

Before Lisa Gill, J.

LUDHIANA IMPROVEMENT TRUST, LUDHIANA —Appellant

versus

AMARJIT SINGH AND ANOTHER —Respondents

RSA No. 2221 of 1998

November 26, 2019

Punjab Courts Act—Section 41(c), Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983—Rules 2, 4, 8, 12; Punjab Public Premises and Lands (Eviction and Rent Recovery) Act, 1973—Chairman allotted flats in discretionary quota—Cancelled by State Government being de hors applicable provisions of law—judgments of lower court set aside—Appellate Court, dismissing appeals of present Appellants gave liberty to pass orders afresh, after affording opportunity of hearing to plaintiffs—Held such course would perpetuate illegal allotment and gave fresh lease of life to the lis and opportunity for another round of litigation—flats not personal bounty of Chairman, for distribution as per his whims and fancies.

Held that the plaintiffs in all these cases were allotted flats in the middle income group category in Dashmesh Nagar, Ludhiana out of the discretionary quota by the Chairman of the Ludhiana Improvement Trust in the year 1987. The allotments were thereafter cancelled in July/September, 1989, by the State Government on the ground that the allotment was de hors the applicable provisions of law, in violation thereof and the Chairman of the Ludhiana Improvement Trust had no power to allot the said flats de hors the provisions of law. All the plaintiffs preferred separate suits for a declaration to the effect that the orders of cancellation passed by the appellant – State were illegal, void, unconstitutional, capricious, arbitrary, discriminatory, without jurisdiction and that the plaintiffs continued to be the allottees, in lawful possession of the flat/flats in question and furthermore the proceedings initiated against the plaintiffs seeking their eviction under the Punjab Public Premises and Lands (Eviction and Rent Recovery) 1973 were lacking jurisdiction, therefore, void. Prayer for mandatory injunction for directing the respondent– Improvement Trust to accept the subsequent installments in terms of respective allotment letters, was also sought.

(Para 2)

Held that I do not find any justifiable ground to uphold the judgments and decrees passed by the learned trial Court decreeing the suits of the plaintiffs or the judgments and decrees passed by the learned Additional District Judge, Ludhiana, dismissing the appeals of the present appellants giving them the liberty to pass orders afresh, after affording an opportunity of hearing to the plaintiffs. Such a course of action would only mean perpetuating the state of affairs, which has followed the illegal allotment of the flats and giving a fresh lease of life to the lis and an opportunity for another round of litigation between the parties. Such a course, therefore, is not being adopted. The allotment of the flats is completely illegal, made in complete and gross contravention of the applicable Rules by the Chairman who clearly had no power to make the said allotments. The flats are not a personal bounty of the Chairman, available for distribution as per his whims and fancies. Therefore, it is clear that both the learned courts below have grossly erred in passing the impugned judgments and decrees in all these cases. There is clearly a substantial error and defect which has crept in the impugned judgments as envisaged in Section 41(c) of the Punjab Courts Act. Moreover, keeping in view the discussion in the foregoing paras, it is clear that the substantial questions of law sought to be raised by the learned counsel for the appellants have to perforce be answered in favour of the appellants and against the respondents/plaintiff. Therefore, impugned judgments and decrees passed by the learned Civil Judge (Junior Division), Ludhiana as well as judgments and decrees passed by the learned Additional District Judge, Ludhiana in all the five suits are set aside. Consequently suits filed by the plaintiffs – respondents are dismissed. However, it is directed that the amount towards allotment of flats, as may be deposited by the plaintiffs, be refunded with interest at the rate of 12% per annum from the date of receipt till realization.

(Para 26)

Kapil Khanna, Advocate for
G.S.Attariwala, Advocate and
for the appellant in
RSA No. 1135 of 2000 and
for respondent no.2 in RSA No. 1240 and 1260 of 1999, 1975
of 2004, 2365 and 2998 of 1998.

Sandeep Khunger, Advocate with
Ramneek Kaur, Advocate and

Nitika Jaura, Advocate
for the appellant in RSA Nos. 2221, 2222, 2285, 2286 of 1998.

