

***** Vs. State of Punjab and Others

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Court : Punjab and Haryana

Decided On : Sep-17-2013

Appellant : *****

Respondent : State of Punjab and Others

Judgement :

CWP No.25121 of 2012 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH ***** CWP No.25121 of 2012 Date of Decision:17.09.2013 *****
Smt.

Narinder Kaur .

.Petitioner Versus State of Punjab and others .

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Respondents ***** CORAM: HONBLE MR.JUSTICE RAKESH KUMAR JAIN *****
Present: Mr.Sunil Chadha, Advocate, for the petitioner.

Mr.Suresh Singla, Addl.

A.G.Punjab.

Mr.J.S.Hooda, Advocate, for respondent No.5.

Mr.Ashwani Prashar, Advocate, for respondent No.6.

***** RAKESH KUMAR JAIN, J.

The case set up by the petitioner is that she is a registered member of the Atam Nagar Cooperative House Building Society Limited.

[for short the Society].and was allotted a plot measuring 125 sq.

yards bearing No.1392, at Model Town Extension, Block-D, Ludhiana.

The plot was allotted to the petitioner on 14.2.1983 but possession was not delivered on account of its non-availability.

However, the plot No.1392-D measuring 125 Sq.

Yards, allotted to the petitioner, was reallocated/converted into plot No.1199-D measuring 100 Sq.

Yards at Model Town Extension Part II, CWP No.25121 of 2012 -2- Atam Nagar, Ludhiana.

Since, the petitioner had already deposited a substantial amount in regard to the earlier plot No.1392-D, she applied for issuance of No Dues Certificate with respect to the newly allotted plot No.1199-D for which a resolution No.7(5) dated 31.10.2010 was passed by the Society to issue No Due Certificate to the petitioner in respect of plot No.1199-D.

The relevant portion of the Resolution is reproduced is as under: - Resolution No.7(5):- It is passed that Smt.

Narinder Kaur wife of S.

Amrik Singh daughter of S.

Dhian Singh resident of Old Address Salem Tabri, Ludhiana New Address House No.2799 Phase-7, Mohali, Punjab was allotted plot No.1392-D measuring 125 sq.

yards on 14.2.83 by the Society.

However, since the said plot was not available at the site, therefore, this member was allotted alternative plot No.1199-D measuring 100 sq.

yards.

As per the register of the members membership number of Smt.

Narinder Kaur is 529.

Now Smt.

Narinder Kaur through her affidavit and written application has requested the President of the Society that she be allotted No Dues Certificate CWP No.25121 of 2012 -3- in respect of aforesaid plot.

Only after receiving the balance amount in respect of aforesaid plot along with interest @ 10% per annum from Smt.

Narinder Kaur, No dues Certificate be issued.

Approved.

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It is pertinent to mention that the petitioners membership number in the Society is 529.

One Surjit Kaur wife of S.

Pritam Singh, who was also a registered member of the Society having membership No.456 was allotted Plot No.1370 at Model Town Extension, Block-D, Ludhiana measuring 125 sq.

yards and was also not given possession of the said plot, filed a reference under Section 55 of the Punjab Cooperative Societies Act, 1961 [for short the Act].against the Society which was decided on 30.4.2007 by the Assistant Registrar Cooperative Societies, Ludhiana West (Arbitrator).in which a direction was issued that whenever any plot or land is available to the Society, the said plot

be allotted to the petitioner on priority basis. After the aforesaid order, on coming to know that Resolution dated 31.10.2010 passed by the Society was only with regard to No Dues Certificate in favour of the petitioner in respect of plot No.1199-D measuring 100 sq.

yards which was allotted way back on 11.1.1999, through letter dated 17.1.1991, Maninder Kaur, who is the daughter of Smt.

Surjit Kaur, who stepped into her shoes after the demise of her CWP No.25121 of 2012 -4- mother, sought another reference under Section 55 of the Act wherein she prayed for cancellation of the Resolution dated 31.10.2010 and for complying with the order dated 30.4.2007 passed by the Assistant Registrar Cooperative Societies, Ludhiana West (Arbitrator). In the said reference, it was alleged that the petitioner has failed to deposit full price of plot No.1392-D, allotted to her vide allotment letter dated 14.02.1983, therefore, action of the Society in allotting the said plot to her and issuance of No Due Certificate in her favour on receiving the balance amount with interest @ 10% per annum was wrong.

However, vide Award dated 24.6.2011, the Assistant Registrar, Cooperative Societies, Ludhiana allowed the reference of Maninder Kaur and cancelled Agenda/Resolution No.7(5) dated 31.10.2010 passed by the Society and directed the Managing Committee to allot the plot to respondent No.6 on seniority basis.

