

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.3977 of 2018(O&M)

Date of Decision:12.05.2021

Ludhiana Improvement Trust and another

...Petitioners

Versus

Shaheed Bhagat Singh Coop House Building
Society Ltd. and others.

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Neeraj Kumar Jain, Sr. Advocate, with
Mr. Sanjeev Sharma, Advocate
for the petitioners.

Mr. Yogesh Goel, Advocate and
Mr. Vijay B Verma, Advocate
for respondent no.1.

Mr. P.S.Bajwa, Addl.A.G., Punjab

Mr. Ajoy Kumar Sinha, Principal Secretary
Department of Local Government, Punjab.

Mr. Aayush Gupta, Advocate
for the applicant-intervener.

ANIL KSHETARPAL, J.

In the considered opinion of this Court, the questions which
needs adjudication are

- A. *“If it is found in the subsequent proceedings filed under
Article 226 of Constitution of India that the order of the
Tribunal has been obtained by playing fraud/deceit, then,
whether the Constitutional Court is required to declare
such order as non-executable or not”?*
- B. *Whether concealment/omission to disclose irrelevant
facts must lead to the dismissal of a meritorious petition*

filed under Article 226 of the Constitution?

1. It has already been held by the Hon'ble Supreme Court in **Ram Preeti Yadav vs. U.P. Board of High School and Intermediate Education and others (2003) 8 SCC 311** that 'fraud' and 'justice' can never dwell together. In **S.P Chengalvaraya Naidu vs Jagannath, (1994) 1 SCC 1**, the court went on to lay down that the judgment and decree passed on the basis of fraud is a nullity and non est in the eyes of law. In **Union of India and others vs. Ramesh Gandhi, (2012) 1 SCC 476**, it was held that even a court of subordinate jurisdiction is permitted to enter into the question as to whether the judgment of a superior Court was obtained by playing fraud on the later Court because such a judgment is nullity and is required to be treated as non est. With these broad outlines, this Bench now proceeds to examine the present case.

2.FACTS:-

2.1 It is necessary to note the facts in detail. The respondent-Society claims to be the owner of land measuring 16800 sq. yds. located at Village Dugri, District Ludhiana. The Government of Punjab has enacted the Punjab Town Improvement Act, 1922 (hereinafter referred to as 'the 1922 Act') for the improvement and expansion of towns in a planned manner in the State. Section 3 thereof provides that the duty to carry out the provisions of the Act in any local area shall vest in a Board to be called 'the (name of town) Improvement Trust'. Every such Board shall be a body corporate having perpetual succession and a common seal. In the exercise of the aforesaid powers, the petitioner-Ludhiana Improvement Trust (hereinafter referred to as 'the petitioner-Trust') was created. In order to carry out a planned development of approximately 400 acres of land located at

Ludhiana, the petitioner-trust proposed a scheme. The requisite notifications under Section 36 and 42 of 'the 1922 Act' declaring its intention to acquire an approximate area of 400 acres of land for 'Model Town Extension Part-II' scheme were published. Out of the afore-said land, land measuring 16800 sq. yds. belongs to the respondent-Society. Similarly, individual pieces of land belonging to 5 other societies were also proposed to be acquired. The respondent-Society challenged the proposed compulsory acquisition before the High Court in Civil Writ Petition No.5166 of 1975 which was withdrawn on 03.05.1976. The Government vide a notification dated 25.06.1981 decided to release the entire land, measuring 16800 Sq.yds., owned by the respondent-Society from compulsory acquisition, subject to the following terms and conditions:-

“(a) that the lay out of the proposed co-operative Housing Colony will form part of overall lay out of the Scheme. However, while framing the overall lay out, an effort would be made to cater to the requirements of the Co-operative Society as far as possible;

(b) that development charges will be paid by the Society to the Trust on the basis of rates fixed by the Trust and the development of the area exempted will be carried out by the Improvement Trust;

(c) that utilization in the area exempted in favour of the Co operative Society will be to the same extent as the land utilization in the overall scheme. For instance, the land left for roads, parks and other common purposes would be to the same extent as left in overall scheme. Consequently, the area under plots would be about 45 to 55% of the entire area exempted;

(d) that exemption will be in respect of bonafide

Housing Societies and that its individual members will be giving an undertaking that they will not transfer, lease, or otherwise alienate plot for a period of ten years. Not more than one plot will be given to an individual member.”

2.2 Thereafter, the respondent-Society & other societies started making representations to the petitioner-Trust for allotment of plots which was not accepted by the petitioner-Trust. For a continuous period of 8 years, separate requests, made by the 6 Societies, were not accepted. However, after about a period of 8 years, Sh. B.D.Aggarwal, an officer belonging to Punjab Civil Service (State Service Cadre), was made the Chairman, Improvement Trust. After his joining, the process of allotting plots to concerned 6 Societies gained momentum. A big chunk of land of the respondent society was in possession of the Jhuggi dwellers. A fraud was sought to be perpetrated by adopting a lay out plan of 400 acres of land in such a manner that the respondent- society's land which was in possession of the Jhuggi dwellers was reserved for vacant area and a piece of land owned by the trust and other societies was planned to be given to the respondent society in the shape of developed plots. On 29.08.1990, vide resolution No.593, a decision was taken to allot 58 plots to the respondent-Society in Block 'C' of Model Town Extension Scheme Part-II in a total area of 8800 Sq. yds. Out of the 58 plots allotted to the Society, only 5 plots were planned to be carved out on the land of the respondent-Society, whereas 23 plots were sought to be allotted on the piece of land belonging to other Societies while 27 plots were sought to be allotted on the land belonging to the petitioner-Trust.