Hittan Nehra, A.A.G. Punjab
for the appellant in RSA Nos. 1975 of 2004, 2365 and 2998 of
1998, 1240 and 1260 of 1999
for respondent No. 2 in RSA No. 1135 of 2000
for respondent No. 2 in RSA No. 2221, 2222, 2285, 2286 of
1998

Sunil Chadha, Senior Advocate with
Sharad Mehra, Advocate
for respondent no.1 (in all appeals).

LISA GILL, J.

(1) This judgment shall dispose of RSA Nos. 2221, 2222, 2285, 2286, 2365, 2998 of 1998, 1240 and 1260 of 1999, 1135 of 2000 and 1975 of 2004.

(2) All these RSAs are taken up together for hearing with the consent of learned counsel for the parties as the controversy involved in these appeals is identical i.e. cancellation of the allotment of flats to the various plaintiffs by the then Chairman, Ludhiana Improvement Trust, out of the discretionary quota. These appeals have been filed by the Ludhiana Improvement Trust, Ludhiana through its Chairman as well as the State of Punjab challenging the concurrent findings returned against them by the learned trial Court as well as learned the First Appellate Court in the suits filed by the respondent – allottee. The plaintiffs in all these cases were allotted flats in the middle income group category in Dashmesh Nagar, Ludhiana out of the discretionary quota by the Chairman of the Ludhiana Improvement Trust in the year 1987. The allotments were thereafter cancelled in July/September, 1989, by the State Government on the ground that the allotment was dehors the applicable provisions of law, in violation thereof and the Chairman of the Ludhiana Improvement Trust had no power to allot the said flats dehors the provisions of law. All the plaintiffs preferred separate suits for a declaration to the effect that the orders of cancellation passed by the appellant – State were illegal, void, unconstitutional, capricious, arbitrary, discriminatory, without jurisdiction and that the plaintiffs continued to be the allottees, in lawful possession of the flat/flats in question and furthermore the proceedings initiated against the plaintiffs seeking their eviction under the Punjab Public Premies and Lands (Eviction and Rent Recovery) 1973 were

lacking jurisdiction, therefore, void. Prayer for mandatory injunction for directing the respondent – Improvement Trust to accept the subsequent instalments in terms of respective allotment letters, was also sought.

(3) Learned trial Court decreed the suits filed by all the plaintiffs vide separate judgments and decrees while holding the orders of cancellation of the flat/flats in question to be illegal, void and inoperative qua the rights of the plaintiffs. It is observed that the plaintiffs were condemned unheard. They were not given an opportunity of personal hearing. Moreover, the exercise of cancellation of the flats was held to be discriminatory inasmuch as it is observed that the appellants had regularised the allotments of certain similarly situated allottees. Furthermore, in case there were any procedural irregularities regarding non-submission of affidavit/s or earnest money, it is observed that the plaintiffs cannot be held responsible for the same. The said irregularity was never pointed out by the appellants whereas the same was imperative so as to afford an opportunity to the allottees to remove the irregularities, if any.

(4) Appeals preferred by the Ludhiana Improvement Trust were dismissed by the learned Additional District Judge, Ludhiana vide separate judgments and decrees. It is, however, observed therein that though the impugned order of cancellation cannot be allowed to stand but it would be open to the defendants to pass any order in accordance with provisions of law after affording an opportunity of personal hearing to the plaintiffs. Aggrieved therefrom, present appeals have been filed by the Ludhiana Improvement Trust as well as State of Punjab.

(5) Learned counsel for the appellants vehemently argues that allotment of all the flats was admittedly made without any advertisement, infact, without following the prescribed procedure. It is submitted that the Chairman of the Trust had no power to allot the flats out of the discretionary quota. Allotment of the plots/flats by the Improvement Trust is governed by Rules 4, 8 and 12 of the Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983 (for short – 'PTI Rules'). Rule 4 of the PTI Rules, it is contended, deals with the reservation of residential plots and multi-storeyed houses for allotment of various categories of persons. None of the plaintiffs, it is submitted, fall under any of the prescribed categories. Therefore, the flats in question could not have been allotted out of the discretionary quota by the Chairman to them. Learned counsel for the appellants further submits that action against the Chairman in question was

