IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

S.No.110

RSA-3644-2000 (O&M)
Date of decision : 26.5.2025

Tarlochan Singh Thind

... Appellant

VERSUS

Ludhiana Improvement Trust

... Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sanjiv Gupta, Advocate,
for the appellant.

Ms. Kavita Arora, Advocate,
for the respondent.

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PANKAJ JAIN, J. (Oral)

The plaintiff is in second appeal. The plaintiff filed suit seeking permanent injunction restraining the defendant from taking forcible possession of plot bearing No.90-B as described in the headnote of the plaint (hereinafter referred to as, "the plot in dispute"). Later on, the suit was amended and relief of declaration qua the order of cancellation dated 04.08.1989 was incorporated.

2. As per case of the plaintiff, one Sital Verma son of Hans Raj Verma was allotted plot measuring 500 square yards bearing No.92-D in 256 acre Scheme situated in Maharishi Balmiki Nagar, Ludhiana being a local displaced person vide memo dated 26.10.1982.

3. The plot was allotted @ Rs.98 per square yard. Out of the total sale consideration of ₹ 49,000/-, Sital Verma made payment of ₹33,585/- to

the Improvement Trust. The possession of the plot could not be delivered. The defendant vide communication dated 02.01.1989 expressed their inability to deliver possession in Maharishi Balmiki Nagar, Ludhiana and offered to allot plot bearing No.90-B measuring 500 square yards in 129 Acre scheme in Raj Guru Nagar, Ludhiana on same terms and conditions. Sital Verma was required to deposit differential reserve price. An amount of ₹ 31,750/- was deposited against receipt No.19490 dated 04.04.1989.

4. Sital Verma executed agreement to sell in favour of the plaintiff. Sital Verma having agreed to sell the plot applied for transfer thereof in the name of the plaintiff. The transfer charges were deposited. Request made by Sital Verma, the original allottee was accepted. The plot was transferred in the name of the plaintiff vide memo dated 11.05.1989. The sale deed was executed in favour of the plaintiff by defendants No.1 and 2 and was registered on 29.05.1989.

5. The plaintiff submitted building plan for construction over the plot vide application No.514 dated 23.05.1989. The site plan were sanctioned on 03.07.1989. As per plaintiff, it is only in the midst of construction that he came to know that allotment in the name of the original allottee has been cancelled and the sanction of building plan stands revoked. The plaintiff, relying upon the sale deed in his favour, filed the present suit questioning the action of the defendants seeking protection of his rights.

6. The suit was contested by the defendants filing joint written statement. As per defendants, the then Executive Officer was not competent to allot the plot in question and thus, the original allotment itself being bad, subsequent transfer cannot be held to be legal. On merits, allotment of plot

No.92-D in favour of Sital Verma was admitted though it was claimed that Sital Verma illegally procured the same from the Executive Officer.

7. On the basis of the pleadings, the following issues were framed :-

1. *Whether Sital Verma had deposited total sale consideration of the plot in dispute? If so, to what effect? OPP.*
2. *Whether Sital Verma was allotted the disputed plot in lieu of the plot allotted to him in Balmiki Nagar Ludhiana. If so, to what effect? OPP*
3. *Whether S.S.Mann, Executive Officer of the Improvement Trust Ludhiana, was competent to allot to the plaintiff in lieu of the plot allotted to him (Sital Verma) in Balmiki Nagar, Ludhiana? OPD*
4. *Whether the Improvement Trust was competent to cancel the sanctioned building plan? OPD*
5. *Whether the plaintiff has no locus standi to file the suit? OPD*
6. *Whether the suit is bad for want of service of notice under Section 98 of the Punjab Town Improvement Act, 1922? OPD*
7. *Whether the plaintiff has no cause of action? OPD*
8. *Relief.*

8. The Court of the First Instance, while answering issues No.1 to 4, held that the Executive Officer being not authorized to make allotment of the plot and the allotment being void, ab-initio, no right accrued in favour of the plaintiff on the basis of the allotment in the name of Sital Verma. The Court, thus, dismissed the suit filed by the plaintiff regarding declaration. Finding the plaintiff to be in possession of the same, the suit was partly decreed regarding relief of permanent injunction. The defendants were restrained from taking forcible possession of the plot in dispute except in due course of law.