2.3 On 08.05.1992, the respondent-Society filed a consumer

complaint before the Consumer Disputes Redressal Forum, Ludhiana, (For short CDRF) complaining that the decision to allot plots to the society has not been implemented. The same was allowed vide the order dated 15.02.1996. The complaint was allowed only on the ground that the resolution passed has not been implemented. An appeal filed by the petitioner-Trust before the Punjab State Consumer Disputes Redressal Commission (for short 'SCDRC') was dismissed on 17.10.1996.

2.4 In the year 1996-1997, when the Government became aware of the fraud committed by the Chairman and other officials of the petitioner-Trust, the Director, Local Government, was directed to hold an investigation, who after concluding the same, found that a fraud has been committed by the Chairman in active connivance of the officials of the petitioner-Trust and the office bearers of the 6 societies. The operative part of the report with respect to the respondent-Society reads as under:-

“After about 8 years when Sh. B. D. Aggarwal, PCS., took over as Chairman, Improvement Trust, Ludhiana, in May, 1990 the process for allotting plots to these societies suddenly gained momentum. Several resolutions were passed by the Trust to allot plots to the Societies and letters of allotment were issued by Sh. B. D. Aggarwal on the recommendations of Sh.K.R.Garg, Executive Officer, LIT. The scrutiny of the allotment made to these Co-operative Housing Societies shows that the allotment of plots to the societies has not been confined to their own land. Rather the societies have been allotted some plots in other societies' land. In some cases the societies have also been allotted plots in Trust land. The society wise actual position is an under:-

1) Shaheed Bhagat Singh Co-operative H/B Society.

In case of this society land measuring 16,153 Sq. Yds. was excepted. As per condition of exemption the society was allowed to carve out plots in its own land in area measuring up to 9000. yds. However, in the lay out plan of the scheme approved by the Trust in 1988 (Ex-6) only 26 plots in 3900 sq. yds. were shown to have been carved out in the society's land. Remaining land of the society was shown to be reserved for special purpose. This appears to have been done by the Town Planning officials and Engineering wing of the Trust in connivance with the management of the society because large portion of the land of society was under encroachment from 1970 onwards. It is probably for this reason that only 26 plots could be carved out in the Society's land. The other area which was under encroachment was deliberately kept reserved for special purpose knowing fully well that this area of the society is under encroachment. The only reason for doing all this appears to be that certain officials wanted to give undue benefits to the society. They knew fully well that the land under society was under encroachment and it would be difficult for the society to adjust all its members within its own land the concerned officials kept the encroached x portion as reserved for special purpose" so that the society could later claim alternative plots in lieu of this.

Thereafter Mr. B. D. Aggarwal who took over as Chairman in 1990 and Sh, K. R. Garg, the then Executive Officer and the official capitalised on this to allot 58 plots to the society. Instead of getting the 1988 lay out plan revised or asking the society to adjust all its numbers in its own land they allotted 58 plots to the society. Out of these 58 plots 50 plots were given outside its own land. Although 26 plots had been carved

out in the Society land only 8 plots were given to the society in its own land (this was done because most of societies land including some of these 26 plots were under encroachment). 23 plots (total area 3450 aq.yds.) were allotted in others Society's land and 27 plots (total area 4050 sq.yda.) were allotted in Trust's land. No money was deposited in the Trust regarding any of these plots. Only exemption fee of Rs.5.00 per sq. yd and 1/4th development charges were deposited. No agreement was executed with the society for vesting of open land in the Trust as per requirement in the letter of allotment.

The perusal of the file shows that the note recommending allotment of plots was put up by Sh. Malhotra the then Supdt, and approved on 27-07-90 by the Chairman Sh. B. D. Aggarwal after discussion with E.O and put in the Trust meeting. The Trust under the Chairmanship of Sh. B. D. Aggarwal resolved to allot 58 plots vide the rust Res. No.593 to the Society. Letter of allotment No.LIT/5242 Dt. 23-10-90 (Annexure 5) was issued by Sh. B. D. Aggarwal on the recommendation of the E.O. Sh.K. R. Garg.”