initiated but he passed away in the interregnum and the matter could not be taken to its logical end. Learned counsel for the appellants further submits that as per Rule 8 of the PTI Rules, the flats could have been allotted only by way of draw of lots and not in the manner as has been done in the present cases. It is vehemently argued that regularisation, if any, of allotment of flats to any similarly situated persons cannot in any manner vest the plaintiffs with any right for allotment of present flats. It is contended that both the learned courts below have wrongly observed that principles of natural justice were not observed while passing the cancellation orders as it is borne out from the record that show cause notice in each case was duly issued to the allottees. It is only after considering their replies that well reasoned orders have been passed.

(6) Learned counsel for the appellants vehemently argued that none of the original allottees have come forward to file the suits. All the suits have been filed through General Power of Attorney holders, which in itself reflects that the flats were taken for speculative purposes and for unconscionable gains. It is not the case of the plaintiffs that the allottees are poor persons, who would be inflicted with great hardship in case the allotments are cancelled. Learned counsel for the appellants further submits that though in view of the judgments of the Hon'ble Supreme Court in *Pankajakshi (Dead) through LRs and others* versus *Chandrika and others*¹ and *Kirodi (since deceased) through his LR* versus *Ram Parkash and others* in Civil Appeal No. 4988 of 2019, SLP (C) No. 11527 of 2019, it is not necessary to formulate substantial questions of law, the following questions of law are involved in these appeals for consideration of this Court:-

- (i) Whether the evidence on record has been misread and the relevant evidence ignored which has led both the learned courts below to return findings which are perverse and infirm?
- (ii) Whether any allotment could have been made dehors the specific provisions of law?
- (iii) Whether regularisation of allotment to similar situated allottees could per se vest the plaintiffs with any right as has been held by both the learned courts below.

(7) It is further submitted that there are sufficient grounds for interference as per Section 41 of the Punjab Courts Act as well. It is,

¹ 2016 (2) RCR (Civil) 245

thus, prayed that these appeals be allowed, impugned judgment and decree dated 30.04.1996 passed by the learned Civil Judge (Junior Division), Ludhiana as well as judgment and decree dated 05.12.1997 passed by the learned Additional District Judge, Ludhiana be set aside. Consequently, the suits filed by the plaintiffs be dismissed throughout and the order of cancellation of allotment of flats in question in all the cases be upheld.

(8) Per contra learned counsel for the allottees in all the appeals vehemently argued that both the learned courts below have rendered well reasoned and logical judgments, returning concurrent findings of fact against the appellant after proper appreciation of the evidence on record. It is submitted that no question of law is involved for consideration of this Court, neither is there any ground for interference as per Section 41 of the Punjab Courts Act.

(9) Learned counsel for the respondents submits that a complete go-bye has been given to the principles of natural justice, as no hearing was given to the allottees. It is submitted that a perusal of the impugned cancellation orders, clearly shows that the replies filed by the plaintiffs were not even considered. Merely the grounds as mentioned in the notice, have been reproduced in the cancellation orders, which reflects total non-application of mind. Moreover, notice was not issued by the Ludhiana Improvement Trust but by the State Government, which is not permissible. It is further contended that there is no question of any violation of the provisions of law or the rules, which is sufficient for setting aside the allotment in favour of the plaintiffs. It is submitted that the allotment letter by itself did not have any provision/stipulation of the application being filed in a specific proforma or being accompanied by the earnest money itself. Moreover, once the Ludhiana Improvement Trust had accepted the earnest money at a later stage and thereafter accepted few of the instalments as well in some of the cases, the appellants are estopped from raising these grounds at a subsequent stage. It is submitted that in fact there is no fetter on the allotment of the said flats to the plaintiffs by the Chairman of Ludhiana Improvement Trust, who is well within his rights to have allotted the flats out of the discretionary quota. It is vehemently argued that the appellants have indulged in a pick and choose policy, inasmuch as out of all the twenty six (26) flats allotted by the then Chairman Prahlad Singh, the appellants chose to target only some of the allottees. The said action of the appellants in cancelling allotments in favour of the plaintiffs is clearly discriminatory, illegal and arbitrary. The

appellants are estopped from raising these grounds qua only some of the allottees and not taking action against the others. Both the learned courts below have, thus, rightly decreed the suits filed by all the plaintiffs. It is, thus, prayed that these appeals be dismissed and impugned judgment and decree dated 30.04.1996 passed by the learned Civil Judge (Junior Division), Ludhiana as well as judgment and decree dated 05.12.1997 passed by the learned Additional District Judge, Ludhiana be upheld.

