IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No.1850 of 1999 (O&M)
Date of reserve : 19.08.2015.
Date of Pronouncement: 30.09.2015.

Improvement Trust, Barnala and another ....Appellants.

VERSUS

The Barnala Iron and Steel Dealers Cooperative House Building Society Ltd. and another
....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Argued by: Mr. J.S. Toor, Advocate and
Mr. Sandeep Khunger, Advocate with
Ms. Sagina Walyat, Advocate for the appellants.

Mr. Sapan Dhir, Advocate for respondent No.1.

Mr. Rahul Verma, A.A.G., Punjab, for respondent No.2.

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SNEH PRASHAR, J.

1. This was second appeal filed by the appellants-defendants Improvement Trust, Barnala and another (hereinafter referred to as the "appellant Improvement Trust") impugning the judgment and decree dated 03.11.1995 passed in Civil Suit No.702 of 20.10.1994 by learned Sub Judge

Ist Class, Barnala, decreeing the suit for mandatory injunction filed by plaintiff-respondent No.1 'The Barnala Iron and Steel Dealers Cooperative House Building Society Limited' (hereinafter referred to as the "plaintiff society") which was upheld by the first appellate Court vide judgment dated 21.11.1998.

2. By way of a suit for mandatory injunction filed by the plaintiff society, a prayer was made for issuing mandate to the appellant Improvement Trust to allot the land measuring 12.97 acres in Superdenti Tohba Scheme and 25 acres Development Scheme which was reserved for Steel Market Complex (hereinafter referred to as the "suit land"). The plaintiff pleaded that the appellant Improvement Trust had reserved the suit land for Steel Market Complex while making the development scheme, but now despite long correspondence and personal meetings and in contravention to the scheme has refused to allot the suit land to the plaintiff society and is planning to allot the same to some other persons though it has no right to do so.

3. The suit was contested by the appellant Improvement Trust on various legal and factual grounds. The preliminary objections raised were that the suit was not maintainable in the present form; the suit was barred by limitation; a valid notice under Section 80 of the Code of Civil Procedure (for short, "the Code") had not been served; the plaintiff society was estopped from filing the present suit by its own act and conduct; no cause of action for filing the suit had accrued to the plaintiff society; and lastly that the suit had become infructuous. Replying on merits, the appellant denied

that the site was ever reserved for the plaintiff society and submitted that the case of the said society was rejected by the Government and the land had been utilized by the appellant Improvement Trust by preparing requisite scheme.

4. On the rival contentions of the parties, following issues were framed:-

> (1) Whether the suit property has been reserved for the steel market by defendants? OPP.
>
> (2) Whether plaintiff is entitled to permanent injunction prayed for? OPP.
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> (3) Whether plaintiff Society is registered society and plaintiff has locus standi to file the present suit? OPP.
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> (4) Whether suit of the plaintiff is not maintainable in the present form as such plaintiff has no locus standi to file the suit? OPD.
>
> (5) Whether suit is barred by limitation? OPD.
>
> (6) Whether the plaintiff has not served any notice u/s 80 C.P.C. to the defendants? OPD.
>
> (7) Whether plaintiff is estopped by his act and conduct from filing the suit? OPD.
>
> (8) Whether the suit of the plaintiff is infructuous and defendants are entitled to special costs? OPD.
>
> (9) Relief.

5. Both the parties adduced evidence to substantiate their respective pleadings.

6. Considering the oral and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court decreed the suit of the plaintiff society with costs and directed the

defendant-appellant Improvement Trust etc. to allot the land to the plaintiff society within three months after relaxing the Rules and on payment of either acquisition cost plus external development charges or in case the land is allotted as fully developed, on payment of acquisition costs plus internal and external charges. The appellant-defendants were also restrained from allotting the land to any other person.

7. Feeling aggrieved by the judgment and decree dated 03.11.1995 passed by learned Sub Judge Ist Class, Barnala, the appellant Improvement Trust preferred an appeal which was dismissed by Additional District Judge, Barnala vide judgment dated 21.11.1998. The first appellate Court held that the Improvement Trust shall allot the land to the plaintiff society within a period of three months on the terms and conditions, as specified in its resolution dated 02.06.1988 and further in letter dated 09.06.1989 including interest upto date at such rate as is prescribed in the Land Acquisition Act, on the amount spent for acquisition and development, imposing further condition that the drawing etc. shall be approved by the Chief Town Planner, Punjab.

8. Being unsatisfied with the judgment and decree dated 21.11.1998 passed by the learned Additional District Judge, the appellant Improvement Trust preferred the instant regular second appeal.

9. The submissions made by Mr. J.S. Toor and Mr. Sandeep Khunger, learned counsels representing the appellants, Mr. Sapan Dhir, learned counsel representing respondent No.1 and Mr. Rahul Verma, Assistant Advocate General, Punjab representing respondent No.2 have

been considered and record has been perused.

