IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2048 of 2018 (O&M)
Date of Order:13th November, 2018

Ludhiana Improvement Trust Ludhiana

..Appellant

Versus

J.S.Chugh, Advocate and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Kavita Arora, Advocate,
for the appellant.

Mr. Kanwaljit Singh, Sr. Advocate, with
Mr. Abhinav Aggarwal, advocate,
for respondent no.1.

Mr. Mohit Vashisht, Advocate,
for respondent no.2.

ANIL KSHETARPAL, J.

Defendant no.1-appellant-Ludhiana Improvement Trust, Ludhiana (hereinafter referred to as 'the Improvement Trust') is in the regular second appeal against the concurrent judgments passed by the courts below.

In the considered opinion of this Court, question which needs adjudication is:-

> *"Whether a development authority after having prepared a development scheme of the land and got sanctioned a lay out plan/master plan assigning/reserving a piece of land for constructing the community centre as also sold the remaining plots carved in the scheme can use the powers arbitrarily and change/alter the purpose of the*

> *plot reserved for construction of a community centre to commercial and residential purpose on the ground that the development authority does not have enough funds and no one has come forward to construc*t the same over the years?

Undisputed facts are that the Improvement Trust acquired certain land by issuing the notification under Section 36 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as 'the Act of 1922') in the year 1973. Lay out plan was got sanctioned from the Government along with the scheme on 05.07.1975 on the basis of Drawing NO.DPT(L)-118/74 dated 11.10.1974. After the sanction of the scheme and lay out plan, plots were sold/allotted to various persons. In the drawing, land measuring 6920 square yards equivalent to 1.45 acres was reserved for constructing a community centre. After the colony has been sold and developed, now the site reserved for community centre is sought to be used for constructing three shops-cum-offices and multi storeyed residential flats.

Two residents of the area has filed a suit in a representative capacity under Order 1 Rule 8 of the Code of Civil Procedure. Stand of the Improvement Trust, the appellant herein, is that since the Improvement Trust does not have funds and the plot reserved is suitable to be used for commercial purpose, therefore, change of use of plot has been got approved from the Government on 29.04.1992. Initially the land was decided to be allotted to Sahir Ludhianavi Society. However, thereafter the resolution has been passed by the Improvement Trust on 18.03.1987, which has been approved by the Government on 14.07.1997, permitting change in purpose of land use. It is claimed that the lay out plan has been sanctioned by the Government in exercise of powers under Section 43 of the Act of 1922.

It may be significant to note that initially a writ petition was filed in this court against the proposal and the State of Punjab was directed to consider and decide the representation. Principal Secretary to Government of Punjab, Local Government after hearing the residents as well as Improvement Trust, passed an order on 10.01.2001, finding that the Improvement Trust has no right to straight way change the purpose of land use without making sincere efforts for execution of the scheme as originally approved. Operative part of the order passed by the Principal Secretary to Government of Punjab is extracted as under:-

> *I have carefully considered the matter. It transpires that at no stage, the Improvement Trust Ludhiana had shown any interest or intention towards providing a community centre on the land in question. It does not lie with the Trust to straightway change the land use without making sincere efforts for execution of the scheme as originally approved. Further, it also emerges that the Trust had sought the change of land use directly for raising resources and gaining financial benefits. Accordingly, I hold that the earlier permission given by the State for change of land use under Section 43 of the Act ibid, needs to be reviewed. It may suffice if the matter is sent back to the Improvement Trust, Ludhiana, for looking into the matter afresh. They must sincerely try to utilise the land for the purpose it was earmarked. In case, for reasons that may be considered as objectively valid, they find it is not possible to utilise the land as per original*

stipulations they can pursue the matter further keeping in view the legal position as incorporated under Section 43 of the Act ibid. Order is passed accordingly.

Thereafter, Improvement Trust has reiterated its decision by passing a resolution on 16.04.2001. Operative part of the resolution reads as under:-

M.T. Extension Part-II Scheme was notified in the year 1973 and till 1997 the land could not be used for the purpose it was reserved. Neither any society came forward and approached the Trust for the handing over the land for its use as community centre, not the Trust of its own was in a position to spend huge amount for the construction of community centre as there were much more financial liabilities against the trust.