(10) I have heard learned counsel for the parties at length and have perused the record with their able assistance.

(11) It is a matter of record that the present are ten appeals arising out of five different suits filed by the plaintiffs. Some of the details peculiar to each of the cases and as admitted by both the parties are detailed as hereunder for ready reference.

Sr No	RSA No.	Party Name	Flat No.	Date of Allotment	Date of cancellation of flat	Suit filed by	Category under which Flat was allotted	Suit filed on	Decision of learned trial Court	Decision of learned First Appellate Court
1.	RSA No. 2221 /1998 RSA No. 2365 /1998	LIT V. Amarjit Singh	65SF Dashmesh Nagar	26.08.87 (Ex.DW 1/1)	12.7.89 (Ex.P11)	Through GPA Ved Parkash Kaushal	Social Worker (Sikh Migrant)	01.02.92	30.04.96	05.12.97
2.	RSA No. 1135 /2000 RSA No. 1975 /2004	LIT v. Yadwinder Singh State vs. Yadwinder Singh	76FF Dashmesh Nagar	26.8.87 (Ex.P2)	12.9.89 (Ex.D2)	Through GPA Prem Lal	There is no mention of any category	31.01.92	30.04.96	15.10.99
3.	RSA No. 1240 /99 RSA No. 2222 /98	State v. Kulwinder Kaur LIT v. Kulwinder	75FF Dashmesh Nagar	07.8.87 (Ex.P 2)	12.7.89 (Ex.P7)	Through GPA Ram Pal	Social Worker	30.1.96	30.4.96	5.12.97

		Kaur								
4.	RSA No. 1260 /99 RSA No. 2285 /98	State v. Dilbagh Singh LIT V. Dilbag-h Singh	62FF Dashemesh Nagar	28.8.87 (Ex.P 2)	12.7.89	Through GPA Hans Raj Sharma	As Secretary of Dashmesh Nagar Welfare Association	1.2.91	30.4.96	5.12.97
5.	RSA No. 2286 /98 RSA No. 2998 /98	LIT v. Surjit Singh State v. Surjit Singh	63FF Dashemesh Nagar	26.8.87 (Ex.P 2)	12.7.89 (Ex.P7)	Through GPA Puja Sharma	Social Worker	30.1.92	30.4.96	5.12.97

(12) The basic facts, which are primarily similar in all the cases are being culled out from RSA No. 2221 of 1998 for the sake of brevity.

(13) At the very outset, it is considered useful to refer to the applicable rules. Rule 8 of the PTI Rules, which deals with the mode of sale reads as under:-

8. Mode of sale. - (1) Unless otherwise provided under these rules every Trust shall allot residential plots and multi-storeyed houses by draw of lots and shall sell the commercial plots by auction :

[Provided that the Non-Residential Indians shall be allotted residential plots, -

(i) If the number of applications is less or equal to the number of plot available for allotment to such category of persons, on the basis of 'First come First served' and

(ii) If the number of applications is more than the number of plots available for allotment to such category of persons, by draw of lots.]

Provided further that the local displaced persons shall be allotted residential plots in accordance with the criteria specified in sub- rule (2) of rule 4.

(2) The land for the institutional purposes shall be allotted by the Trust on the recommendation of a Committee consisting of the following for *bona fide* use of the institutions :-

(1) The Chairman or the Administrator of the Trust, as the case may be;

(2) The Deputy Commissioner or his representative in the case of a Trust at the district headquarters and Sub-Divisional Officer (Civil) in the case of a Trust at Sub-Division level; and

(3) The Regional Deputy Director, Local Government.