10. As the matter was opened for arguments, learned counsel for the appellant Improvement Trust referred to clause (1) of Rule 8 of the Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983 (for short, "the Rules of 1983") and argued that as postulated under the said Rule all residential plots and multi-storeyed houses are to be allotted by the Improvement Trust by draw of lots and all commercial plots are to be auctioned. Learned counsel contended that there was no privity of contract between the plaintiff society and the Improvement Trust consequent to which the Improvement Trust was under obligation to allot the suit land to the plaintiff society. Even if it is accepted for the sake of arguments that a resolution recommending the plaintiff society for allotment of the land reserved for 'Steel market complex' was passed by the appellant Improvement Trust, yet that did not confer any right on the plaintiff society as the recommendation was subject to approval by the Government and the Government vide its order dated 15.05.1990 Ex.D1 had rejected the prayer of the plaintiff society for allotment of the suit land. The reason being that it was not permissible under rule 8(1) of the Rules of 1983 to allot a commercial plot.

Learned counsel further argued that by way of present suit the plaintiff society though not directly but in between the lines had sought a declaration that the order dated 15.05.1990 Ex.D1 passed by the Government is null and void and deserves to be ignored/set aside. Under the provisions of Article 100 of the Limitation Act, the limitation period for impugning an order is one year from the date of its passing. Since the suit was filed on 20.10.1994 i.e. more than four years after the order, the suit was apparently barred by limitation. Learned counsel urged that there was no legal right of the plaintiff society which it could get enforced through the Civil Court.

11. Controverting the above arguments, learned counsel for the plaintiff society at the very outset referred to Ex.P/4, the certificate dated 05.10.1990 issued by the appellant Improvement Trust, wherein it was mentioned that land measuring 12.97 acres was reserved for 'Steel Market Complex' for the plaintiff society in Superdenti Tohba scheme and 25 acres Development Scheme of Improvement Trust, Barnala. Learned counsel further contended that alongwith the letter Ex.P/12 dated 24.03.1988 written by Sub Divisional Officer (C), Barnala to different Heads of the Department, the proceedings of the meeting, regarding development of Barnala Town, held on 17.03.1988 under the Chairmanship of Deputy Commissioner, Sangrur was sent. Item No.3 under the head **'Development Scheme of Improvement Trust, Barnala'** related to **'Bhai Mani Singh Nagar (25 acres Development Scheme of Improvement Trust, Barnala)'** therein and mentioned that it was discussed that the commercial portion of the scheme which has been reserved for the 'Steel Market Project' may be handed over to the plaintiff society at the acquisition costs price so that they may develop the same as per norms of Country and Town Planning Department and Improvement Trust.

Learned counsel further referred to resolution No.27 dated

02.06.1988 Ex.P/14; letter dated 19.07.1988 Ex.P/15 written by Vijay Kain, IAS, on behalf of Deputy Commissioner, Sangrur to Shri J.S. Kesar, Director, Local Bodies, Government Punjab, Chandigarh; letter dated 21.06.1988 Ex.P/16 written by Executive Officer, Improvement Trust, Barnala to the Secretary, Government Punjab, Local Government Department; and letter dated 22.02.1988 Ex.P/17 written by the Punjab Government to Chairman, Improvement Trust. Relying on the said documents, he argued that from the very initial stage when the 25 acres Development Scheme and the Superintendenty Tohba Scheme was floated the appellant Improvement Trust was ready to transfer/allot the suit land to the plaintiff society on the terms and conditions specified in the resolution Ex.P/14 dated 02.06.1988. The Deputy Commissioner also endorsed and forwarded the recommendations of the appellant Improvement Trust. However, the Government after lengthy correspondence and convening several meetings suddenly declined the request for allotment of the suit land to the plaintiff society vide memo dated 15.05.1990 Ex.D1.

12. Learned counsel urged that it is clear from the facts that since the Government issued gazette notifications reserving the suit land for the plaintiff society and the land was accordingly acquired, it was clear that the land shown as reserved was in fact acquired for the plaintiff society exercising powers under Section 42 of the Punjab Town Improvement Act, 1922 (for short, the Act of 1922"). In such circumstances, the question of seeking relaxation of rules did not arise. The Rules had no overriding effect on the provisions of the Act. Any act done, while exercising the powers

under the Act of 1922, cannot be undone by making reference to the Rules. In fact, the land should have been handed over/allotted to the plaintiff society on the commencement of the award on payment of the acquisition costs.