9. The Lower Appellate Court affirmed the findings recorded by the Court of First Instance and dismissed the appeal preferred by the unsuccessful plaintiff.

10. This Court admitted the present appeal framing following substantial questions of law vide order dated 16.01.2005 : -

1. *Whether the building plans could be cancelled, once these were sanctioned by the Executive Officer of the Improvement Trust?*
2. *Whether the allotment of the plot could be cancelled by the Trust without hearing the allottee or the transferee?*

11. Mr. Gupta counsel for the plaintiff-appellant assails the findings recorded by the Courts below. He submits that the Courts below erred in granting approval to an illegal act of the Improvement Trust of cancelling allotment despite the said having matured into a registered sale deed. He submits that once registered sale deed was executed in favour of the appellant, it could not be annulled except by way of a valid decree passed by the Civil Court. The allotment authorities by way of executive action have no right to take away the rights of the plaintiff. He further submits that not only the sale deed was executed but even the site plans were sanctioned by the Trust and thus, the same could not have been revoked, that too, without giving any opportunity of hearing to the plaintiff. Further contention is that despite the fact that the transfer in favour of the plaintiff was allowed, the sale deed was registered and site plans were sanctioned, no prior notice was even served upon the plaintiff prior to passing of cancellation order Ex.P12. Even cancellation order was addressed to Sital Verma who had no right or interest left in the suit property. He, thus, submits that the findings recorded

by the Courts below being in the teeth of the settled law need to be reserved and suit filed by the plaintiff be decreed with costs.

12. Per contra, counsel for the respondent Ms. Kavita Arora submits that in terms of Rule 94 of Punjab Town Improvement Trust Rules, 1939, it is only the Chairman, who on behalf of the Trust, could have entered into contract or agreement qua property exceeding value of ₹ 1000/-. The agreement in the present case having been entered into by the Executive Officer, the respondent rightly annulled the allotment in favour of Sital Verma. She submits that once the allotment was not carried out by a competent person, Improvement Trust was within its right to annul the same. She further refers to cancellation order Ex.P12 to submit that even though the same was addressed to Sital Verma, copy thereof was served upon Tarlochan Singh Thind son of Gurcharan Singh Thind i.e. the plaintiff. However, she fairly admits that prior to the passing of the impugned order, no opportunity of hearing in the form of show cause notice was ever granted either to Sital Verma or to the plaintiff. She further refers to communication dated 17.09.1991 to submit that Sital Verma was not a 'Local Displaced Person' (LDP) in the concerned scheme and thus, was not entitled for allotment of plot. Despite Sital Verma being not entitled, the Executive Officer wrongly allotted the plot in his favour.

13. I have considered the counsel for the parties and have carefully gone through the record of the case.

14. In the considered opinion of this Court, following issue arises for consideration : -

"(i) Whether Sital Verma can be said to be an LDP or not?"

(ii) Whether sale deed can be annulled by an executive order?

15. Both the counsel are *ad idem* that it is Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983 that govern the allotment in the present case. Rule 2(d) defines 'local displaced person' as under : -

> *"**Section 2(d) :** - '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;"*