(14) Rule 12 of the PTI Rules which deals with the manner of draw of lots reproduced as hereunder:-

12. Manner of draw of lots. - A draw of lots in respect of the applications received or pending under rule 11 shall be held by the Trust on a date to be fixed and notified by it for this purpose. Separate draw shall be held in respect of the applications pending with the Trust for more than five years ending with the commencement of these rules and in respect of fresh applications received in lieu of such pending applications.

(15) The unamended Rule 4 as it stood at the time of allotment before the omission of Rule 4(i), (vi) and (vii), dealing with the reservation of residential plots and multi-storeyed houses and dealing with the categories of persons to whom the allotment can be made, reads as under:-

4. Reservation of residential plots and multi-storeyed houses. - (1) Subject to the provisions of rule 10, residential plots and multi-storeyed houses shall be reserved for allotment to the following categories of persons to the extent specified against each:-

Category of persons	Extent of reservations
(i) Members of the parliament representing the state of Punjab and the Members of the Punjab Legislatures Assembly.	Eight per cent of plots of 250, 300, 400 and 500 square yards only.
(ii) Freedom fighters and political sufferers having domicile in the State of Punjab and who have been awarded Tamra Patras by the Punjab Government; and in the case of death of such persons their	Two percent

widows their children.	
(iii) Defence Personnel, Border Security Force Personnel, members of the Central Reserve Police Force, Ex-servicemen and War Widows having domicile in the State of Punjab.	Eight per cent
(iv) Persons appointed to Public Services by the State Government, who are holding posts in connection with the affairs of State of Punjab and in case of their death while in service, to their widows;	
(v) Persons belonging to the Scheduled Castes and Backward Classes;	Eight per cent
(vi) Employees of the concerned Trust and in case of their death while in service, their widows.	Two per cent
(vii) Non-Resident Indians	Four per cent of plots of 500 Square Yards size only.

Provided that ten per cent of the residential plots and multi-storeyed houses shall be reserved for persons whose applications for allotment of residential plots and multi-storeyed houses are pending for a period of more than five years ending with the date of commencement of these rules:

Provided further that the unutilized plots reserved for different categories of persons under sub-rule (1) for want of eligible persons shall be open for allotment to the persons other than the reserve categories of persons:

Provided further that ten percent of the residential plots and multistoried houses shall be allotted by the Trust with the approval of the Government to such category or class of persons and in the manner as the Government may from time to time keeping in view the socio-economic conditions of such persons specify.

(16) The Rule further deals with allotment to Ex-serviceman and Displaced Persons.

(17) At this juncture, it is relevant to note that a Full Bench of this Court in *Dr. Amar Singh and others* versus *State of Punjab and another*², while dealing with allotment under the discretionary quota, frowned upon the allotment of the flats/plots dehors the specific provisions of law. Rule 4 of the PTI Rules, as it stood at that time, was under scrutiny of the Full Bench. It is specifically observed that the

² 2003 (4) RCR (Civil) 146

allotment cannot be made in an unguided and unlimited manner. No absolute discretion, in any manner, vests with the Government for making either reservations or allotments. The Full Bench set aside the reservation for the category of Non-Resident Indians, Members of Parliament representing the State of Punjab and the members of Punjab Legislative Assembly besides 5% reservation of residential plots and multi-storeyed houses, to be allotted by the Trust with the approval of the Government to such category or class of persons and in the manner as the Government may from time to time specify keeping in view the socio-economic condition of such persons. It is specifically held in the judgment of *Dr. Amar Singh* (supra) that the allotment under the policy to be framed by the Government of Punjab would be made by inviting applications through public notice to all those, who belonged to a particular class.

