

(2012) 07 P&H CK 0301

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2264 of 2010 (O and M)

Ludhiana Improvement Trust

APPELLANT

Vs

Kulwinder Singh

RESPONDENT

Date of Decision: July 10, 2012

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2012) 4 RCR(Civil) 795

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Samrath Sagar, for the Appellant; S.S. Salar, for the Respondent

Judgement

K. Kannan, J.

Civil Revision is filed at the instance of a Ludhiana Improvement Trust against a direction of the Executing Court to make an allotment for sale of the property to the decree holder at the rate of Rs. 2,580/- per square yard. The contention is that the Executing Court did not have a power to traverse beyond the decree which merely had spelt out a decree holder's entitlement to be allotted a plot of 500 square yards and nowhere contained any direction that it should be for a particular price. The order passed by the Executing Court is sought to be supported by the decree holder by drawing reference to the nature of suit that has been instituted initially. The suit had been filed for a declaration that he was entitled to get one plot measuring 500 square yards to be allotted to him according to the rules made under the Town Improvement Act as "local displaced person" and for a mandatory injunction directing the Trust to allot a plot to the plaintiff as such Misplaced person". Although suit had been dismissed, the appellate Court reversed the decision and held that he was entitled to be allotted a plot. The implication was that the plaintiff's contention of his right of allotment as a "local displaced person" was accepted by the Court. This decision was confirmed by this Court in RSA No. 2699 of 1997 and still later by the Supreme Court in Civil Appeal No. 1487 of 2003, dated 29.08.2006. The decisions

of the High Court as well as of the Supreme Court do not also stipulate any particular price. After securing a decree, it appears that the petitioner had made a request for an allotment and when the Improvement Trust called upon the petitioner to pay twice the reserved price, namely, Rs. 5,160/- per square yards for 500 square yard of allotment of plot, the decree holder demurred and was prepared to deposit only 1/4th of the reserved price of Rs. 2,580/-. This was returned by the Improvement Trust as not in fulfillment of the requirement as per rules. The Executing Court proceeded to accept the contention of the decree holder, determined the price at Rs. 2,580/- per square yards and directed the enforcement of the decree on such a basis.

2. The learned counsel for the Trust would contend that the allotment of the property could have been only at the rate at which the property was to be allotted under the Rules and Rule 4(2) of the Punjab Town Improvement (Utilization of Land and Allotment of Plots) Rules of 1983 provided that a "local displaced person" would be allotted a residential plot on a reserved sale price in accordance with the criteria stipulated under the Rules, provided further that he applied for such allotment in Form "A" within a period of 3 years from the date of taking over the possession of his land acquired by the Trust. The learned counsel for the petitioner would contend that the price must therefore be fixed only with reference to the period before when the application could have been filed for allotment. Since the decree holder had not filed such an application, the price could not be at the rate at which the property could have been offered if he had filed an application within 3 years. I reject this argument as meaningless, for, the stipulation of period of 3 years must be taken as judicially become unworkable when the Court had granted a decree. If the plaintiff's right could have been defeated by the fact that he did not apply within 3 years that should have been a ground of dismissal of the suit itself. If the Trust has suffered a decree by a direction for allotment of a plot, the Trust shall be barred by res judicata from taking a plea that such an application had not been filed within 3 years period.

3. The Rules only provide for a reserved sale price in accordance with the guidelines specified in the annexures. When the Trust was making a demand for Rs. 5,160/-, it was attempting to work a right at twice a reserved price by invoking Rule 6. Rule 6 of the 1983 Rules cannot apply to a person, who was claiming an allotment as a "local displaced person". To him, the fixation of reserved price shall be in the manner provided under Rule

4. The decree holder was actually relying on yet another allotment which was made to a person by name Avtar Singh, who had secured a similar direction from the Consumer Forum for an allotment and for the allotment made in the year 2009, the price stipulated was Rs. 2,580/-. The actions of a public authority ought to satisfy the test of equality under Article 14 and, therefore, the price that was offered to another allottee ought to prevail for the decree holder as well. If the decree holder was, therefore, relying on an allotment of Avtar Singh at a particular rate as the basis for

his own liability, it was fair enough that he made the payment at the same rate and sought for sale to be concluded. If the Trust has dithered and it has delayed the process by returning the money, it cannot secure higher price or ask for redetermination of a price as per the present market conditions. The price at Rs. 2,580/- shall be taken as frozen on the date when the decree holder made payment of 1/4th of Rs. 2,580/- as per the Rules and expressed himself willingly to pay the balance of amount in 6 installments as the Rules stipulated. Having regard to the fact that 6 month's period would have expired now, I direct that the decree holder deposits within 30 days from the date of receipt of copy of this order the entire amount calculated @ as Rs. 2,580/- per square yard to the Trust. If there is any default in payment, the right secured will be taken to have been rescinded. On such deposit, the sale deed in the manner known to law shall be executed and the registration expenses shall be borne by the purchaser and possession delivered as per the procedure contemplated under the Rules. The civil revision is disposed of with the above directions.