16. In para. 1 of the plaint, the plaintiff pleaded as under : -

> *"1. That one Sital Verma, son of Baldev Verma, son of Hans Raj Verma, through his guardian Sh. Baldev VErma, son of Hans Raj Verma, care of Naseem Hosiery, Phalahi Bazar, Ludhiana was allotted one plot measuring 500 sq. yards bearing No.92-D in 256 acre scheme situated in Maharishi Balmik Nagar, Ludhiana as a local displaced person vide Memo No.LIT/SB/9914 dated 26.10.1982. The plot was allotted at a price settled at Rs.98/- per sq. yards and the total price of the plot came to Rs.49000/-. After the allotment of the plot Sh. Shital Verma made various payments. He paid a sum of Rs.500/- vide receipt No.18455 dated 19.10.1981 on account of earnest money; Rs.12250 vide receipt No.40101 dated 7.11.1982; rupees 7787.50 vide receipt No.53460 dated 22.4.1983; rupees 7185.00 vide receipt No.63861 dated 8.3.1984, rupees 6562.50 vide receipt No.65947 dated 7.5.1984. In this way, he paid a sum of Rs.33585.00 to the Improvement Trust, Ludhiana."*

17. Same was responded to by defendants No.1 and 2 filing joint written statement as under : -

> *"1. That para no.1 of the plaint is correct to the extent of allotment of plot no.92-D in 256 acre scheme."*

18. From the pleadings, it is evident that the Improvement Trust never disputed status of Sital Verma as a local displaced person. At the time of arguments, though Ms. Arora relied upon communication dated 17.09.1991 but the same is inconsequential. Evidently, the same pertains to plot No.90-B in Raj Guru Nagar Scheme.

19. The case of the plaintiff is not that he is not a local displaced person in Raj Guru Nagar Scheme. His case is that Sital Verma was a 'local displaced person' qua 256 Acre scheme in Maharishi Balmik Nagar, Ludhiana. It is not disputed that Sital Verma deposited majority of the amount in lieu of allotment of Plot No.92-D in the said scheme. However, after the Improvement Trust failed to deliver possession of the plot to him in Maharishi Balmiki Scheme, an alternative plot was offered to Sital Verma in the form of Plot No. 90-B in Raj Guru Nagar Scheme, Ludhiana. It is in light of this fact only that till date, the Improvement Trust has maintained stony silence regarding entitlement of plot of Sital Verma in Maharishi Balmik Nagar, Ludhiana. Neither any order has been passed nor any proceedings were ever initiated qua the said plot. Reliance by the counsel for the defendants on Rule 94 of Punjab Town Improvement Trust Rules, 1939 questioning competence of Executive Officer also is inconsequential in view of the fact that the order that has been annulled by way of impugned order is the allotment. Rule 94 of 1939 Rules bars the power with respect to entering into contract and does not bar the power of allotment.

20. Section 5 of the Transfer of Property Act defines, 'transfer of property'. Transfer of property includes sale of immovable property. Section 4 provides that Chapters and Sections of 1882 Act which relate to contracts shall be taken as part of Indian Contract Act, 1872. In private law, transferor

cannot reopen or cancel the completed transaction except by invoking jurisdiction of the Civil Court. Public law, however, provides certain exceptions. The breach of statutory provisions, procedural irregularities, arbitrariness and malafides on part of transferor may constitute ground to cancel or annul the transfer. However, the same is subject to fulfillment of following two conditions : -

(i) The transferee must have a role to play like fraud, misrepresentation, undue influence etc. that renders the agreement void.

(ii) If on account of transfer, public interest has suffered.

21. In the present case, having found that Sital Verma was a local displaced person qua Maharishi Balmiki Scheme where he was allotted plot No.92-D and the said allotment as till date not found to be bad, this Court finds that no fraud, mis-representation etc. can be alleged against Sital Verma or the plaintiff. It is only after the Improvement Trust itself failed to deliver possession of the allotted plot, that alternative plot in the form of Plot No.90-B in different scheme i.e. the present plot was allotted.