(18) Rule 4 of the PTI Rules was thereafter amended. Relevant part of the amended rule is reproduced as hereunder:-

4. Reservation of residential plots and multi-storeyed houses.

- (1) Subject to the provisions of rule 10, residential plots and multi-storeyed houses shall be reserved for allotment to the following categories of persons to the extent specified against each:-

Category of persons	Extent of reservations
(i) Omitted	
(ii) Freedom fighters and political sufferers having domicile in the State of Punjab and who have been awarded Tamra Patras by the Punjab Government; and in the case of death of such persons their widows and in the absence of widows their children.	Two percent
(iii) Defence Personnel, Border Security Force Personnel, members of the Central Reserve Police Force, Ex-servicemen and War Widows having domicile in the State of Punjab.	Eight per cent
(iv) Persons appointed to Public Services by the State Government, who are holding posts in connection with the affairs of State of Punjab and in case of their death while in service, to their widows;	
(v) Persons belonging to the Scheduled Castes and Backward Classes;	Eight per cent
(vi) Omitted	
(vii) Omitted	

Provided that ten per cent of the residential plots and multi-storeyed houses shall be reserved for persons whose applications for allotment of residential plots and multi-storeyed houses are pending for a period of more than five years ending with the date of commencement of these rules:

Provided further that the unutilized plots reserved for different categories of persons under sub-rule (1) for want of eligible persons shall be open for allotment to the persons other than the reserve categories of persons:

[Provided further that ten percent of the residential plots and multistoreyed houses shall be allotted by the Trust with the approval of the Government to such category or class of persons and in the manner as the Government may from time to time keeping in view the socio-economic conditions of such persons specify:

[Provided further that upto the 31st day of December, 2011, five percent of the residential plots and multistoreyed houses shall be allotted to the riots affected or terrorists affected persons, who fulfil the criteria as laid down in this regard by the Department of Revenue, Rehabilitation and Disaster Management, Punjab for becoming eligible under this category.]

(19) The Rule further deals with allotment to Ex-serviceman and Displaced Persons.

(20) In the present cases, it is not denied by learned counsel for the respondent – plaintiffs that none of the allottees fall under any of the categories as are mentioned in the Rules. It is further not denied that none of the suits have been filed by the original allottees themselves but are filed through their General Power of Attorney holders. The question of violation of the principles of natural justice was vociferously raised before both the learned court below. However, it is a matter of record that show cause notice was issued in each of the matters. This is so admitted in the plaint itself. There is a specific and categorical pleading to the effect that reply to the show cause notice was submitted by the allottees in all the cases except in the case of Yashwinder Singh. It is clearly mentioned in the order of cancellation that no reply to the show cause notice had been filed by Yashwinder Singh. In fact, reply to the show cause notice is available on the record of each of the other cases. It is specifically stated in the show cause notice, that allotment of the

plot was sought out of the discretionary quota of the government, however, the then Chairman Improvement Trust, Ludhiana was not competent to allot the plots out of the discretionary quota of the Government, as the said power vested with the State Government and no approval to the allotments had been accorded by the Government. It is further specifically mentioned that the Chairman Ludhiana Improvement Trust did not invite applications and neither was the proper procedure as prescribed in Rule 11 of the PTI Rules followed. It is further stated in the show cause notice, that the requisite affidavit as provided under the allotment rules was not submitted, neither was the proof of annual income submitted at the time of application for allotment of flats. In the reply to the show cause notice in the case of Sh. Amarjit Singh, the subject matter of RSA No. 2221 of 1998, it is mentioned that applications were not invited by the Chairman because it was known to everyone that majority of migrant persons had returned and it would be fruitless to invite applications again. In case, applications would have been invited, it is stated, the staff of the Ludhiana Improvement Trust would have made wrongful gains. It is further stated that none had asked the allottee to submit any affidavit etc., therefore, no such document was submitted. Allotment to Amarjit Singh has been made in the category of a social worker. Admittedly none of the allottees fall within any of the prescribed categories. The evidence on record in fact proves that allotment was made in absolute and blatant derogation of the applicable rules. All the allotment letters bear the signatures of the Chairman after cutting out the typed nomenclature of Executive Officer, Ludhiana Improvement Trust.

(21) In all the present five suits, it is a matter of record that the application for allotment was not filed by any of the allottees on the prescribed proforma and neither was this application accompanied by the earnest money. In some of the cases, the application for allotment is not even there on record. As per the allotment letters, which are available on record, there is no reference to the said application. Reference in the allotment letters is that it is in continuation of the office memorandum as per the order of the Chairman.

