

Jalandhar Improvement Trust

Vs

Sampuran Singh

Civil Appeal No. 1984 of 1999

(D.P. Wadhwa, N. Santosh Hegde JJ)

01.04.1999

JUDGMENT

N. Santosh Hegde, J.

1. Leave granted in all these special leave petitions.
2. These appeals arise out of a common judgment dated 9.8.1996 delivered in RSA No. 1972/88 and other connected appeals, by the High Court of Punjab & Haryana at Chandigarh confirming the judgment of the first appellate court and decreeing the suits of the plaintiffs.
3. The plaintiffs, who are the respondents in these appeals, had filed suits for declaration and mandatory injunction against the appellant herein, namely, Jalandhar Improvement Trust (for short 'the Trust'), to allot them plots in lieu of lands acquired from them. The trial court in some cases decreed the suit and in others, dismissed the suit. In appeal, the first appellate court decreed all the suits and granted the relief prayed for. The Trust preferred second appeals before the High Court of Punjab & Haryana which confirmed the decree of the first appellate court, giving rise to these appeals. The claim of the respondents in all these appeals arises on the basis that they are all 'local displaced persons' who are entitled to a plot each in lieu of the lands acquired from them by the appellant-Trust, in view of the preference given to such local displaced persons under the allotment rules.
4. Acquisitions involved in these appeals are made under Section 36 of the Punjab Town Improvement Act, 1922 (for short 'the Improvement Act') which empowers the authorities concerned to prepare and publish improvement schemes within the local areas concerned. Section 73 thereof empowers the State Government to make rules consistent with the Act and applicable to all improvement trusts including the appellant herein.
5. The State Government exercising the power vested in it under Section 73 of the Improvement Act on 5.1.1954 notified the Jullundur Improvement Land Disposal Rules, 1954. Rule 2(b) of the said rules defines 'local displaced person' as a person whose property has been acquired by the Trust for the execution of a scheme under the Punjab Development of Damaged Areas Act, 1951 (for short 'the Damaged Areas Act'). Rule 5(ii) of the said Rules provides for certain preferential allotments in favour of local displaced persons, among others.
6. On 18.9.1975, the State Government promulgated Rules titled as "Utilisation of Land and Allotment of Plots by Improvement Trust Rules, 1975". Rule 2(a) thereof defines "'local displaced person' means 'a person who is the owner of a property acquired by the Trust for the execution of a

Scheme and has been such owner for a continuous period of two years immediately before the first publication of the Scheme by the Trust under Section 36 of the Punjab Town Improvement Act, 1922". Sub-rule (ii) of Rule 7 of the said Rules makes reservation of plots and tenants in favour of local displaced persons. On 22.12.1983, the State Government promulgated another Rules titled "The Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983". Rule 2(d) of the said Rules defines 'local displaced person' as follows :-

"Local displaced person" means a person who is the owner of any land acquired by the Trust for the execution of any scheme under the Act and who has been such owner for a continuous period of two years immediately before the first publication of such scheme by the Trust under Section 36."

Rule 4(2) of the said Rules provides for preferential allotment in favour of a local displaced person.

7. A perusal of the above Rules shows that so far as the 1954 Rules are concerned, the definition of 'local displaced person' is confined to a person whose lands have been acquired for a scheme to be executed under the Damaged Areas Act. It is not applicable to any other scheme. So far as the 1975 and 1983 Rules are concerned, the definition of 'local displaced person' applies to a person whose property has been acquired and who has been owner of such property for a continuous period of two years immediately before the first publication of the scheme by the Trust. Thus, it is seen from all these three set of rules that in order to have the benefit of a preferential allotment reserved for a local displaced person, there are contain qualifying standards. Unless and until a person who wants to take benefit of the preferential reservation qualifies to be a local displaced person, the said benefit is not available to him.

8. In the suits filed by the respondents, the main claim of the plaintiffs was that they were 'local displaced persons' inasmuch as under the various schemes executed by the Trust, their lands had been acquired and, therefore, they became local displaced persons entitled for preferential allotment in their favour. They also contended that the persons who are similarly situated as themselves, have been allotted plots on the basis of their being local displaced persons. Therefore, they are also entitled to the same. It was also contended on behalf of some of the respondents that the Trust had initially made allotments in their favour, pursuant to which they had even deposited certain sums of money, hence, it is not open to the Trust to cancel the allotments.

9. As stated above, the trial court decreed some of the suits and dismissed the rest of them. The first appellate court decreed all the suits and the same was confirmed by the High Court. It is contended on behalf of the appellant before us that none of the respondents-plaintiffs qualifies to be 'local displaced person' so as to entitle him for a preferential allotment under the category of 'local displaced person'. It was also contended that the courts below erroneously relied upon a decision of this Court in *M/s. Northern Carriers Pvt. Ltd. v. Jullundur Improvement Trust, Jullundur and others, 1983(2) SCC 5*. On behalf of the respondents it was contended that all the respondents qualify to be beneficiaries under the reservation made for local displaced persons because their lands have been acquired. Even otherwise, in view of the fact that similarly situated persons were allotted lands on preferential basis, they too are entitled to the same. Hence, the impugned judgments do not call for any interference.