22. There is no plea raised by the Improvement Trust regarding any public interest having suffered or likely to suffer in case the sale deed subsists. In view thereof, this Court finds that the action of the Improvement Trust cannot be held to be in accordance with law. Further reference can be made to the observations made by Supreme Court in **ITC Limited** v. **State of U.P. (2011) 7 SCC 493** wherein Supreme Court observed as under : -

> *"….If the Government or its instrumentalities are seen to be frequently resiling from duly concluded solemn transfers, the confidence of the public and international community in the functioning of the Government will be shaken. To save the credibility of the Government and its*

instrumentalities, an effort should always be made to save the concluded transactions/transfers wherever possible, provided (i) that it will not prejudice the public interest, or cause loss to public exchequer or lead to public mischief, and (ii) that the transferee is blameless and had no part to play in the violation of the regulation.…"

23. Trite it is that wherever action of the Executive authority entails civil consequences, the same cannot be passed without affording reasonable opportunity to the person affected. There is nothing on record to suggest that prior to the passing of the order of cancellation, any show cause notice or any opportunity of hearing was ever granted to the plaintiff.

24. Division Bench of this Court while dealing with Section 17 of Haryana Urban Development Authority Act held that prior notice to the person affected of the order of cancellation of allotment, is must as such action follows grave consequence. The Division Bench in **Sandhya Jindal** v. **State of Haryana, 1996 SCC OnLine P&H 778,** underlining the necessity of following the principles of natural justice, observed as under : -

"*11. We are further of the opinion that even if Section 17 does not contain a statutory requirement of notice to the allottee as a condition precedent to the cancellation of allotment, such requirement Would have to be read as implicit in the exercise of power of cancellation. There can be no manner of doubt that even though the power of cancellation of allotment and forfeiture of amount already paid is administrative in character, but, at the same time it cannot be denied that such an action is fraught with grave consequences qua the allottee. An order of this nature not only deprives the allottee of the expected property but also deprives him/her/it of the amount already paid as a part of the bid money. Therefore, giving of notice and opportunity of hearing to the allottee before an order of cancellation or forfeiture of deposit can be made is sine qua not to the validity of the action taken by the competent authority. In State of Orissa v. Dr. (Miss) Binapani Dei and Ors., A.I.R. 1967 S.C. 1267 their Lordships gave a new dimension to the principles of natural justice and applied them to administrative action by observing:-*

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide, an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences, it is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends and significance of a decision in any particular case."

12. Repelling the argument that in purely administrative action the rules of natural justice are not required to be followed, the Supreme Court held:-

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting of explaining the evidence."

13. Above referred principle has not only been followed but has been given extended meaning in Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597, S.L. Kapoor v. Jagmohan, A.I.R. 1981 S.C. 136; Swadeshi Cotton Mills v. Union of India, A.I.R. 1981 S.C. 818 and Olga Tellis v. Bombay Municipal Corporation, A.I.R. 1985 S.C. 180.

14. In the instant case, no notice or opportunity of hearing was afforded to the petitioners before the impugned orders of cancellation were passed by

the Estate Officer. Therefore, these orders are liable to be voided on the ground of violation of principles of natural justice."

25. Needless to say, right to property is not merely a Statutory Right but is a Constitutional Right guaranteed under Article 300-A of the Constitution of India. In terms of the ratio of law laid down by Supreme Court in **K.T. Plantation Pvt. Ltd. & Anr** v **State of Karnataka, AIR 2011 Supreme Court 3430**, right guaranteed under Article 300-A of the Constitution of India is akin to Fundamental Right guaranteed under Part-III of the Constitution of India. In view thereof, this Court finds that the Courts below erred in approving the action of Improvement Trust-a public authority which is in the teeth of law and smacks of not only arbitrariness but also non-application of mind.

26. In view of ratio of law laid down by the Supreme Court in **Pankajakshi (dead) through LRs andn others** v. **Chandrika and others (2016) 6 SCC 157**, second appeals before this Court are to be dealt with in accordance with Section 41 of Punjab Courts Act. Reference can be made to the following observations : -

"23. Shri. Viswanathan also relied upon a Division Bench judgment of this Court in [Kulwant Kaurv. Gurdial Singh Mann, (2001) 4 SCC 262), to submit that this decision is an authority for the proposition that there is no need to expressly refer to a local law when the legislative intent to repeal local laws inconsistent with the Code of Civil Procedure is otherwise clear.