(22) At this juncture, it is relevant to note that in the case of a similarly situated allottee, this High Court in *Daljit Kaur versus State of Punjab through the Secretary, Local Government Department, Punjab*³ upheld the cancellation of the allotment. The

³ 1997 (4) RCR (Civil) 484

allotment in **Daljit Kaur's** case (supra) also pertained to Improvement Trust, which had allotted the flat on 26.08.1987 itself. Show cause notice had been issued to Daljit Kaur on the ground that she had not applied to the Improvement Trust in response to any advertisement given in the press. She did not deposit the required amount and moreover the Chairman, Improvement Trust was not competent to make an out of turn allotment. Reply to the show cause notice was filed by her but the allotment was cancelled by the State Government on 21.09.1988. Writ petition preferred by Daljit Kaur was, however, dismissed while observing as under:-

A reading of Rules 8 and 11 would reveal that the allotment of residential plots and multi storeyed house (such as the one made to the petitioner) 'shall be by draw of lots and in no other way. Rule 11 talks about the method of allotment, and presuppose that before allotments are made the Trust is to invite applications for allotment by notices to be published in Newspaper widely circulated in the locality for this purpose in Form 'B' by the dates to be specified in the notice alongwith certain other enclosures. Sub-rule (2) to Rule (3) provide that no application shall be entertained unless it is accompanied by a bank draft in terms of the rule. It is the admitted case now before me that the allotment made to the petitioner was not by draw of lots and made merely on an application to the Chairman and even the order of allotment was made on the application itself. It is the admitted case that the application was to be made in Form 'B' as mentioned in Rule 11 and was also to be accompanied by token of earnest money. The application made by the petitioner does not satisfy even these two conditions and as a matter of fact, the petitioner vide order dated 15th September, 1987 of the Chairman was allowed to make the deposit of Rs. 50,000/- that was required to be made by her in instalments up to December, 1987 and even the deposit was not made. It is also evident from a reading of Rules 8 and 11 that an application for allotment had to be moved in terms of the advertisement issued. The writ petition is silent as to when and how such an advertisement had been issued and as to whether the application made in the year 1983 pursuant to any such advertisement. In the light of the facts stated, it has to be held that no application had been made in the year 1982 as alleged by the petitioner.

(23) It is further observed in case of *Daljit Kaur* (supra) that as considerable amount of money was spent in making the flat habitable it would be left to the Ludhiana Improvement Trust as well as to the State Government to consider the cases of the petitioners sympathetically for re- allotment. In another matter pertaining to the Improvement Trust, Barnala, the allotment made in violation of the specific applicable rules was set aside in decision dated 30.09.2015 in RSA No. 1850 of 1999 (Improvement Trust, Barnala and another versus The Barnala Iron and Steel Dealers Cooperative House Building Society Ltd. and another). In the said case, learned trial Court had decreed the suit filed by the plaintiff – Society directing the Improvement Trust to allot the land after relaxation of the Rules. Appeal filed by the Improvement Trust was dismissed by the learned Additional District Judge but both the said decisions were reversed by this Court.

(24) A Division Bench of this Court in *Smt. Devinder Kaur* (since deceased) versus *State of Punjab and another*⁴ has categorically held that as per Section 96 of the Improvement Act, wherein powers of the Chairman are defined, the Chairman has no power to make allotment of plots in this manner. Cancellation of the plots in the said case, made without any public advertisement or inviting applications from similarly situated applicants was upheld. It is further categorically observed that no benefit can accrue to the allottees on the ground of some other similarly situated persons being granted any relief. It is held that there cannot be any parity in illegality. It is a settled position that two wrongs in any case cannot make a right. The Hon'ble Supreme Court in *Jalandhar Improvement Trust* versus *Sampuran Singh etc.*⁵ has specifically observed as under:-

If it was not within the scope of the Rules then even those allotments in favour of other persons will not create a right in the respondents to claim equality with them; may be, if the allotments were made wrongly in favour of those persons, the same may become liable for cancellation, if permissible in law, but that will not create an enforceable right on the respondents to claim similar wrongful allotments in their favour. In our opinion, even this ground relied upon by the High Court as well as the lower appellate court is