13. Further, learned counsel pointed out that Ex.PA is the notification dated 06/11.04.1988 vide which the development scheme framed by the Improvement Trust, Barnal known as the Development Superintendenty Tohba Scheme for an area 14.75 acres was sanctioned. In the said notification, there is a reference of resolution no.102 dated 27.02.1987 and the layout-cum-demarcation plan drawing no.D.T.P.(B) 458/88 dated 08.02.1988. In the said layout-cum-demarcation plan the land was shown reserved as Special Area (extension of steel market). Similarly, vide notification Ex.PB, the development scheme framed by the Improvement Trust, Barnala known as Development Scheme of 'Bhai Mani Singh Nagar' for an area measuring 25 acres was sanctioned and in the said notification there is a reference of resolution no.40 dated 10.06.1988 and layout-cum-demarcation plan no.D.T.P.(B) 432/87 dated (date and month not clear) 1987. In the said layout-cum-demarcation plan, a portion of the land had been shown as reserved as 'Special Area for the plaintiff society' with a note 'to be detailed lateron as supplementary scheme'.

14. Learned counsel emphatically argued that from the layout-cum-demarcation plans specifically referred to in the notifications Ex.PA and Ex.PB, it is proved that the development schemes were notified reserving portion of the land measuring 10.47 acres in the Superintendenty Tohba

Scheme and 0.47 acres in the Development Scheme for area measuring 25 acres, for the plaintiff society. From the various correspondence and letters which started even before the schemes were prepared, it is clear that a decision had been taken to reserve special area for the plaintiff society and that was shown in the layout-cum-demarcation plans. In response, the plaintiff society vide its letter Ex.P5 dated 28.05.1990 and subsequent letters had given an undertaking to abide by the terms and conditions to be laid down by the appellant Improvement Trust and had also agreed to pay whatever was demanded by the Improvement Trust i.e. the acquisition cost + external development charges as well as internal development charges in case the land is allotted as fully developed.

Learned counsel urged that during the appeal proceedings before this Court, considering the fact that as per the scheme area has to be earmarked for the shops of steel dealers and in any case the appellant Improvement Trust is to allot/sell the said property had issued notice to the appellant Improvement Trust on the application filed by the plaintiff society whereby it was stated as under:-

> "*3. That respondent Society for the allotment/transfer of reserved land is ready to pay the cost of fully developed reserved land to the Improvement Trust in proportion to the area of each scheme as per Punjab Government Gazette Nos.1(3)-M-III-87/7539(sic.) Ex.PA and 1(3)-4-III-LG/87/ 23671 Ex.PB which are on record in the proceedings as exhibit PA & PB vide which the development schemes were sanctioned, which contains the total cost of the each scheme alongwith interest as applicable under the Land Acquisition Act, from the date of payment by the Improvement Trust till*

allotment date. The layout of the said reserved land be drawn in consultations and concurrence with the respondent allottee Society by the Improvement Trust as per Government rules and guidelines"

15. Having considered the submissions made by learned counsel for the parties, to me it appears to be a case where the plaintiff society of its own deliberation and on mere recommendation made by the appellant Improvement Trust through a resolution and some references in the letters, had assumed to have acquired a legal right enforceable under law for which it could seek issuance of direction by the Court. Vide notification dated 27.08.1987 Ex.PB the Development Scheme of **'Bhai Mani Singh Nagar'** for an area measuring 25 acres was sanctioned. In that notification, there is a reference of layout-cum-demarcation plan bearing drawing no.D.T.P.(B) 432/87 dated 19.08.1987 i.e. Ex.P24 and in that plan two pockets of land were shown as under:-

-- *Reserved as special area for Barnala Iron & Steel House Building Co-op. Society (Commercial) (to be detailed later-on as a supplementary scheme. Area:- 1.511 hect.*

-- *Reserved as special area for Barnala Iron & Steel House Building Co-op. Society (Commercial) (to be detailed later-on as a supplementary scheme. Area:- 2.727 hect.*

This plan was prepared by the Town and Country Planning, Punjab. However, no order of any competent authority on the basis of which two portions of some land of the Improvement Trust were shown to be reserved as special area for the plaintiff society in the layout-cum-demarcation plan, could be tendered in evidence by the plaintiff society.

There is not a single document dated prior to the date of notification to support the reference of reservation of some portions of land in favour of the plaintiff society in the layout-cum-demarcation plan Ex.P24. Otherwise also, as per the note in the reference of reservation, it was 'to be detailed lateron as supplementary scheme'.

16. In the layout-cum-demarcation plan bearing no.D.T.P.(B) 458/88 dated 08.02.1988 referred to in the notification dated 6/11.04.1988 Ex.PA, the portions of land were admittedly shown to have been reserved as **Special Area (extension of Steel Market)**. Except for the Superintendenty Tohba Scheme, there is no other supplementary scheme referred to or proved by the parties which could relate to the reference of reservation of two pockets of land for the plaintiff society in the layout-cum-demarcation plan Ex.PB. Rather, it is clear that some portion of the area forming part of Superintendenty Tohba Scheme floated in 1988 was reserved as 'Special Area for extension of Steel Market'.

