

CASE NO.:
Appeal (civil) 1077 of 1998

PETITIONER:
Chairman, Ludhiana Improvement Trust

RESPONDENT:
Kanwaljit Singh & Ors.

DATE OF JUDGMENT: 04/02/2004

BENCH:
R.C. Lahoti & Ashok Bhan

JUDGMENT:
J U D G M E N T

BHAN, J.

1. Ludhiana Improvement Trust, Ludhiana, (hereinafter referred to as "the appelllant") acquired 8.4 acres land owned by the respondents as joint holders in a khata in the month of March 1975. The land was acquired for construction of four storeyed flats. Under the scheme prepared by the trust no individual plots were to be carved out.

2. Appellant had framed 'The Ludhiana Improvement Trust Land Disposal Rules, 1964' (hereinafter referred to as "the 1964 Rules"). Local displaced person was defined to mean a person whose land was acquired by the Trust for the execution of a scheme under the Punjab Town Improvement Act, 1922 (hereinafter referred to as "the Act"). Rule 5 (ii) provides that the Trust would fix a concessional price at which land comprised in a scheme will be sold to a local displaced person. The concessional price was not to be less then the cost price of the land, i.e. the estimated cost of acquisition of the land plus development charges etc. Not more than one plot of land when demarcated in to plots, was be sold to a local displaced person. Rule 6 provides for issuance of a public notice in an appropriate form in the prescribed manner inviting applications from the Local displaced person. The Land Officer after making enquiries as deemed fit as to the correctness of the statements made therein was to submit all the applications received upto the last date fixed for this purpose to the Chairman who in turn could sell the land to the applicants subject to confirmation by the Trust at the concessional price fixed by it under Rule 5 (ii).

3. In September 1975, the State of Punjab framed the Utilisation of Land and Allotment of Plots and Improvement Trust Rules, 1975 (hereinafter referred to as "the 1975 Rules"). Subsequently in 1983 Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983 (hereinafter referred to as "the 1983 Rules") were promulgated which provided that only one plot can be allotted to the joint holders of a Khata in the acquired land. On 17.8.1988 Respondent Nos. 1 to 5 who were the joint Khata holders of the acquired land made a representation to the State of Punjab to allot one plot to each one of them. Some correspondence was exchanged between the appellant and the Respondents. The stand being taken by the appellant was that the respondents could be allotted flats and not plots as no plots had been carved out in the scheme. On 5.8.1994 Department of Local Government Punjab wrote a letter to the Improvement Trust, Ludhiana seeking certain information regarding the claim of Respondents 1 to 5 for allotment of plots to them, which was replied to by the then Chairman of the appellant Trust on 19.8.1994 which reads as under:

"OFFICE OF IMPROVEMENT TRUST,
LUDHIANA

To

The Director
Department of Local Govt.,
Punjab,
Chanidgarh

Memo No. LIT/7059 dated 19.8.1994

Sub: Regarding allotment of L.D.P. to Shri D.S.
Grewal, IPS, Attorney

Ref: Your letter No. 5/400/94-2 IG 11/9032 dated
5.8.1994 on the above noted subject.

The requisite information, as asked for, is given
below:-

- 1) That 8.4 Acre Scheme of the Trust under
Section 36 was published on 26.3.1975 and,
as per this Scheme, 1964 Rules are
applicable for L.D.P. allotments.
- 2) That there is no record available in the office
for inviting applications from the L.D.Ps.
under this Scheme and earnest money was
deposited by them on 26.12.1985 and
02.1.1986.
- 3) That according to Land Disposal Rules,
1964, every joint Khata Holder is entitled
for allotment of 500-500 sq. yards plot
according to which all the five applicants are
entitled to have 500-500 sq. yard plot each.

Sd/-
President
Improvement Trust

Ludhiana
19.8.94"

4. Basing their claim on this letter the respondents filed Civil Writ
Petition No. 13980 of 1994 seeking its implementation and inter alia praying
for allotment of five separate plots. This writ petition was disposed of by a
Division Bench on 30.9.1994 without issuing notice to the respondents (the
appellant herein) by observing thus:

"The respondents are directed to decide the
representation of the petitioners by passing a
speaking order. In case the petitioners are found
entitled to the allotment of plot(s) in accordance
with the rules/regulations being 'displaced
persons', appropriate relief may be granted to
them. The respondents shall ensure that if the
petitioners are entitled to the allotment of plot(s),
the same would be allotted irrespective of fact
whether the allotment has already been made or
not keeping in view the availability of plot as
today.