Resolution for the change of land use was therefore proposed in 1997 and was sent to the Govt. which had accorded approval and notification to this effect was published U/s 43 of the Act vide No.6/13/99-2 LG II/13940 dated 22.10.99. The Govt. had granted approval for the change of land use only after spot inspection was conducted by the Chief Co-ordinator and Planner Punjab, Chandigarh who after visiting the site along with Chairman Improvement Trust observed that the site in question was most suitable for commercial-cum-residential complex, being straightically located on a potential road. This land is located on Pakhowal Road *which is coming up as commercial area besides it may also be pointed out that opposite to be land in question and across the road there is a site reserved for hotel considering these aspects, the use of this land for the commercial purpose would be most appropriate. The purpose for change of land use was got done not only for commercial gains but it was got done keeping in view the attending circumstances at the relative time and also to save the Trust from financial losses. Prior notice or inviting objections from the inhabitants of localities is not required as per provisions of the Act. The change of land use was got done perfectly in accordance with the rules and keeping in view the increasing demand of the public for commercial site and residential flats. <u>It may be mentioned here that the petitioner welfare society approached the trust much after the change of land use, allowed by the Government</u>. It may be further added that after formulation of the scheme, tenders were invited for the execution of the sanctioned scheme for commercial and multi-storeyed flats and direction were given for execution of work. The contractor had also got excavation work done at site. Applications for draw of lot in respect of allotment of residential flats were also invited which were received along with earnest money and some commercial sites were auctioned which had to be got stopped due to stay from the Civil Court,* *Ludhiana.*

Now in case the scheme is abandoned the architect, contractors and applicants who have deposited earnest money and persons who had made auction bid for commercial site in this scheme would claim damages putting the trust under huge financial losses and it is also apprehended that Trust would be involved in unnecessary long litigation. It is submitted that once change of land use is allowed with the proper approval of the Govt. U/s 43 of the Act, the same cannot be re-considered by the Trust.

Both the courts as noticed above, have held that exercise of powers by the Punjab State as well as Improvement Trust are arbitrary and therefore a decree for injunction has been passed against the appellant-Improvement Trust restraining it from changing the purpose of land use and alienation. A mandate has been issued to the defendant-appellant to construct a community centre with its own resources.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellant has submitted that only suit for injunction has been filed and the notification issued by the State of Punjab has not been challenged, hence, no effective relief could be granted to the plaintiffs. She further submitted that as per Section 43 of the Act of 1992, Improvement Trust is well within its power with prior approval of the State Government to alter the scheme. She further submitted that purpose of no prior notice to the residents was necessary before changing the purpose of land use. She relied upon two judgments passed by Division Benches of this Court in the case of ***Dr. Balbir Singh Sidhu v. State of Punjab and others, 2014 (2) R.C.R.(Civil) 351*** and ***Welfare Society (Regd.) Shaheed-A-Azam Bhagat Singh Nagar v. Punjab State and another, 2012 (3) R.C.R. (Civil) 903.***

On the other hand, learned counsel for the respondents-plaintiffs has submitted that the representative suit was filed seeking not only permanent injunction but also relief of mandatory injunction. He further submitted that the notifications issued by the State Government had been impugned in the suit and defendant-appellant cannot be permitted to defeat the right by taking hyper technical objections that in the prayer clause the notification issued by the Government has not been challenged. He further submitted that no doubt power is available with the Improvement Trust to alter the scheme with prior approval of the State Government, however, such exercise of power has to be bonafide. He further submitted that the residents have purchased the plots on the basis of lay out plan, which was duly sanctioned by the Government and therefore, now the Improvement Trust should not be permitted to change the same, unless there are some valid and justifiable reasons exist or has arisen after sanction of the scheme. He further submitted that the change in purpose of land use is not in public interest rather it is only in the interest of Improvement Trust.

On analyzing the arguments of learned counsel for the parties, it may be noted that plaintiffs, who are residents of the area had not only filed a suit for permanent injunction but prayed for grant of decree for mandatory injunction to direct the Improvement Trust to provide a constructed community centre in the suit property with its own funds. Therefore, specific challenge to the resolution or the notification was not necessary once it has been claimed that the action of the State as well as Improvement Trust is illegal. This court is of the view that on this technical objection, the suit cannot be defeated particularly when no argument on this aspect was raised before the first appellate court.