2.5 The petitioner-Trust, in the meantime, also, filed a revision petition before the National Consumer Disputes Redressal Commission (hereinafter referred to as NCDRC) questioning the correctness of orders passed by CDRF & SCDRC, which was dismissed by an order dated 28.05.2001, the operative part whereof reads as under:-

“The new element of fraud committed by the than Chairman of the Trust, enquiry ordered by the State Government, FIR's lodged against certain functionaries are quite alien at this stage. As has been held by the National Commission, new facts/pleas cannot be

produced at the revisional stage. What we see is a valid order by a competent authority based on a Resolution of the Trust, based on which plots were allotted to the Respondent society. What we also see is that the Resolutions have not been annulled, they remain valid. Mere filing FIR against certain functionaries does not in any way vitiate the valid resolution which stands even today. Another fact noticed is that the land acquired from the Respondent Society is shown as open space (in the Lay Out Plan (Map) of Model town. Extension which means that no construction can come up on this land thus literally depriving the Respondent society of allotting plots to its members of their original piece of land. What was granted through exemption on the one hand was taken away by notifying the land as open space, hence ineligible for construction on the other hand. In fact if any fraud has been committed it is by the petitioner Trust. What they seem to give with one hand is taken away by the other. It is the case of the petitioner that since exemption granted to the respondent society entitled "them to make plots for use by its members, it was defeated by the Lay Out plan notified in 1988. Till date i.e. 2001, no action has been taken by the Improvement Trust to bring any change in the Lay Out Plan of Block-E where the land of the respondent is situated and yet expecting the Respondent Society entitled them to make plots for use by its members, it was defeated by the Lay Out Plan Notified in 1988. Till date i.e. 2001, no action has been taken by the Improvement Trust to bring any change in the Lay Out Plan of Block E where the land of the respondent is situated and yet expecting the respondent Society to carve out plots for its members, leads us to the inexorable conclusion that the petitioner has not come

with clean hands before us. The choices before the Trust were two fold either to change the purpose in the Lay Out plan to Residential as against open space with regard to the society's land or to compensate therein with alternative plots. The Trust, it seems decided to pursue the second option. It does not become of the petitioner now to come before us with the plea of fraud on the part of the then Chairman. They could have cancelled /modified the Lay Out plan; only then they could have come before us stating that the original piece of land of society stands restored to them with the requisite conditions; only under these circumstances allotment of plots by the Trust in other locations would have appeared unwarranted. But this is not what the petitioners have done. Having deprived the Respondent society of the use of land for residential purposes, petitioner-trust is obliged to allot alternative plots for the members of the society.”

2.6 Thereafter, the petitioner-Trust knocked the doors of the Hon'ble Supreme Court by filing Special Leave Petition (Civil) No.16237 of 2001, which was also dismissed by the Court, on 28.05.2001, with the following order:-

“The Special Leave Petition is dismissed.”

2.7 On 11.04.2002, the State Government, on the report of the Director that a fraud has been sought to be played with respect to public property, in exercise of its powers conferred under Section 72-E of 'the 1922 Act, annulled the resolution No.593, dated 29.08.1990. Section 72-E 'the 1922 Act is extracted as under:-

72 E. Power of State Government and its officers over trusts.-

(1) 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.

(2) The State Government may exercise all powers necessary for the performance of this duty and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons, which would in its opinion justify an order by the Deputy Commissioner under section 72-B.

(3) The Deputy Commissioner may, within his jurisdiction for the same purpose, exercise such powers as may be conferred upon him by rules made in this behalf by the State Government.”

Pursuant to the directions issued by the Director, Local Government, Punjab, an FIR No.76, dated 04.03.2001, under Section 409/420/467/468/471/120/34 IPC was registered, at Police Station Division No.5, Ludhiana.

2.8 It is significant to note that the case of Shakti Cooperative House Building Society Ltd. was identical with the respondent-Society in **Ludhiana Improvement Trust, Ludhiana and another vs. Shakti Cooperative House Building Society Ltd. (2009) 12 SCC, 369.** In the case of Shakti Cooperative House Building Society Ltd., the resolution no.594, dated 29.08.1990, was passed by the petitioner-Trust deciding to allot 123 plots. A similar complaint filed before the CDRF was allowed. An appeal as well as a revision petition filed before the SCDRC and NCDRC against

the aforesaid order was dismissed. However, when the matter came up before the Supreme Court, the judgments, passed by the DCFL, affirmed by the PSCDRC and NCDRC, respectively, were reversed. The Court after noticing the report of the Director, Local Government, held that there was no obligation for the petitioner-Trust to allot plots to the respondent-Society particularly when the acquisition proceedings with respect to the land of the respondent-Society stood abandoned and the land had reverted back to the respondent-Society on the fulfillment of certain conditions. The operative part of the judgment passed by the Hon'ble Supreme Court is extracted as under:-

“In the present case, in its brief order, the National Commission has held that since both the fora have upheld the contention of the respondent Society to the effect that it is entitled to allotment of alternative plot in lieu of Plot No. 32 in the same scheme, there is no ground to interfere in exercise of its jurisdiction under Section 21(b) of the Act. Unfortunately, we have not been able to decipher from the order of the Commission and for that matter even from the orders of the 1 District Forum and State Commission, any reason in support of the conclusion that the appellant was obliged to deliver to the respondent possession of Plot No. 32 or an alternative plot in lieu thereof. It is manifest from the orders of the State and District Forum that both the fora have proceeded on the assumption that there was an obligation on the part of the appellant to develop and deliver possession of 151 plots, including Plot No. 32, to the respondent. Their presumption was based on letter dated 23rd October, 1990 from appellant to the respondent, communicating delivery of possession of 151 plots which included Plot No. 32 also. They failed