Feeling aggrieved against the order dated 24.6.2011, the petitioner preferred Statutory Appeal under Section 68 of the Act which was dismissed by the Deputy Registrar, Cooperative Societies, Ludhiana on 3.11.2011 holding that since the petitioner had failed to deposit the payment as per allotment letter, her plot ought to have been cancelled by the Society and requisite information ought to have been furnished to the Improvement Trust, Ludhiana and in case, Improvement Trust, Ludhiana has allotted a plot in favour of the petitioner, the Society ought to have represented to the Improvement Trust that the CWP No.25121 of 2012 -5- said plot ought to have been allotted in favour of respondent No.6 on seniority basis.

The petitioner then preferred revision under Section 69 of the Act which was dismissed on 22.10.2012 by the Joint Registrar (Planning). Cooperative Societies, Punjab.

It is argued by learned counsel for the petitioner that the petitioner was allotted plot on 14.2.1983 measuring 125 sq.

yards bearing No.1392 at Model Town Extension, Block-D, Ludhiana being a registered member of the Society and since the said plot was not available at the site, therefore, on 11.1.1991 along with other persons, Plot No.1392-D measuring 125 sq.

yards was converted into Plot No.1199-D measuring 100 sq.

yards instead of challenging the said action of the Improvement Trust, Ludhiana, whereby although amongst various plots, Plot No.1392-D was converted into Plot No.1199-D but Plot No.1370-D which was allotted in favour of Surjit Kaur (predecessor-in-interest of respondent No.6).was not converted into any plot though the said plot was also rightly not available at the site and Surjit Kaur filed reference under Section 55 of the Act which culminate into passing of an order on 24.6.2011 in which it was directed that in case of availability of any plot, the same shall be offered to Surjit Kaur on priority basis.

It is further submitted that the subsequent reference at the instance of Maninder Kaur daughter of Surjit Kaur, on the ground that she is senior in membership than the petitioner and should CWP No.25121 of 2012 -6- be allotted the plot which has been allotted to the petitioner, has been illegally and wrongly allowed and the said order has been maintained by the Higher Authorities without application of mind.

Learned counsel for the petitioner has submitted that there is no dispute that the predecessor-in-interest of respondent No.6 was registered as a member at No.456 whereas the petitioner is at No.521 but as per the order dated 30.4.2007, the predecessor-in-interest of the petitioner has been held entitled to any other plot holding that therefore, I order that whenever any plot or land is available to the Society, the said plot be allotted to the petitioner on priority basis. It is argued that

the direction contained in the order dated 30.4.2007 is prospective in nature and would not relate back to a plot which is already allotted to the petitioner.

In reply, learned counsel for the respondents has submitted that respondent No.6 is senior to the petitioner and plot No.1199-D allotted to the petitioner should have been allotted to respondent No.6 against plot No.1370-D which was also not available at the site.

I have heard learned counsel for the parties and on perusal of the record, I am of the considered opinion that the writ petition deserves to be allowed because admittedly, when the petitioner was allotted plot No.1392-D on 14.2.1983 measuring 125 sq.

yards, she had deposited the sale consideration.

The said plot was not found at the site and a CWP No.25121 of 2012 -7- list was prepared of those plots on 17.1.1991 subject to exchange of plot in lieu of the abandoned area.

In this list, the number of plot of respondent No.6 bearing 1370-D is not mentioned rather number of plot bearing 1392-D allotted to the petitioner is specifically mentioned and the exchanged plot measuring 100 sq.

yards is also mentioned as 1199-D.

The said document is duly signed by the Chairman of the Improvement Trust, Ludhiana.

Thus, it is clear that the petitioner has allotted plot in exchange way back on 17.1.1991 and the reference preferred by the predecessor-in-interest of respondent No.6 under Section 55 of the Act was allowed on 30.4.2007 in which the language of the direction is categorically indicate for an action in future as it says that whenever any plot or land is available to the Society, the said plot be allotted to the petitioner on priority basis., meaning thereby, it does not talk of any plot or land which has already allotted rather it talks of the plot or the land which is likely to be available or discovered in future and if such plot is made available then

the preference is ordered to be given to respondent No.6, who has illegally been ordered to be allotted plot of the petitioner on the basis of preference on the ground that there is a provision in the Instructions that the allotment of plots/flats shall be made strictly on the basis of seniority as per the list and since respondent No.6 is senior to the petitioner, therefore, the plot which was allotted to the petitioner in the year 1991 is sought to be taken from CWP No.25121 of 2012 -8-her.

This action is patently illegal, arbitrary and unsustainable, and hence the impugned orders are hereby set aside protecting the right of respondent No.6, given to her vide order dated 30.4.2007, which may be used in respect of the land or plot which may be made available to the Society on or after 30.4.2007 and not before that.

(RAKESH KUMAR JAIN) 17.09.2013 JUDGE Vivek Pahwa Vivek 2013.09.20
16:23 I attest to the accuracy and integrity of this document

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