With the said observations, the writ petition
is disposed of."

5. On 6.10.1994, respondents filed a representation seeking for allotment of five separate plots. On 2.5.1995 the Government of Punjab issued a notification vide memo No. 5/245/95 \026 2DGHII/6195 mentioning therein that there was some ambiguity in the 1964 Rules regarding the number of plots to be allotted to the joint holders of a Khata of the land acquired. It was clarified that only one plot could be allotted to the joint Khata holders of the land acquired. The relevant portion of the said notification reads:

"In 43 cases, more than one plot has been allotted against a Joint-Khata. These allotments have been made under 'The Ludhiana Improvement Trust Land Disposal Rules, 1964', which are ambiguous on this point. Under the Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983 which are operative now, only one plot can be allotted against a joint Khata. Therefore, these allotments are not in accordance with the rules and deserve to be cancelled by following the procedure as laid down under the Rules. However, it has been noted that in cases, as detailed in Annexure 'C' where payments have been fully/partly made, agreements etc. have also been executed and possession have also been delivered, in such cases cancellation though technically right would only be a paper cancellation and lead to prolonged litigation. As a one time measure, therefore, such cases of allotments of more than one plot to a joint khata holder where possession has been delivered, payments have been fully or partly accepted and agreements etc. has been entered into, allottees may be given an offer to have this allotment regularised on payment of market price prevailing on the date of allotment, which would be assessed by the Deputy Commissioner. This is only a one time measure and would not be a precedent for dealing with similar cases in future. In the remaining cases where no payment has been made nor any document has been executed nor possession delivered and allotments may be cancelled by following procedure as laid down under the rules."

[Emphasis supplied]

6. The appellant did not accede to the request made by the respondents for allotment of five separate plots to them. According to the appellant under the Scheme and the Rules the respondents were entitled to get one flat allotted to them and not flats/plots, as claimed by them as no plots had been carved out under the scheme .

7. On 29.8.1995 respondents filed contempt petition No. CCOP No. 991 of 1995 against Surinder Aggarwal, the then Chairman of the appellant Trust. Contempt Petition was disposed of on 13.2.1997. Respondent Chairman of the Trust was discharged of the allegation made against him by observing that the respondent had already accepted the position taken by the writ petitioners (Respondents herein) that they were entitled to the allotment of five plots in lieu of land acquired by his letter dated 19.8.1994. Whatever was possible had already been done by the Chairman in compliance with the directions issued by the High Court by its order dated 30.9.1994 in C.W.P. No. 13980 of 1994. In the body of the order the learned Single Judge recorded a finding that the trust by its letter No. LIT \026 7059 dated 19.8.1994, has admitted that the respondents were entitled to the plots in lieu of the land acquired by the Trust. It was held:

"I find that the Trust vide letter No. LIT-7058 dated 9.8.1994 (sic) addressed to the Government of Punjab admitted and accepted the position that petitioners are entitled to five plots in lieu of their land acquired by the Trust. "

In the concluding portion the learned Single Judge held:

"If the petitioners are still aggrieved of the action of the Trust or the action of the present Chairman of the Trust that despite their entitlement in regard to allotment of plot(s) they are not being allotted the same, they shall be at liberty to proceed against the Trust or the present Chairman in accordance with law."

8. Aggrieved by the aforesaid two findings recorded by the learned Single Judge the present appeal has been filed. According to the appellant the learned Single Judge gravely erred in recording the above said two findings. Trust had neither accepted nor endorsed the claim of the respondents that they were entitled to five separate plots in lieu of the land acquired from them. That the letter of the Chairman dated 19.8.1994 was prior in time to the directions issued by the High Court on 30.9.1994 in C.W.P. No. 13980 of 1994. The letter written prior to the directions issued on 30.9.1994 could not be made the basis for recording a finding that the Trust had accepted or endorsed the claim of the respondents for allotment of one plot each of the five joint holders of the Khata of the land acquired.

9. As against this the stand taken by the respondents is that their case would not be governed either by the Rules of 1983 or by the instructions issued by the Government on 7.1.1995. According to them their claim was to be determined in accordance with 1964 Rules and since the Chairman of the Trust in response to a letter written by the Government had accepted that each of the joint holder in the joint Khata was entitled to the allotment of a separate plot they had become entitled to the allotment of five plots.