to appreciate that on passing of order by the State Government under Section 56 of the Punjab Town Improvement Act, 1922, the acquisition proceedings in respect of respondent's land stood abandoned and it reverted back to the respondent on fulfilment of certain conditions, enumerated in appellant's letter dated 23rd October, 1990. It is amply clear that the exemption notification did not contemplate that the appellant trust was to allot plots to the members of the respondent Society, whose land had been exempted from acquisition under the said notification. The only obligation on the appellant was to ensure that the colony of the respondent 1 comes up in consonance with the overall layout plan of the scheme. In furtherance of that object, it seems that the appellant formulated the scheme for development of the land; perhaps developed it and vide letter dated 23rd October, 1990, delivered the plots to the respondent on fulfilling certain conditions including payment of development charges. Apart from the fact that Resolution No. 594, dated 29th August, 1990 stood annulled vide order dated 29th May, 1997 passed by the Department of Local Government, Government of Punjab, the scheme for development was scrapped, no evidence was led by the respondent to show that all the conditions stipulated in letter dated 23rd October, 1990 had been complied with. As a matter of fact, it had been highlighted in the report submitted by the enquiry officer that the appellant was under no obligation to allot plots to the societies whose land had been exempted because after the abandonment of acquisition in terms of Section 56(1) of the Punjab Town Improvement Act, 1922 they had failed to recover full development charges from some of the societies and even the members of the societies also appeared to be

bogus. Furthermore, in view of the Civil Suit in respect of the land out of which Plot No. 32 had been carved out having been decreed in favour of the landowner, it was clear that the said piece of land did not belong to the Society, which could be placed at the disposal of the appellant for development and yet, it seems that in connivance with the officials of the appellant, they succeeded in getting it included in their list of allotted plots with an ulterior motive to get a plot in lieu thereof. We are convinced that all these were relevant factors which have been ignored by all the three fora and, therefore, their finding that the non-delivery of Plot No. 32 or an alternative plot in lieu thereof amounted to “unfair trade practice” on the part of the appellant Trust, cannot be sustained. It is evident that even the implication of abandonment of acquisition under Section 56 and the annulment of Resolution No. 594, dated 29th August, 1990 by the State Government have not been taken into consideration by any of the three fora. In our judgment, there is no material on record to return a finding that the appellant had indulged in “unfair trade practice”

2.9 It is important to note that the respondent-Society, pursuant to the order of release, did deposit Rs.3,81,475/- with the petitioner-Trust. However, on 23.11.1993, it filed a suit for refund of the development charges with interest on the ground that no development has taken place which was decreed on 13.05.2005. As per the decree, the amount has already been returned with interest. In an appeal filed by the respondent society, the rate of interest was enhanced. Further, it is relevant to observe that the consumer complaint was filed with respect to 33 plots from among the 58 plots which were allotted. With regard to the remaining 25 plots, the

respondent-Society filed a suit for permanent injunction restraining the petitioner-Trust from interfering in the possession of the respondent-Society which was ordered to be dismissed on 25.11.2014.

2.10 Further, the case of Ludhiana Partap Employees Cooperative House Building Society, in ***Civil Writ Petition No. 3245 of 1995 (The Ludhiana Partap Employees Cooperative House Building Society v. The State of Punjab and Ors.)***, is also identical. The land owned by the aforesaid Society was included in the development plan for Model Town Extension Part-II and thereafter, released from the acquisition subject to the conditions which have been extracted above. The aforesaid Society was also allotted plots by a resolution passed by the petitioner-Trust. The aforesaid Society filed the Civil Writ Petition No.3245 of 1995 to direct the petitioner-Trust to deliver the possession of the plots allotted to the petitioner-Society. The aforesaid writ petition was dismissed by the Division Bench on 03.12.2014, with the following observations:-

We have heard learned counsel for the parties at length and find no merit in the present writ petition. The land of the petitioner-Society was subject matter of acquisition proceedings vide notification dated 13.02.1969 issued under Section 42 of the Punjab Town Improvement Act, 1922. The land was sought to be acquired as part of the Model Town Extension Part-II Scheme. A Higher Secondary School was proposed to be constructed on the land sought to be acquired. But after acquisition, on the representation of the petitioner-Society, the entire land purchased by it was exempted from acquisition on 29.06.1981. The land of the petitioner-Society ceases to be part of the acquisition and the petitioner continues to be owner thereof. That

part of the development scheme, where Higher Secondary School was reserved, also came at naught for the reason that the land of the petitioner-Society was no longer a part of the development scheme. Therefore, the petitioner as owner of the land is free to utilize the land in terms of the conditions of the exemption i.e. that the layout of the proposed cooperative housing colony will form part of the overall layout of the scheme and that development charges shall be deposited by the petitioner-Society. The utilization of the area would be to the same extent as the land utilization in the overall scheme. However, instead of using the land purchased by the petitioner-Society and exempted from acquisition for its purposes, the Society clandestinely moved an application seeking allotment of plots from the other land owned by the Trust comprising in Khasra No.56. The Resolution allotting plots could not have been granted, as the petitioner continues to be owner of the land purchased by it. Once the land purchased by the petitioner was available for its use, the petitioner could not take other land of the Trust. There was no obligation on the part of the Trust to allot its land to the petitioner-Society, as the petitioner continues to be owner of the land purchased by it. Instead of developing the land purchased by it in terms of the exemption granted, the petitioner maneuvered to get land owned by the Trust for its benefit. The Resolution passed on 11.07.1990 has been rightly annulled by the State Government in the year 2002. Such Resolution, though communicated to the petitioner vide registered post, was not challenged for almost 12 years. It is only by virtue of amended writ petition filed on 11.02.2004, the petitioner-Society has sought to impugn the same.”

