

BALJIT SINGH

v.

IMPROVEMENT TRUST LUDHIANA & ANR.

(Civil Appeal No. 9 of 2009)

JANUARY 6, 2009

[ALTAMAS KABIR AND MARKANDEY KATJU, JJ.]

URBAN DEVELOPMENT:

Allotment of plot – Under 'locally displaced person' Scheme – Change to plot in question effected in lieu of original allotment – Allottee transferring the plot with permission of Trust – Transferee denied possession on the ground that original allottee did not fulfil the condition of 'locally displaced person' and subsequent change was effected by an officer not competent to do so – HELD: Trust was right in holding that transferee did not acquire any right independent of the transferor – However, since transfer was effected with approval of the Trust before the allotment was cancelled, Trust directed to consider the case of transferee in view of his willingness to pay such additional amount as may be levied for a fresh allotment, provided the plot in question has not been reallocated in the meantime.

The appellant, with the permission of the respondent-Improvement Trust, acquired on 11.5.1989 a plot from the original allottee, who had earlier been allotted a different plot and later a change to the plot in question was effected in her favour in lieu of the original allotment. However, the appellant was denied possession on the ground that the original allottee was not a 'Locally Displaced Person' which was the eligibility criteria for allotment of plots under the Scheme, and the subsequent change in allotment was effected by an office who was neither authorized nor entitled to do so. The writ petition

A of the appellant was dismissed by the High Court holding that he being a transferee, did not have any right in the plot independent of his transferor.

B In the appeal filed by the transferee the question for consideration before the Court was: "Can a person who is a transferee of a plot of land allotted to the transferor by the Improvement Trust, claim a right to continue with such allotment even after the same is cancelled, particularly, when such transfer was effected with the approval of the Trust?"

C Disposing of the appeal, the Court

D HELD: 1.1. The Chairman of the respondent-Trust rightly passed the order dated 11.2.2004, that notwithstanding the fact that the transfer of the plot in favour of the appellant had been duly approved by the Trust, the appellant did not acquire any independent right in the plot and he only acquired whatever rights the transferor or the original allottee had therein. The defect in the allotment made in favour of the original allottee, on account of her ineligibility to avail of the Scheme for rehabilitation of locally displaced persons, was inherited

E by the appellant as her transferee. [Para 11] [6-F-H]

F 1.2. However, since the transfer had been effected in appellant's favour with approval of the Trust before the allotment was cancelled, his case could have been treated differently in the special facts thereof. While the allotment of plot had been made in favour of the original allottee on 28th October, 1982, it was after almost seven years

G that the order of cancellation of such allotment was passed by the Trust, during which period not only had the allotment been altered from one plot to another plot, but even the transfer in favour of the appellant had also taken place. [Para 11] [7-A-C]

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1.3. The judgment and order of the High Court dated 30th January, 2006, and the order of the Chairman, Improvement Trust, dated 11th February, 2004, are modified and the Chairman of the Trust is directed to reconsider the case of the appellant in view of his willingness to pay such additional amount as may be levied for a fresh allotment of the plot in question in his favour, after giving him a reasonable opportunity of being heard, in the event the said plot has not been re-allotted in the meantime. [Para 12] [7-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9 of 2009.

From the final Judgment and Order dated 30.1.2006 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 11844 of 2004.

R.K. Kapoor and Anis Ahmed Khan for the Appellant.

Subramaniam Prasad, Varuna Bhandari Gugnani and Rameshwar Prasad Goyal for the Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. Can a person who is a transferee of a plot of land allotted to the transferor by the Improvement Trust, Ludhiana, claim a right to continue with such allotment even after the same is cancelled, particularly when such transfer was effected with the approval of the Trust, is the question for consideration in the instant appeal.

3. There is no dispute that on 28th October, 1982, one Smt. Shammi Verma was allotted plot No.94-D in the Development Scheme of 256 Acres at Balmik Nagar, Ludhiana, under Memo No.9913 dated 26th October, 1982 issued by the Improvement Trust, Ludhiana. Although, Smt. Verma deposited

A the amounts which were required to be paid against such
allotment, she was informed by the respondent No.1 by its letter
dated 2nd January, 1989, that the Trust was unable to make
over possession of the plot to her. Subsequently, Smt. Verma
was allotted another plot, being No.91-B and an agreement to
B sell was also executed in her favour.

4. On 11th May, 1989, the appellant herein acquired the
said plot No.91-B from Smt. Verma and such transfer was also
permitted by the Trust. Surprisingly, however, three months later
on 14th August, 1989, when the appellant applied for approval
C of the site plan submitted by him, he came to learn that the
allotment of plot No.91-B in favour of Smt. Shammi Verma had
been cancelled on the ground that such allotment had been
made by one Shri S.S. Mann, who was not competent to make
such allotment. The appellant allegedly made various
D representations to the respondent Trust and also to the
Government and on consideration thereof the Trust was
directed by the Government to restore the plot in question to
the appellant and consequently the allotment in favour of Smt.
Verma stood restored. It is the case of the appellant that since
E the interest of Smt. Verma devolved upon him as her approved
transferee, possession of plot No.91-B ought to have been
made over to him.