10. Counsel for the parties have been heard at length. The record has been perused.

11. We find force in the submissions made by the learned counsel for the appellant. Letter dated 19.8.1994 could not be taken as a decision of the Trust to allot one plot to each of the joint holder in a Khata. This letter was written by the Chairman of the Trust in response to a query made by the State Government. Based on this letter Civil writ petition No. C.W.P. 13980 of 1994 was filed in the High Court seeking a mandamus directing the respondents to allot five plots (one each to the five joint Khata holders). The Division Bench without issuing notice to the respondents in the High Court issued a direction to the appellant Trust to decide the representation of the respondents and if found entitled to the allotment of the plots, then, they be allotted plots keeping in view the availability of the plots as on the date of the passing of the order. It was conceded by the counsel for the parties that the representation filed by the respondents has not been decided. Aggrieved against this inaction of the Chairman of the Improvement Trust, petition under the Contempt of Courts Act, 1971 was filed for taking suitable action under the Act against the Chairman of the Trust. Learned Single Judge exonerated the Chairman of the Trust of the charge leveled against him but proceeded to record findings on merits regarding the entitlement of the respondents to get the plots and reserving liberty with them to proceed against the Trust or the present Chairman for not allotting plots to them despite their entitlement in accordance with law. "Civil Contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a Court. The appellant Trust and the Chairman were exonerated of the charge of wilful

disobedience of the directions issued by the High Court. On the recording of this finding the learned Single Judge hearing the contempt petition should have closed the matter but instead of doing that the learned Single Judge proceeded to decide the rights of the parties as if he was hearing the writ petition.

12. Letter dated 19.8.1994 written by the Chairman was prior in time to the order passed on 30.9.1994 in the writ petition. In fact, the letter dated 19.8.1994 was the basis on which the writ petition was filed in the High Court for issuance of a mandamus to direct the Trust to allot one plot to each of the holders of the joint Khata. The Division Bench while disposing of the writ petition did not deem it appropriate to issue a mandamus as prayed for but instead directed the Trust to decide the representation and allot the plots if found entitled subject to the availability of the plots as on the date of the passing of the order. The entitlement of the respondents to get plots was not determined. The finding recorded by the learned Single Judge hearing the contempt petition that the entitlement of the respondents for allotment of plots had already been decided is without any basis. The liberty reserved with the respondents to proceed against the Trust or the new Chairman for not allotting the plots despite their entitlement to get the plots is based on wrong assumption of the fact that the Trust had endorsed the claim of the respondents to get five plots being the holders of joint Khata

13. Correspondence exchanged between the State Government and the Chairman of the Improvement Trust could not be treated as a decision taken by the Trust to allot five plots to the respondents. Even according to the 1964 Rules (Rule 6) the Chairman of the Trust could sell the plots subject to confirmation by the Trust. Trust has not taken any decision so far. The Scheme prepared for development of 8.4 acres of land acquired for the construction of four storeyed flats has not been placed on record. While deciding the representation a host of questions would arise including (i) whether the application filed by the respondents in the year 1988 was within time?; (ii) whether the respondents would be entitled to plots or flats?; (iii) whether they would be entitled to one plot/flat being the joint holders of the Khata or to separate plots/flats (one each) as claimed by them?; (iv) whether any applications were invited by the Trust from the Local displaced persons in accordance with the 1964 Rules? (v) whether the respondents had put in their claim in response to the said application?; (vi) As to which of the Rules of 1964, 1975 or 1983 would apply as respondents had filed the representation in the month of 1988 for the first time?; (vii) what would be the effect of the clarificatory notification issued by the Government on 7.1.1995 stating therein that co-sharers of the joint khata of the land acquired would be entitled to get one plot only and not separate plots to each of the co-sharers and (viii) availability of the plot/flat as on the date of the passing of order.

14. For the reasons stated above, it is held that that learned Single Judge erred in holding that the Improvement Trust had either accepted or endorsed the claim of the respondents for allotment of separate plots to each of the joint holders of the khata of the land acquired. Learned Single Judge further erred in holding that the respondents were at liberty to proceed against the Trust or the present Chairman in accordance with law in case plots were not allotted despite their entitlement to the allotment of plots.

15. For the reasons stated above, the findings recorded by the High Court which are reproduced in paragraph 7 are set aside and appeal is allowed to that extent. Parties shall bear their own costs.