24. The judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] raised a question which arose on an application of Section 41 of the Punjab Courts Act, 1918. This section was couched in language similar to section 100 of the Code of Civil Procedure as it existed before the Code of Civil Procedure (Amendment) Act, 1976, which amended Section 100 to make it more restrictive so that a second

appeal could only be filed if there was a substantial question of law involved in the matter. The question this Court posed before itself was whether Section 41 stood repealed by virtue of section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, which reads as under:

"97. Repeal and savings.-(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed."

This Court concluded that Section 41 of the Punjab Courts Act was repealed because it would amount to an amendment made or provision inserted in the principal Act by a State Legislature. This Court further held that, in any event, Section 41 of the Punjab Courts Act being a law made by the Legislature of a State is repugnant to a later law made by Parliament, namely, section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, and that therefore, by virtue of the operation of Article 254 of the Constitution of India, the said provision is in any case overridden. In arriving at the aforesaid two conclusions, this Court held [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262.

"27. Now we proceed to examine Section 97(1) of the Amendment Act and the amendment of section 100 CPC by the said 1976 Act. Through this amendment, right to second appeal stands further restricted only to lie where, 'the case involves a substantial question of law.

This introduction definitely is in conflict with Section 41 of the Punjab Act which was in pari materia with unamended section 100 CPC. Thus, so long there was no specific provision to the contrary in this Code, section 4 CPC saved special or local law. But after it comes in conflict, section 4 CPC would not save, on the contrary its language implied would make such special or local law inapplicable. We may examine now the submission for the respondent based on the language of section 100(1) CPC even after the said amendment The reliance is on the following words:

'100, Second appeal. (1) Save as otherwise expressly provided... by any other law for the time being in force.....

These words existed even prior to the amendment and are unaffected by the amendment. Thus, so far it could legitimately be submitted that, reading this part of the section in isolation it saves the local law. But this has to be read with Section 97(1) of the Amendment Act, which reads:

97. Repeal and savings.-(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed. (Noticed again for convenience.)

28. Thus, language of Section 97(1) of the Amendment Act clearly spells out that any local law which can be termed to be inconsistent perishes, but if it is not so, the local law would continue to occupy its field.

29. Since Section 41 of the Punjab Act is expressly in conflict with the amending law viz. Section 100 as amended, it would be deemed to have been repealed. Thus, we have no hesitation to hold that the law declared by the Full Bench of the High Court in Ganpat [Ganpat v. Ram Devi, AIR 1978 P&H 137] cannot be sustained and is thus overruled."

25. We are afraid that this judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] does not state the law correctly on both propositions. First and foremost, when section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said section refers only to amendments made and/or provisions inserted in the Code of Civil Procedure itself and not elsewhere. This is clear from the expression "principal Act" occurring in Section 97(1). What Section 97(1) really does is to state that where a State Legislature makes an amendment in the Code of Civil Procedure, which amendment will apply only within the four corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression "any provision inserted in the principal Act" by a High Court has reference to section 122 of the Code of Civil Procedure by which High Courts may make rules regulating their own procedure, and the procedure of civil courts subject to their

superintendence, and may by such rules annul, alter, or add to any of the rules contained in the First Schedule to the Code of Civil Procedure

26. Thus, Kulwant Kaur [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] decision on the application of section 97(1) of the Code of Civil Procedure (Amendment) Act, is not correct in law.

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 2621. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80-A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent legislature or other competent authority. We have already found that since section 97(1) of the Code of Civil Procedure (Amendment) Act 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Shri. Viswanathan's reliance upon this authority, therefore, does not lead his argument any further.

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27. As a sequel to above, the present appeal is allowed and judgment and decree passed by the Court are hereby set aside. Suit filed by the plaintiff is ordered to be decreed. It is declared that order 04.08.1989 is

bad. The defendants are restrained from interfering in the peaceful possession of the plaintiff-appellant.

(PANKAJ JAIN)
JUDGE

May 26, 2025
Paritosh Kumar

Whether speaking/reasoned Yes/No
Whether reportable Yes/No