2.11 Thereafter, in order to get the possession of the plots as ordered by the Consumer Forum, the respondent society filed an execution petition which has been moving back and forth. On 21.06.2016, the respondent society filed a fresh execution application after withdrawing the previous one with liberty to file fresh. In the meantime, against the order passed by the NCDRC, on the application for impleadment of party, a Special Leave Petition filed by the petitioner-Trust before the Supreme Court was dismissed on 04.05.2015. In the execution petition, the objections filed by the petitioner-Trust were dismissed by the DCFL on 31.10.2017. Even the revision petition filed before the SCDRC was dismissed on 02.02.2018. The aforesaid two orders are the subject matter of challenge in this writ petition.

2.12 It may be noted here that the petitioner-Trust after having filed the present writ petition, withdrew the same on 20.02.2018. Afterwards, the petitioner-Trust filed a revision petition before the NCDRC which was found to be not maintainable and was, as such, dismissed on 23.05.2019. The petitioner-Trust, thereafter, moved an application for re-call of the order dated 20.02.2018 which was allowed on 04.07.2018 and hence, this writ petition was ordered to be revived.

I have heard learned counsels for the parties at length and with their able assistance perused the record. Both the counsels have also filed their written synopsis with the gist of their submissions.

Court Proceedings:-

3. On 24.02.2021, after hearing the arguments at some length, the Principal Secretary, Department of Local Government, Punjab, was requested to examine the file and assist the Court by attending the hearing through Video conference as it was brought to the notice of the court that

pursuant to the FIR registered in the year 2001, no further action has been taken. Further, it was observed that although the resolution of the Trust stands annulled in the year 2002, but the corresponding changes have not been made in the layout plan (Map). On 03.03.2021, Sh. Ajoy Kumar Sinha, Principal Secretary, Department of Local Government, Punjab, attended the virtual hearing and filed a short affidavit. On 09.04.2021, the matter was again taken up wherein it was recorded that additional pleadings have been filed. An additional affidavit filed on behalf of the Government was also taken on record. Thereafter, the case was again adjourned to 22.04.2021. An affidavit dated 20.04.2021 has been filed pointing out that the Commissioner of Police, Ludhiana, vide its order dated 04.03.2021 has formed a Special Investigation Team (SIT) to probe into the matter. The stand taken by the Government is that the entire fraud was perpetrated by the officers/officials of the Improvement Trust in connivance with the office bearers of the respondent-Society. It has further been pointed out that the Director General of Police, Punjab, has issued necessary directions to complete the investigation in a time-bound manner. It has further been pointed out that a revised lay out plan submitted by the petitioner-Trust has been approved by the Government on 19.04.2021, wherein the Government has earmarked the Society's land as exempted land in accordance with the order passed at the time of exempting the land from compulsory acquisition. Consequently, now the land of the society has not been earmarked as an open space or reserved for any special purpose.

The bench, now, proceeds to examine the same.

Contentions of the Petitioner-Trust:-

4. On the one hand, learned counsel representing the petitioner-

Trust while drawing the attention of the bench to the report of the Director contends that a fraud has been played while passing the resolution dated 29.08.1990. The petitioner trust has not acquired even an inch of land of the respondent-Society. Further, he, accentuating the judgment passed in Shakti Cooperative House Building Society Ltd. (supra), submits that the Supreme Court after observing that an incorrect allotment has been made, dismissed a consumer complaint which is identical to the facts in the present case. He, again, while drawing the attention of the court to the Division Bench judgment in the case of Ludhiana Partap Employees Cooperative House Building Society (supra), contends that the allotment in favour of another Society by similar resolution No.538, dated 11.07.1990, has already been held to be not enforceable being a result of fraud. He, further, contends that the respondent society is spurious as is proved on perusal of the list of 19 members, all of whom are labourers except one. The respondent society has failed to challenge the order of the Government passed on 11.04.2002 annulling the resolution no. 593, dated 29.08.1990. In view of the subsequent developments like the annulment of resolution, the suit for recovery having been decreed and the judgments passed by the other courts, it is proved beyond reasonable doubt that a fraud had been played with the public authority. He, hence, prays that the writ petition be allowed.

Contentions of Respondent-Society:-

5. On the other hand, Sh. Yogesh Goyal, Advocate for respondent No. 1, submits that the petitioner-Trust has concealed the dismissal of SLP(C) No.9196 of 2017 on 04.05.2017. The petitioner-Trust has already lost their case in the Supreme Court on two different occasions. He, while drawing the attention of the Court to the Special Leave Petition filed by the

petitioner-Trust, submits that the same allegations have already been rejected by the Supreme Court. He further contends that the petitioner-Trust has also concealed the fact that against the order dated 18.05.2011, a review petition filed by the petitioner-Trust before the NCDRC was dismissed on 05.09.2011. He further submits that through the writ petition only two orders, passed by the DCFL and the SCDRC in the execution application, respectively, have been challenged whereas there is no challenge to the original orders passed by the DCFL which stand affirmed in the appeal as well as revision petition filed under the Consumer Protection Act, 1986. He, hence, contends that the writ petition itself is defective. He further submits that the petitioner-Trust can, now, only file a SLP before the Hon'ble Supreme Court and cannot file a writ petition. He, further, contends that 29 years have passed, however, the possession of plots have not been delivered to the respondent-Society. It is further alleged that the petitioner-Trust is guilty of contumacious conduct by making false statements. It is further contended that the Consumer Protection Act, 1986, is a complete Code in itself and the orders passed therein cannot be challenged by filing a writ petition. Hence, he prays that the writ petition be dismissed.