10. Learned counsel for the appellant has furnished us a Chart showing the dates of Section 36 Notification in each of these cases and the year of purchase by the respective respondents of the

lands concerned. A copy of which was handed over to the learned counsel for the respondents and the statement made in the said Chart has not been controverted before us. From the said Chart, it is seen that the Notification under Section 36 applicable to the acquisitions of the respondents in these appeals are dated 7.6.1963, 27.8.1964, 7.11.1966 and 3.9.1974, a date anterior to the coming into force of the 1975 and 1983 Rules. It is not disputed in these cases, on the contrary it is admitted that the acquisitions made under the Notifications referred to above, are not made under the Damaged Areas Act. That being so, the definition as found in the 1954 Rules of 'local displaced person' does not apply to the acquisitions concerned in these appeals. If that be so, none of the respondents could claim a preferential allotment as contemplated under Rule 4(2) of the 1954 Rules. Therefore, the very basis of the claim of preferential allotment is *non est* in these cases. Assuming for argument's sake that the 1975 or 1983 Rules are applicable to the acquisitions in question even then a bare perusal of the statements in the Chart referred to above, shows none of these respondents qualifies to be a local displaced person even under those Rules because they have not been owners of the land acquired for a continuous period of two years immediately before the first publication of the scheme by the Trust under Section 36 of the Improvement Act. Therefore, none of these respondents qualifies to be a local displaced person for the purpose of preferential allotment of plots by the Trust. Since it is the respondents who claim preferential allotment under the Rules, the onus is on them to establish the fact that they do fall within the definition of the 'local displaced persons' so as to entitle them to the benefit of preferential allotment. In our view, the respondents-plaintiffs have failed to discharge this burden and the courts below have erred in presuming that the respondents were entitled to preferential allotment reserved for the category of local displaced person. As a matter of fact, it seems that the courts below have proceeded on the basis that all persons whose lands have been acquired for the execution of any scheme by the Trust, automatically become local displaced persons. This view of the courts below is unsustainable. The benefit of reservation made for local displaced person will be available only to such of those persons who fulfil the requirements of the definition of 'local displaced person' under the relevant Rules applicable to the acquisition of their property.

11. The lower appellate court and the High Court relied upon a decision of this Court in Northern Carriers's case (supra) for decreeing the suits. We have carefully perused the above judgment. In the said case, the appellant before this Court challenged the validity of a notice issued under Section 36 of the Improvement Act as also the Award dated 5.10.1972 made by the Collector, determining the compensation for the land acquired under the impugned Notification. This Court while refusing to quash the notice under Section 36 of the Act came to the conclusion that the amount awarded as compensation for the acquisition of the land was patently inequitable inasmuch as that while the appellant purchased the land from the Central Government at the price of Rs. 2,43,050/- on 25.6.1971, the Collector awarded the compensation only in amount of Rs. 1,10,561/-. Because of this inequitable situation, this Court enhanced the compensation to Rs. 2,43,050/- and in addition, directed payment of Rs. 50,000/- to the appellant for the improvements made in the acquired land. This Court, however, observed in para 9 of the judgment as thus : "Only one aspect remains to be dealt with. Dr. Chitale urged that whenever land of anyone was acquired for the purpose of scheme, each such owner, whose land was acquired, was allotted one plot admeasuring 1 Kanal at reserved price. We see no justification in treating the appellant differently." It is this observation that was relied upon by the courts below in support of its finding. With respect, we are unable to agree with the courts below on this aspect also. In Northern Carriers's case (supra) this Court did not have an opportunity of analysing the definition of local displaced person nor did it have an occasion to consider the applicability of the reservations made under various allotment rules. The observation made in para 9 of the said judgment was based on a submission of the learned counsel and not based

on any principle of law. Therefore, we are of the opinion that the said judgment does not lay down as a proposition of law that every person whose land is acquired for the purpose of execution of a scheme under the Improvement Act will be entitled to preferential allotment of a plot as a 'local displaced person'. In the said view of the matter, we are of the opinion that the reliance placed on Northern Carriers' (supra) by the lower appellate court and the High Court is erroneous.

12. The High Court as well as the lower appellate court also relied upon the fact that the Trust had made similar preferential allotments as local displaced person in favour of other persons. Therefore, the courts below came to the conclusion that even the plaintiffs-respondents were entitled to such allotment. In our opinion, before coming to this conclusion the courts below should have first decided the question whether the allotment in favour of those persons was within the scope of the Rules applicable. If it was not within the scope of the Rules then even those allotments in favour of other persons will not create a right in the respondents to claim equality with them; may be, if the allotments were made wrongly in favour of those persons, the same may become liable for cancellation, if permissible in law, but that will not create an enforceable right on the respondents to claim similar wrongful allotments in their favour. In our opinion, even this ground relied upon by the High Court as well as the lower appellate court is unsustainable. The courts below next relied upon the fact that in regard to some of the respondents, the Trust itself at a point of time made allotments and accepted initial deposits towards the consideration of the plot which was subsequently cancelled. Based on those facts, the courts below held that the Trust having once allotted the plots and having collected part of the consideration, it could not have cancelled the allotments, probably basing the respondents' case on the principle of promissory estoppel. Here the courts below have failed to notice the legal principle that there is no estoppel against law. The allotment of plots by the Trust is controlled by the statutory Rules. Any allotment contrary to those Rules will be against the law. Since the allotments made in favour of some of the respondents was based on wrong application of the reservation made for "local displaced person" those allotments were contrary to law. Hence, the principle of promissory/equitable estoppel cannot be invoked to protect such illegal allotments. In the said view of the matter, we are unable to sustain the judgments and decrees impugned in these appeals.

13. However, we were told at the Bar that the amount deposited by some of the respondents/allottees is still with the Trust. If so, they are entitled to get back those deposits without driving them to other legal proceedings. We direct the Trust to refund all such amounts deposited pursuant to the allotments in question made in favour of such of those respondents herein, with 12 per cent interest per annum from the date of deposit till the date of payment.

14. For the reasons stated above, three appeals are hereby allowed, setting aside the judgments and decrees impugned in these appeals. No costs.

Appeals allowed.