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STATE OF PUNJAB AND ANR.

v.

MEWA SINGH

MARCH 23, 2006

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[ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.]

URBAN DEVELOPMENT:

C

Scheme for allotment of plots—In lieu of land acquired by the State—Claim for allotment by co-sharer—Writ Petition on the question of entitlement of group of co-sharers—No relief granted for the co-sharer in question—Application of co-sharer for allotment agreeing to prevalent rate of land—Allotment made—Rate of land questioned in Writ Petition—High Court granting relief directing the rate prevalent in 1985 to be applied—On appeal, held: The

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co-sharer could not question the rate of land as he was not entitled to the relief given in the earlier proceedings before the court because therein no relief was granted to him—He had also agreed to pay the prevalent rate.

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Appellants had framed a scheme for allotment of residential plots to the eligible persons whose land was acquired for urban development. Respondent claiming to be co-sharer to the extent of 1/4th in a piece of land, made application in 1980 to the effect that he alone was entitled to the plot under the scheme.

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On the question of entitlement of a group of co-sharers a Writ Petition was filed before High Court wherein respondent herein was one of the appellants. Therein no relief was granted to some of the Writ Petitioners including the respondent herein as no relief was claimed qua them. In appeal thereagainst, no discussion was made qua the respondent herein in view of the fact that his case was not pressed before the High

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Court. In appeal to this Court also no relief was granted to him.

Respondent applied for allotment with the appellant. In the affidavit accompanying its letter, the respondent had indicated that he was agreeable to the prevalent rates of Punjab Urban Planning and

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Development (PUDA). Accordingly in 2001 allotment letter was issued fixing the rate. Respondent filed Writ Petition, questioning the rate fixed. High Court granted relief directing the rate prevalent in 1985 was to be applied. Hence the present appeal. A

Allowing the appeal, the Court B

HELD: 1. The judgment of the High Court is unsustainable on several counts. The first fallacy in the High Court's judgment is that it proceeded on the assumption that in the earlier Writ Petition relief had been granted to the respondent. On the contrary High Court's order clearly indicates that no relief was claimed so far as the present respondent is concerned. Therefore, the question of respondent being entitled to relief given to other writ-petitioners and the respondents in the civil appeal before this Court does not arise. The respondent himself in the affidavit accompanying the letter had clearly indicated that he was agreeable to the prevalent rates of PUDA. [219-D-F] C D

2. In case the respondent deposits the amount payable pursuant to the allotment letter within three months from the date of the judgment, the appellants shall allot the land and deliver possession. [219-H; 220-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4006 of 2004. E

From the Judgment and Final Order dated 17.7.2003 of the Punjab and Haryana High Court in C.W.P. No. 12393/2001.

Altaf Ahmed and Mrs. Rachana Joshi Issar for the Appellants. F

Manoj Swarup, Neeraj Sharma, Naresh Kaushal, Dinesh Verma, Ms. Suresh Kumari, A.P. Mohanty, G.K. Bansal (N.P.), R.K. Talwar, S.S. Virk, Amit Talwar and S.L. Aneja for the Respondent.

The Judgment of the Court was delivered by G

ARIJIT PASAYAT, J. Challenge in this appeal is to the judgment rendered by a Division Bench of the Punjab and Haryana High Court directing appellants to allot a plot to the respondent at the rate which was prevalent in the year 1985. It was, however, directed that respondent has to pay interest H

A @ 12% from 1985 upto the date of actual payment after adjustment of Rs.13,700/- which had already been paid as sale consideration. The order was passed in a writ petition filed by the respondent seeking a direction to the present appellants to modify the price indicated in the allotment letter dated 13.7.2001. The rate indicated was Rs.3,200/- per square yard.