17. The above scrutiny of the documents reveals that the land which the plaintiff society claims to have been reserved for it was in fact reserved for 'extension of Steel Market'. Needless to say that the said land being commercial was to be sold for establishing Steel Market. The mode of sale of commercial plots is postulated under Rule 8 of the Rules of 1983 which reads as under:-

> *1. "**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-Resident Indians shall be allotted residential plots;*
>
> *(1) If the number of applications in 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 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 specific in sub-rule (2) or 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 head quarters and Sub Divisional Officer (Civil) in the case of a Trust at Sub Divisional level' and*
>
> *(3) The Regional Deputy Director, Local Government."*

18. Apparently, in the above Rule, the word used is 'shall' which means it is mandatory for the appellant Improvement Trust to sell the commercial plots by auction. From that it follows that the commercial plots out of the land reserved for extension of Steel Market could be sold only by way of auction and by no other mode. In other words, the appellant Improvement Trust is not competent to sell the commercial land except by way of auction.

19. In the above premises, the next substantial issue that needs

determination is whether the plaintiff society had any vested right in the area for which the development schemes had been floated which it could enforce by seeking issuance of direction by the Court to allot the land to it by relaxing the rules. It is also a contentious issue whether any resolution or recommendation made by the appellant Improvement Trust to allot the land to the plaintiff society even after the Government had passed an order declining to do so is of any consequence. In my considered opinion, the answer to both the questions is in negative.

20. By no stretch of imagination, on a mere recommendation by the Improvement Trust by way of passing a resolution or a reference in any letter or a layout-cum-demarcation plan, the plaintiff society acquired a vested right to get the commercial land of the development schemes allotted in its favour in violation of Rule 8 of the Rules of 1983. Section 72-B of the Act of 1922 provides as under:-

> *"The Deputy Commissioner may, by order in writing, suspend the execution of any resolution or order of a trust or prohibit the doing of any act which is about to be done, or is being done in pursuance of or under cover of this Act, or in pursuance of any sanction or permission granted by the trust in the exercise of its powers under the Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law or contrary to the interests of the public or likely to cause waste or damage of trust funds or property, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, to encourage lawlessness or to cause injury or annoyance to the public or to any class or body of persons."*

Section 72-E of the Act of 1922 is also relevant which is as under:-

> *"The State Government and Deputy Commissioners acting under the orders of the State Government, shall be bound to require that the proceedings of trusts shall be in conformity with law and with the rules in force under any enactment for the time being applicable to Punjab generally or the areas over which the trusts have authority. "*

There remains no doubt from the above provisions that the State Government and the Deputy Commissioner acting under the orders of State Government are bound to ensure that the proceedings of the Trust are in conformity with the law and the Rules in force under any enactment for the time being applicable to State of Punjab generally or the areas over which the Trust has authority. Under the above provisions while the Deputy Commissioner had been given the power to suspend the execution of any resolution or order of a Trust or prohibit the doing of any act in exercise of its powers conferred by or contrary to the interest of public etc., by passing an order in writing, the State Government has been empowered to annul or modify any proceedings which are not in conformity with law or with the Rules. It implies that any resolution/decision taken by the Improvement Trust is subject to surveillance/acceptance of the State Government, for whom it is mandatory to require that the proceedings of the Trust mandatorily are in conformity with the law and with the rules in force.

21. Reverting to the instant case, there may have been lengthy correspondence between the Trust and the plaintiff society with regard to the land reserved for development/extension of Steel Market, Barnala, the

fact remains that it was a "commercial land" which could be sold only by way of auction as per Rule 8 of the Rules of 1983 and by no other mode. For that reason, the Government, finding no reason to relax the rules had declined the request for allotment of the plaintiff society vide order dated 15.05.1990 Ex.D1. Any recommendation or correspondence of any officer before or after the order Ex.D1 is irrelevant and of no consequence.

22. That is not the end of the matter. There is another substantial question of law which requres determination. The order dated 15.05.1990 Ex.D1 declining to allot the land to the plaintiff society was passed by the Government on 15.05.1990. As per the provisions of Article 100 of the Limitation Act, the period of limitation provided for assailing an order is one year. The instant suit was filed on 20.10.1994 i.e. almost four years after the passing of the order dated 15.05.1990. By way of present suit, the plaintiff society is infact indirectly seeking to get the said order set aside. The suit having been filed after more than four years of the order is barred by limitation.

23. As a consequence to the above decision, the appeal filed by the appellant Improvement Trust is allowed and the judgment and decree dated 03.11.1995 passed by learned trial Court and the judgment and decree dated 21.11.1998 passed by learned first appellate Court are set aside/ reversed and as a result thereof the suit filed by the plaintiff society is dismissed with costs throughout.

(SNEH PRASHAR)
JUDGE

30.09.2015
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