As regards power to alter/change the scheme after its sanction, no doubt, there is an enabling power with the Improvement Trust under Section 43 after obtaining the prior approval of the State Government. Section 43 of the Act of 1922 is extracted as under:-

> *43.* ***Alteration of scheme after sanction.-*** *A scheme under this Act may be altered by the trust at any time, with the prior approval of the State Government, between its sanction by the State Government and its execution.*

However, here the question is whether exercise of such power is bonafide and in public interest or not?

Learned counsel has relied upon judgments passed by Division Bench of this court in Dr. Balbir Singh Sidhu's Case(supra) wherein the Hon'ble Division Bench was dealing with a case where all the properties situated on the main road in the area of Kartar Singh Sarabha Nagar was permitted to be used for commercial purpose taking into consideration subsequent developments. In the aforesaid case, dispute was not with respect to a change of user of property assigned for common purpose to commercial purpose. The question which was decided by the court was whether the Improvement Trust or the Municipal Corporation or the State Government has power to alter the scheme under Section 43 of the Act of 1922. Hence, the aforesaid judgment has no application to the controversy involved in the present case.

As regards second judgment in the case of **Welfare Society (Regd.)**(supra), it may be noted that as per original lay out plan, the place was reserved for constructing a Marriage Palace (community centre). However, later on it was found that two community centres in the area already exist and there is no need for a new community centre. In these circumstances, the court dismissed the writ petition. The court further noticed that residential plots have been carved out and houses have been constructed, hence, the writ was also dismissed on the ground of delay. Hence, even the aforesaid judgment would not come to rescue the defendant-appellant.

On the other hand, learned senior counsel appearing for the respondent has drawn attention of the court to the judgment passed by the Hon'ble Supreme court in the case of ***Bangalore Medical Trust v. B.S.Muddappa and others, 1991(4) SCC 54***, to contend that such change in purpose of land use after the plots have been sold is not a bonafide exercise of powers unless it is proved on file that it is in public interest.

In the present case, reservation of the plot (land) in dispute for community centre is not in dispute. It is further not in dispute that on the basis of the aforesaid lay out plan, as notified after the approval by the State Government, plots have been sold and residents of the area have constructed their residential houses. Still further, as would be clear from the reading of the order passed by Principal Secretary on 10.07.2001, no sincere efforts were made by the Improvement Trust to construct community centre. It is not even the case of the Improvement Trust that the aforesaid community centre is not required or not feasible. Even after the Principal Secretary directed the Improvement Trust to reconsider the matter, the Improvement Trust has noted that the site in question is more suitable for commercial-cum-residential complex. Although, it is mentioned in the resolution that the decision has been taken not only for commercial gains but keeping in view the "attending circumstances". "Attending circumstances" as explained in the resolution are that it would save the Improvement Trust from financial crisis. In the considered view of this court such "attending circumstances" cannot be made basis to change the lay out plan/master plan to take away a site assigned for an use as community centre by the residents of the area. Such exercise of power by the Improvement Trust is clearly arbitrary. The residents are being deprived of a facility of community centre. It is not the case of the Improvement Trust that such alteration of the scheme is in public interest.

This court while upholding the power of the Improvement Trust to alter the scheme after sanction with prior approval of the State, hold that such exercise of power is not a bonafide exercise of powers and rather it is arbitrary use of power which cannot be sustained.

In view of the aforesaid, the question framed earlier is answered in favour of the respondents and against the appellant.

However, taking into consideration that before the Improvement Trust re-considered the matter, an application was moved by a society of the residents offering to construct the community centre with their own funds, the Improvement Trust shall be at liberty to devise ways and means to get the community centre constructed preferably with its own resources or in alternative permitting the residents to pool in their resources to construct the building of community centre while ensuring its usage for the benefit of the residents of the area as per original lay out plan.

With the slight modification aforesaid above, the regular second appeal is dismissed.

13th November, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

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