Discussion & Analysis by the Bench:-

6. Let us first examine the objections of the learned counsel representing the respondent-Society with respect to the jurisdiction of the Court. It is significant to note that Article 226 of the Constitution of India enables the High Court to issue, to any person or authority, including the government (in appropriate cases) directions, orders or writs, including writs in the nature of habeas Corpus, mandamus, prohibition, quo-warranto, certiorari or any of them for the enforcement of any of the fundamental

rights conferred under Part-III of the Constitution or for any other purpose. Such jurisdiction is plenary in nature. The powers conferred on the High Courts, by virtue of Article 226 of the Indian Constitution, are to enforce the rule of law and ensure that the state and other statutory authorities discharge its functions in accordance with the law. The Constitutional Courts are also the protector of rule of law apart from safeguarding the rights conferred by Part-III of the Constitution. It is a different matter that the Constitutional courts have adopted certain self-imposed parameters to avoid interference in every matter. However, such self-imposed restrictions are only for the guidance of the Courts and as such, these parameters do not bar the jurisdiction of the Court under Article 226.

6.1 Now let us examine the contention of learned counsel for the respondent society with respect to the alternative remedy available to the petitioner-Trust in the circumstances of the present case. According to the learned counsel representing the respondent-Society, the petitioner should file a Special Leave Petition in the Supreme Court which is governed/regulated by Article 136 of the Constitution. On a careful reading thereof, it is apparent that the Supreme Court has been given an absolute discretion to grant the Special leave to Appeal in appropriate cases. The Supreme Court is the apex court of the country. Its docket is already overflowing. In such circumstances, it would not be appropriate to expect from the Supreme Court to entertain every matter.

6.2 Still further, dismissal of a matter at the threshold in a SLP does not bar a litigant from enforcing the remedies available in other courts as the doctrine of merger is not applicable to such cases. Once the Supreme Court grants the leave to appeal in the matter, only then, it becomes a civil

appeal. Even otherwise, the remedy of Special Leave to Appeal is also available from the decision of this Court. Therefore, the objection of the learned counsel representing the respondent-Society that the petitioner-Trust should be relegated to the remedy before the Hon'ble Supreme Court is not correct. It may be noted here that in this writ petition, this bench is not examining the correctness or validity of the orders passed. The petitioner-Trust has filed a writ petition bringing to the notice of the court that a fraud has been played by the government officials in collusion with the officer/officials of the Trust as well as the officials of certain societies. In these circumstances, this Bench is of the considered view that if the Constitutional Court also closes its door, it would be an inappropriate approach in such circumstances and the court would be abdicating from the responsibility bestowed upon the High Court. Still further, the learned counsel representing the respondent-Society has failed to underline any other remedy available to the petitioner trust in the facts and circumstances of the case. Still further, Section 3 of the Consumer Protection Act, 1986 clearly provides that the remedies under it are not in derogation of any other law. The Consumer Protection Act, 1986, only provides for a special forum but does not bar the jurisdiction of the other Courts intrinsically. Keeping in view the aforesaid facts, there is no substance in the first objection of the learned counsel representing the respondent-Society.

6.3 Next objection is with respect to the concealment of facts. The counsel, for the respondents, state that the order passed by the Hon'ble Supreme Court, dismissing the Special Leave Petition No.9196 of 2017 on 04.05.2017, has been concealed. It may be noted here that the aforesaid

Special Leave Petition was filed against the order passed by the NCDRC on

an application under Order 1 Rule 10 CPC i.e. for impleadment of a party. The aforesaid fact is not relevant for the decision of the case. Further, it is contended that the petitioner-Trust has concealed an order dated 05.09.2011 passed by the NCDRC in a review petition. It may be noted here that this fact is also not relevant. The petitioner-Trust has disclosed in the writ petition that on 18.05.2011, the revision petition filed by it before the NCDRC was dismissed. Against the aforesaid order, even a SLP has been dismissed. Hence, the facts which have, allegedly, been not disclosed are irrelevant for the decision of the present writ petition. Still further, the court, before taking any serious view of the concealment of facts, is required to examine as to whether the facts concealed were material and relevant for the decision of the case or not. The court is, further, required to examine as to whether the, allegedly concealed facts have been intentionally veiled or inadvertently omitted. It is thereafter, only, that the court can non-suit the petitioner on the ground of concealment. On a careful examination of the file, this Bench is of the considered view that neither the facts which have not been disclosed in the petition are relevant nor the concealment is intentional or deliberate. Hence, the objection is without substance.