B Background facts in a nutshell are as follows:-

The appellants acquired land belonging to several persons for the purpose of urban development of SAS Nagar, Mohali (Punjab). The award was made on 24.3.1976. The respondent was claiming to be co-sharer to the extent of 1/4th in the land so far as an area of 66 Kanals 9 Marlas of land is concerned. The appellants had framed scheme known as "Scheme of 1974" for allotment of residential plots to the eligible persons whose land was acquired for the aforesaid purpose. The respondent made an application on 6.3.1980 taking the stand that he alone was entitled to the allotment of the residential plot under the scheme. There were certain changes made in the scheme with which we are not concerned. On the question of entitlement of a group of co-sharers a writ petition was filed before the Punjab & Haryana High Court numbered as writ petition no.4837/1981. The respondent was petitioner no.6. By order dated 4.5.1982, relief was granted to the writ-petitioners except writ-petitioner nos. 1, 6, 7 and 15. As noted above, the respondent was writ-petitioner no.6. In the said order it was clearly indicated as follows:-

"Before parting with the judgment, it is made clear that Mr. Ajmer Singh has not claimed any relief qua petitioners Nos. 1, 6, 7 and 15."

F The matter was carried before this Court in CA No.168/1983. By order dated 11.9.1997 the appeal filed by the present appellants was dismissed. Here again, the entitlement of respondents in the civil appeal was decided, but so far as respondent Mewa Singh is concerned, no discussion was made in view of the admitted position that his case was not pressed before the High Court. The respondent filed petition before the appellant praying for allotment. G The letter written by the respondent dated 8.9.2000 related to allotment of plot against the original registration No.9895 in the oustees category. In the accompanying affidavit it was clearly indicated that he was agreeable to the prevalent rates of Punjab Urban Planning and Development (in short 'PUDA'). Accordingly on 13.7.2001 allotment letter was issued. It was clearly mentioned H therein that tentative price of the plot was Rs.8,40,000/- calculated

@ Rs.3,200/- per square yd. Questioning the rate fixed, the writ petition was filed and as noted above the High Court granted relief directing the rate prevalent in 1985 was to be applied. A

In support of the appeal, Mr. Altaf Ahmad, learned Senior counsel submitted that the High Court has erroneously proceeded on the basis as if in the earlier order passed in the writ petition, relief had been granted to the respondent. It is to be noted that the awards were dated 24.3.1975, 20.2.1996 and 14.8.1996. In view of the fresh allotment made the rate prevalent which the respondent himself had agreed to pay was applied. B

On the other hand, learned counsel for the respondent submitted that there was confusion about the entitlement for the plot where co-sharers were involved. The principles relating to allotment were decided earlier by the decision of the High Court and the order of this Court. Therefore, the High Court was justified in directing application of rate of 1985. C

The judgment of the High Court is unsustainable on several counts. The first fallacy in the High Court's judgment is that it proceeded on the assumption that in the earlier writ petition relief had been granted to the respondent. On the contrary, the portion of the High Court's order as quoted above clearly indicates that no relief was claimed so far as the present respondent is concerned. Therefore, the question of respondent being entitled to relief given to other writ-petitioners and the respondents in the civil appeal before this Court does not arise. D

Admittedly, the respondent himself in the affidavit accompanying the letter had clearly indicated that he was agreeable to the prevalent rates of PUDA. This is clearly stated in the paragraph 6 of the affidavit accompanying respondent's letter dated 8.9.2000. There is no dispute that at the time allotment was made by the allotment letter dated 13.7.2001, the rate was Rs.3200/- per sq. yd. E

Above being the position, the High Court's direction to the appellants to charge rate prevalent in the year 1985 is clearly unsustainable. Learned counsel for the respondent submitted that the respondent is willing to pay at the rate indicated in the allotment letter dated 13.7.2001. In case the respondent deposits the amount payable pursuant to the allotment letter within three months from today, the appellants shall allot the land and deliver possession G

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A within two weeks from the date of the payment of the amount due which is to be calculated by the appellants.

The appeal is allowed but in the circumstances without any order as to costs.

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K.K.T.

Appeal allowed.