5. However, since the appellant was unable to obtain any
F relief from the respondents, he filed Civil Writ Petition No.17103
of 2003 before the High Court seeking directions upon the
respondents to allot any alternative plot to the appellant in lieu
of plot No.94-D in Balmik Nagar, Ludhiana. While disposing of
the writ petition on 31st October, 2003, the High Court directed
G the respondents to pass an appropriate speaking order on the
appellant's representation within four months from the date of
the order upon production of a certified copy thereof. Pursuant
to the said directions, the Chairman of the Trust heard the
appellant on 11th February, 2004, but rejected his claim on the
ground that although the plot in question had been allotted to
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Smt. Shammi Verma as a Local Displaced Person, she was not the owner of any portion of the land acquired by the Trust and was not a Displaced Person, which was the eligibility criteria for coming under the Scheme. Even the subsequent change in the allotment was effected by an officer who was neither authorized nor entitled to do so. A
B

6. The decision of the Chairman of the Trust was challenged by the appellant in Writ Petition No.11844 of 2004, wherein various reliefs were prayed for and in particular for restoration of plot No.91-B, Rajguru Nagar, Ludhiana. On being served with notice, the respondents herein filed their written statement on 23rd December, 2005, claiming that since the predecessor-in-interest of the appellant was ineligible for allotment of the plot in her name, the appellant could not get a better right than she enjoyed in respect of plot No.91-B subsequently offered to her in lieu of plot No.94-D. C
D

7. The High Court dismissed the writ petition by holding that the appellant did not have any independent right in the plot and as a transferee his fortunes depended on the fortunes of the transferor. The High Court having dismissed the civil writ petition, any claim made by the appellant either over plot No.94-D or plot No.94-B also stood rejected. However, according to the appellant, since a mistake had been committed by the respondents themselves at the initial stage and various transactions had already taken place in respect of the plot in question, the cancellation of the allotment which stood transferred to the appellant with the permission of the Trust and its authorities, was unacceptable. However, as indicated hereinbefore, the said argument did not find favour with the High Court, which dismissed the writ petition, which has given rise to the present appeal. E
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8. On behalf of the appellant it was urged that the transfer effected in his favour with the approval of the Trust created an interest in the plot in his favour which was independent of and not dependent on the allotment made in favour of Smt. Shammi H

A Verma. It was urged that after the transfer was effected in his
name on 11th May, 1989, a fresh right accrued in the
appellant's favour and Smt. Verma ceased to have any interest
in the plot thereafter and, in any event, she had no subsisting
right in the plot on 14th August, 1989, when the allotment was
B cancelled.

9. It was also urged that the amounts deposited for
allotment of the plot had yet to be refunded and if the
respondents were determined to re-allot the plot on fresh terms,
the appellant was willing to pay any additional amount that
C might be imposed to retain the plot or even for a fresh allotment
in his name, in the special facts of the case.

10. The submissions made on behalf of the appellant were
vehemently opposed on behalf of the respondents and on their
D behalf it was maintained that since the predecessor-in-interest
of the appellant, Smt. Shammi Verma, was not eligible for
allotment of any plot under the Scheme, the allotment had been
rightly terminated and the appellant could not derive any right
thereto on account of the transfer made in his favour. According
E to the respondents, the appellant would have to sink or swim
with the fortunes of his transferor as no independent right had
been acquired by him by virtue of such transfer.

11. Having considered the submissions made on behalf
of the respective parties and the materials on record, we are
F unable to accept the case as made out on behalf of the
appellant. We agree with the Chairman of the Trust that
notwithstanding the fact that the transfer of the plot in favour of
the appellant had been duly approved by the Trust, the appellant
did not acquire any independent right in the plot and he only
G acquired whatever rights the transferor or the original allottee
had therein. The position may have been different if after the
transfer a fresh allotment had been made in favour of the
appellant. The defect in the allotment made in Smt. Shammi
Verma's favour, on account of her ineligibility to avail of the
H Scheme for rehabilitation of Locally Displaced Persons, was

inherited by the appellant as her transferee. The view taken by the Chairman of the Trust in his order dated 11th February, 2004 and affirmed by the High Court, cannot be faulted. However, since the transfer was effected in the appellant's favour with the approval of the Trust before the allotment was cancelled, the appellant's case could have been treated differently in the special facts thereof. While the allotment of the plot was made in Smt. Verma's favour on 28th October, 1982, it was after almost seven years that the order of cancellation of such allotment was passed by the Trust, during which period not only had the allotment been altered from one plot to another plot, but even the transfer in favour of the appellant had taken place.

12. We, accordingly, dispose of the appeal by modifying the judgment and order of the High Court dated 30th January, 2006, and the order of the Chairman, Improvement Trust, Ludhiana dated 11th February, 2004, and directing the said Chairman to reconsider the case of the appellant in the light of the submissions made on his behalf that he was willing to pay such additional amount as may be levied for a fresh allotment of the plot in question in his favour, after giving the appellant a reasonable opportunity of being heard, in the event the said plot has not been re-allotted in the meantime. Such consideration must be completed by the Chairman of the Trust within two months from the date of communication of this order and in the event the plot in question has not been re-allotted, the same shall not be re-allotted until a decision is arrived at in terms of the directions given in this order.

13. In the facts of the case, the parties will bear their own costs.

R.P.

Appeal disposed of.