6.4 The next argument of the learned counsel is with respect to dismissal of Special Leave Petition on two different occasions. It may be noted here that the Special Leave Petition is not a regular appeal or revision. The Hon'ble Supreme Court has been conferred with discretionary jurisdiction under Article 136 of the Constitution so as to enable it to do substantive justice. Further, each and every petition cannot be entertained by the Hon'ble Supreme Court owing to its own limitations. Still further, under Article 136 of the Constitution of India, the petition is only an application

for permission to file an appeal. Once the court refuses to grant permission, then there is no appeal. Hence, there is no question of merger. If a SLP is dismissed at the threshold, it only means that the Hon'ble Supreme court has not found it appropriate to entertain the petition for discrete reasons. Therefore, when a SLP is dismissed in limine by a non-speaking order, there is no merger and the other available remedies are open to the petitioner. This aspect has been examined in detail by the Hon'ble Supreme Court in **Kunhayammed & Ors vs State of Kerala & Anr, (2000)6 SCC, 359**. In paragraph 44, it was concluded as under:-

44. *To sum up, our conclusions are:*

- (i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.*
- (ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.*
- (iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue*

before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

- (iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.*
- (v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.*
- (vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the*

order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.”

In view thereof, the dismissal of both the SLP's has no consequence on the questions of law in the present case. Therefore, there is no substance in the objections of the learned counsel representing the respondent-society.

6.5 The learned counsel has further, alleged, that similar allegations were made in the Special leave Petition filed before the Hon'ble Supreme Court. In the considered view of this Bench, once no leave was granted and the Special Leave Petition was dismissed on the very first date of hearing, even if the same grounds have been taken before the Hon'ble Supreme Court, still it cannot be held that the Hon'ble Supreme Court has rejected the petition on merits. There can be more than one reasons for the dismissal of the Special Leave Petition. In the facts of the case or due to other discrete reasons, the Court can dismiss or refuse to entertain a SLP. Hence, there is no substance in this objection.

6.6 The next argument of the learned counsel representing the respondent-Society is that the petitioner-Trust has only challenged the orders passed by the Executing Court. It is contended that in the absence of any challenge to the orders passed by the DCFL which have been confirmed in

appeal by the SCDRC and further, affirmed in the revision petition by the NCDRC, the writ is not maintainable. It may be noted here that the petitioner-Trust has not challenged the correctness of the orders passed by the Tribunals, respectively, under the Consumer Protection Act, 1986. The petitioner has sought a writ to declare that in the facts of the case, particularly, when a fraud with the public authority with respect to the public property stands established, the original order in favour of the respondent-society cannot be permitted to be executed. In view of these circumstances, there was no requirement to challenge the orders passed by the respective Tribunals.

6.7 The next objection of the learned counsel is that there is a delay of 29 years. It may be noted here that the State Government annulled the resolution passed by the petitioner-Trust way back in the year 2002. Thereafter, the litigation has remained pending. Still further, once the judgment/order has been obtained by playing fraud, the subsequent Court is entitled to avoid the same in view of Section 44 of the Indian Evidence Act, 1872 which provides that any party to a suit or other proceedings may show that any judgment, order or decree which is relevant under Section 40, 41 and 42 of the Indian Evidence Act, 1872 and which has been proved by the adverse party, was delivered by a Court not competent to deliver it or was obtained by fraud or collusion. In any such given situation, the Court is entitled to ignore the judgement/order/decreed and therefore, the delay, if any, in challenging the same is immaterial. Hence, the petitioner is entitled to file the present writ petition irrespective of the delay.

6.8 The next objection of the learned counsel is with regard to alleged contumacious conduct of the officials of the petitioner-Trust. On the

examination of the file, it is apparent that there is neither any false statement nor suppression or concealment of any material fact, therefore, the objection is without merit.

6.9 The next argument of the learned counsel is with respect to the Consumer Protection Act, 1986, being a complete Code. At the cost of repetition, it is important to note that the remedy under the Consumer Protection Act, 1986, is in addition to the other remedies and is not in derogation thereof. Section 3 of the 1986 Act bears testimony to the aforesaid intention of the legislature. Still further, here the question is not regarding the validity of the orders passed by the Consumer Forum in the original complaint. The question is that once the Constitutional Court comes to the conclusion that the basis/foundation of the obtaining the afore-said order from the District Forum was a result of fraud on the public property then whether the Court should exercise its jurisdiction in remedying the error or not? Hence, the objection is without merit.

6.10 It may be noted here that although, normally the fraud can be proved by permitting the parties to lead their evidence and therefore, the civil suit is the appropriate remedy. However, in the facts of the present case particularly when the facts are not disputed and both the parties have been permitted to file documents, it is inappropriate to direct the petitioner-Trust to avail the alternative remedy.

7. Certain undisputed facts need recapitulation, which are as under:-

- (i) It is undisputed that no part of the land belonging to the respondent-Society has ever been acquired. No doubt, at one stage, there was a proposal to acquire the land but

subsequently on release of the land proposed to be acquired, not even an inch of land of the respondent-Society has been acquired. Still further, the restriction, if any put, on utilization of the land in a particular manner has already been removed in view of an affidavit filed on behalf of the Government on 20.04.2021, in which it has been stated that the Government has adopted a revised layout plan on 19.04.2021 wherein the Government has earmarked the land of the respondent-Society as exempted land as per the terms and conditions of the notification dated 25.06.1981.

