

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.1527 of 2013 (O&M)
Date of decision: 25th September, 2018

Improvement Trust Patiala & another

... Appellants

Versus

Jasbir Kaur & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Jasdeep S. Toor, Advocate for the appellants.

Mr. Dhirinder Chopra, Advocate for the respondents.

FATEH DEEP SINGH, J.

The brief facts and the background leading to institution of this regular second appeal by the unsuccessful defendant (now appellant) the Improvement Trust, Patiala, can be summarized as follows:-

Improvement Trust, Patiala (in short, 'the Trust') framed a scheme for the construction of commercial complex under the name and style of 'Gurudwara Dukhniwaran Sahib Scheme, Patiala'. In this scheme, the original allottees Smt.Bimla Devi wife of Phool Chand Arora and Smt.Sudarshan Devi wife of K.C. Narula were declared as successful auction purchasers vide auction dated 22.09.1976, whereby the property in dispute bearing shop-cum-flat plot No.11 was allotted to them. Undisputedly, Smt.Bimla Devi died and Smt.Sudarshan Devi transferred her rights in favour of Phool Chand Arora and therefore, Phool Chand

Arora became owner of the whole of this plot. It is vide registered sale deed bearing No.916 dated 14.05.1986, Phool Chand Arora sold the plot in favour of the plaintiffs for a valuable consideration of Rs.65,000/-. It is thereafter, when the subsequent purchasers submitted construction-cum-site plan of the building along with charges of Rs.26,521/- through demand draft for approval of their building plan, the Trust declined the same and rather a letter dated 22.11.2000 raising a demand of Rs.3,17,000/- was made being on account of penalty due to non-construction which was supposed to be raised within three years. It is worthwhile to refer here that the plaintiffs deposited a sum of Rs.1,82,138/- on 24.03.2003 and it is subsequent thereto, vide memo No.PIT-04/162 dated 14.01.2004 the plaintiffs were called upon to deposit further amount on account of non-construction charges upto 31.01.2004 and to complete the construction by 31.01.2005. The plaintiffs first challenged this demand before the District Consumer Forum, Patiala, however, the same was dismissed vide orders dated 13.03.2003. It is thereupon, the present suit has been got instituted by the plaintiffs on 31.01.2005.

In the present suit, the plaintiffs, i.e. subsequent purchasers namely Jasbir Kaur and Harpreet Kaur sought a decree for permanent injunction restraining the defendants from making further demands on account of non-construction charges in respect of the property detailed above and further seeking decree restraining the defendants from

interfering in the construction activities on the said plot. The main plank of the plaintiffs is that the Trust had already received the amount and as per the new instructions, only 50% of Rs.3,64,276/- i.e. Rs.1,82,138/- was to be deposited and therefore, the demand was illegal.

In their stand, the defendants besides the preliminary reaction as to lack of jurisdiction, non-maintainability of the suit and absence of prior notice before filing the suit, took the plea on merits that neither the original allottees nor the subsequent purchasers have raised construction within three years of the allotment which was a mandatory pre-requisite under the terms and conditions of the allotment, and therefore, on account of this violation, were under obligation to pay non-construction charges as per the rules of the Trust. It was the stand of the Trust that since no sanction for building plan on the said plot has been accorded, any construction raised thereon would be illegal in nature and the Trust reserves its right to act in accordance with its rules and the law. The trial Court framed following issues:

1. Whether plaintiffs are entitled to permanent injunction as prayed for? OPP
2. Whether suit of the plaintiffs is not maintainable in the present form? OPD
3. Relief.

The plaintiffs, in their evidence, examined PW1 Jasmit Singh Brar, holder of Special Power of Attorney of the plaintiffs, to prove documents Ex.PW2/B to Ex.PW2/Q and closed the evidence of the plaintiffs. On the other hand, defendants examined DW1 Basant Singh, Senior Assistant of the Trust, who proved documents Ex.D2 to Ex.D5 and DX, and thereafter closed the evidence.

The Court of learned Civil Judge (Junior Division), Patiala vide judgment and decree dated 10.01.2011, decreed the suit of the plaintiffs. The unsuccessful Trust challenged the same before the Court of learned Additional District Judge, Patiala, who vide impugned findings dated 17.03.2012, dismissed the appeal upholding the findings of the trial Court.

Heard Mr. Jasdeep Singh Toor, Advocate for the appellants; Mr. Dhirinder Chopra, Advocate representing the respondents and perused the records of the case.

At the very onset of submissions of the two sides, learned counsel for the parties certainly accept the fact that in the suit, the main challenge is to the demand being raised by the Trust on account of non-construction charges. However, to the specific query of the Court, learned counsel for the respondents/plaintiffs could not convince how, by resorting to a pure simplicitor suit for permanent injunction and without challenging the legality of the demand in question, the plaintiffs can get the same declared as illegal and nonest in the eyes of law.

Section 41(h) of the Specific Relief Act clearly bars in such eventualities, a suit for permanent injunction when more efficacious remedy is available to a party. This Court is fortified by the ratio laid down in '**Satish Bahadur v. Hans Raj and others**' AIR 1980 P&H 351, where this Court has laid down the proposition that where the plaintiff is entitled to another efficacious relief, the suit for permanent injunction cannot proceed because an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceedings. Since a perusal of the plaint itself reflects that the plaintiffs can invariably challenge the demand so raised by the defendant-Trust on account of non-construction charges, and instead of challenging that demand and seeking declaration of the same being illegal, null and void; have rather sought a decree for permanent injunction which certainly is not an efficacious remedy in such a situation. Therefore, to the mind of this Court the present suit simply seeking permanent injunction for stalling the demand raised by the Trust on account of non-construction charges, certainly is not maintainable.

The second most contentious issue that is sought to be raised, is the non-service of notice by the plaintiffs prior to filing of the suit upon the defendant-Trust. By virtue of Section 98, the Punjab Town Improvement Act, 1922 (in short, 'the Act'), mandates that no suit shall be instituted without service of two months' notice prior to the filing of the suit, which certainly goes against the plaintiffs and was never

considered by the two Courts below; besides the fact that under the very terms of the allotment, the matter ought to have been referred to the Arbitrator under the Act as per Clause 14 of the terms of allotment Annexure D2.

The memorandum of agreement, which is dated 06.12.1976 placed on the record, shows that in the event of any dispute or differences arising between the Trust and the purchaser, the same shall be referred to the Secretary to Government of Punjab, Local Government Department or an officer appointed by him in this behalf, as an Arbitrator, and learned counsel for the respondent could not controvert this argument so raised and even otherwise, filing of a suit at the very first instance is premature as well.

It is during the course of hearing of the appeal, Jasmit Singh Brar, who is holding special power of attorney of the plaintiffs and had been appearing before the trial Court as well, has made a statement on behalf of the principal plaintiffs namely, Jasbir Kaur and Harpreet Kaur, praying that he may be allowed to withdraw the initial suit and since as has been held in '**Sardar Tajender Singh Ghambhir and another vs. Sardar Gurpreet Singh and others**' 2015(1) SCC (Civil) 86 an appeal is continuation of suit and the power of the appellate Court is co-extensive with that of the trial Court. Even by that analogy, since the plaintiffs are withdrawing the suit, the appeal certainly becomes nonest and is rendered otiose.

In the light of the foregoing discussions, the impugned findings of the learned trial Court dated 10.01.2011 and that of the learned first appellate Court dated 17.03.2012 are hereby set aside and the present appeal stands allowed in those terms.

Disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

September 25, 2018
rps

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