thus, held that the suit against the Improvement Trust, Ludhiana, for cancellation of notice vide which the allotment of plot No. 22 TF was cancelled, was not maintainable for want of impleadment of necessary parties. However, issue No. 2 was decided in favour of the plaintiff by holding that for injunction no notice was necessary. In the result, it was held that the plaintiff was not entitled to injunction.

The findings recorded by the learned trial Court stand affirmed by the learned lower appellate Court.

Mr. Sumeet Mahajan, learned senior counsel, appearing on behalf of the appellant, contends that the following substantial questions of law arise for consideration in this appeal: -

- “1. *Whether non-acceptance of balance payment and non-compliance of other conditions of allotment does give rise to cause of action to institute suit?*

2. Whether the State of Punjab was necessary party when allotment of flat was made only by Improvement Trust?"

In support of substantial questions of law, as framed, the learned senior counsel appearing on behalf of the appellant vehemently contends that once the allotment was made by the Chairman of the Improvement Trust in pursuance to which the plaintiff, sought to deposit the balance payment, the Improvement Trust was not justified in refusing to accept the same. The cause of action arose to the appellant against Improvement Trust for non-acceptance of the balance allotment money. The learned Courts below committed an error in law in non-suiting the appellant for want of impleading the State of Punjab as party.

The contention of the learned counsel for the appellant is that lis, in fact, was between the plaintiff and the Improvement Trust and the Government was neither necessary nor proper party. Therefore, the findings recorded by the learned Courts below on issue Nos. 1 and 3, on the face of it, are perverse and, therefore, liable to be set aside.

Learned counsel for the appellant further contends that so far allotment has not been cancelled and the reply to notice stands filed.

The contentions raised by the learned senior counsel for the appellants cannot be accepted. The Improvement Trust was bound by the instructions issued from time to time and once a show cause notice for cancellation stood issued by the Government under Section 72-E of the Punjab Town Improvement Act, 1992, the Improvement Trust could not have accepted the balance payment. It can hardly be said that in absence of the decision on notice having been taken and finally

adjudicated, the Improvement Trust could have accepted the balance instalment as claimed. The substantial question of law deserves to be answered against the appellant and in favour of the defendant/respondents.

Second substantial question of law also deserves to be answered against the appellant. Once it is admitted that notice was issued by the State Government, which was impugned, the State was necessary party to the suit and in absence of the State of Punjab, no adjudication was possible.

The learned Courts below, therefore, rightly held that the suit framed by the appellant was not competent in absence of the State Government being party and that the plaintiff/appellant was not entitled to any injunction.

No merit.

Dismissed.

(Vinod K. Sharma)
Judge

January 31, 2009
R.S.