⁴ 2014 (24) RCR (Civil) 10

⁵ 1999 (2) RCR (Civil) 568

unsustainable. The courts below next relied upon the fact that in regard to some of the respondents, the Trust itself at a point of time made allotments and accepted initial deposits towards the consideration of the plot which was subsequently cancelled. Based on those facts, the courts below held that the Trust having once allotted the plots and having collected part of the consideration, it could not have cancelled the allotments, probably basing the respondents' case on the principle of promissory estoppel. Here the courts below have failed to notice the legal principle that there is no estoppel against law. The allotment of plots by the Trust is controlled by the statutory Rules. Any allotment contrary to those Rules will be against the law. Since the allotments made in favour of some of the respondents was based on wrong application of the reservation made for "local displaced person" those allotments were contrary to law. Hence, the principle of promissory/equitable estoppel cannot be invoked to protect such illegal allotments. In the said view of the matter, we are unable to sustain the judgments and decrees impugned in these appeals.

(25) Keeping in view the facts and circumstances of the case, it is apparent that the allotment in all these cases has been made illegally by the then Chairman of the Ludhiana Improvement Trust without any adherence to the applicable Rules, in force, at the time of allotment.

(26) I do not find any merit in the argument raised by learned counsel for the respondent – plaintiffs that the impugned orders of cancellation are vitiated due to non- application of mind or that relevant material has not been considered by the authorities while passing the said orders. It is to be noticed at this stage that the learned Additional District Judge vide impugned judgments has observed that the appellants shall be at liberty to pass a fresh order after giving an opportunity of hearing to the allottees. The order of cancellation has been set aside primarily on the ground of the allottees not being given an opportunity to present their case. The said finding is not subject to challenge by any of the plaintiffs – respondents. However, keeping in view the facts which are evident from the record and the clear cut position that none of the plaintiffs fall under any of the categories for whom there can be any reservation of the plots to be allotted and moreover the fact that no applications were invited for allotment of the plots from similarly situated persons, neither the prescribed procedure

followed, the allotment in favour of the plaintiffs cannot be sustained in any manner. I do not find any justifiable ground to uphold the judgments and decrees passed by the learned trial Court decreeing the suits of the plaintiffs or the judgments and decrees passed by the learned Additional District Judge, Ludhiana, dismissing the appeals of the present appellants giving them the liberty to pass orders afresh, after affording an opportunity of hearing to the plaintiffs. Such a course of action would only mean perpetuating the state of affairs, which has followed the illegal allotment of the flats and giving a fresh lease of life to the lis and an opportunity for another round of litigation between the parties. Such a course, therefore, is not being adopted. The allotment of the flats is completely illegal, made in complete and gross contravention of the applicable Rules by the Chairman who clearly had no power to make the said allotments. The flats are not a personal bounty of the Chairman, available for distribution as per his whims and fancies. Therefore, it is clear that both the learned courts below have grossly erred in passing the impugned judgments and decrees in all these cases. There is clearly a substantial error and defect which has crept in the impugned judgments as envisaged in Section 41(c) of the Punjab Courts Act. Moreover, keeping in view the discussion in the foregoing paras, it is clear that the substantial questions of law sought to be raised by the learned counsel for the appellants have to perforce be answered in favour of the appellants and against the respondents/plaintiff. Therefore, impugned judgments and decrees passed by the learned Civil Judge (Junior Division), Ludhiana as well as judgments and decrees passed by the learned Additional District Judge, Ludhiana in all the five suits are set aside. Consequently suits filed by the plaintiffs — respondents are dismissed. However, it is directed that the amount towards allotment of flats, as may be deposited by the plaintiffs, be refunded with interest at the rate of 12% per annum from the date of receipt till realisation.

(27) Consequently, RSA Nos. 2221, 2222, 2285, 2286, 2365, 2998 of 1998, 1240 and 1260 of 1999, 1135 of 2000 and 1975 of 2004 are allowed.

Shubreet Kaur