- (ii) It is not in dispute that the Society's land was exempted as per the notification issued in the year 1981 subject to certain terms and conditions. The respondent-Society accepted those conditions and thereby, got the land released.
- (iii) That resolution No.593, dated 29.08.1990, passed by the petitioner-Trust, does not even remotely refer to the allotment of land of the plots to the respondent-Society. The Ludhiana Improvement Trust is a creation of Statute. It is bound by the rules framed by a competent authority. Initially, in year 1965, Ludhiana Improvement Trust Land Disposal Rules, 1965 were notified, which were substituted by the Utilization of Land and Allotment of Plots by the Improvement Trust Rules, 1975. Rule 4 thereof laid down the mode of utilization of the land and

plots. In the year 1983, the Punjab Town Improvement (Utilization of Land and allotment of Plots) Rules, 1983, have been enforced while superseding the previous rules. It provides for a procedure as to how the Trust would dispose of the land/plots at its disposal. Learned counsel representing the respondent-Society has failed to draw the attention of the Court to any provision in either 1964 Rules or in 1974 Rules or in 1983 Rules, enabling the Trust to allot the land/plots to such societies.

- (iv) Still further, the resolution No.593 stands annulled by the Government on 11.04.2002. Admittedly, the validity of the aforesaid resolution has never been challenged.
- (v) The Challenge to the decision of annulment in a case of another identically placed Society has already been repelled by a Division Bench of this Court.
- (vi) Now, in view of the change in circumstances and the decision of the Government to adopt a revised lay out plan, the matter in dispute has already undergone substantial change. The foundation of the case set up by the society before the Consumer Forum stands removed. Even the Hon'ble Supreme Court has found in the case of Shakti Cooperative House Building Society Ltd(supra) that the Society had no right to allotment.

Still further, as per the terms of release of the land, the respondent- Society was not entitled to any allotment. Still further, in the present case, the fraud by the then

Chairman, officials/officers of the Trust and the office bearers of the Society stands established beyond reasonable doubt. The report of the Director, Local Government, Punjab, clearly not only establishes the fraud but also explains as to how the fraud was perpetrated. A Division Bench of this Court has also taken a similar view in the case of Partap Cooperative House Building Society Ltd. (supra). It is further apparent that the then management of the petitioner-trust acted in a manner which was detrimental to its own interest. Thus, it is safe to conclude that the officials, who were appointed to protect the interest of a Corporate body, themselves, assumed the roles of encroachers and perpetrator in defeating its interest.

(vii) Still further, the plots were allotted without payment of its cost which is not permissible as per the rules. The petitioner-trust is an instrumentality of the State and is a creation of Statute. Therefore, the land/property, owned by it, is a public property which could not be distributed free of cost without any justifiable reasons.

viii) Still further, it is appropriate to notice that there is a considerable doubt regarding the genuineness of the Society and its members. The Civil Court in the suit filed by the respondent-Society against the trust with respect to possession of remaining plots as noticed above, on examination, has expressed this doubt in detail. The

relevant findings in the judgment dated 21.11.2011, are as under:-

“19. In this suit defendants had filed an application on 14.09.2006 calling upon plaintiff for production of the following documents for the cross examination of P.W-1:

1 Minutes book of Shaheed Bhagat Singh Cooperative Society from 1996 to till date.

2 The details of 25 allottee of plots showing their name, plot no.,size and complete address of the abovesaid allottees alongwith record of their allotments, membership and document regarding delivery of possession.

3. The details of 33 members, their names and complete address alongwith record of their allotments and membership number.

4. Detail the persons/office bearers of of management committee of Shaheed Bhagat Singh Cooperative H/B Society.

5. Copy of Bye Laws of Shaheed Bhagat Singh Cooperative H/B Society.

20. Defendants neither filed reply nor submitted the documents. Unfortunately, my learned predecessor was constrained to pass the following detailed order 12.1 2006:-

"Heard on application for directing the plaintiff to produce the original record for the purpose of cross examination. The present application has been moved for production of the record for the purpose of

cross-examination. Upon notice, reply has been filed.

Heard.

During the arguments, Sn.V.B.Verma Advocate, ld. counsel for the plaintiff society stated at bar that all the record is in possession of the plaintiff society but that record is not relevant for the present case. If the record is in possession of the society, then relevance of the record will be seen at the time of final disposal of the case. Plaintiff society is directed to produce the record mentioned in the application.

At this stage, ld. counsel for the plaintiff society has stated at bar that he does not want to produce the record because it is irrelevant for deciding the present case.

Ld. counsel for the plaintiff does not want to produce the record as stated above, adverse inference if any, will be drawn at the time of final disposal of the present case for non production of the record. Application stands disposed of accordingly.

Now to come upon 3.11.06 for the purpose of cross examination.

These documents were necessary to ascertain whether D.K.Sareen was authorized to institute the present suit and also to see who are the members who are in actual possession of disputed 25 plots. The best evidence le with the plaintiff has been with held. Rather it has been concealed

despite persistent demand by the opposite party. Even the court was constrained to order drawing of adverse inference. Resultantly in these circumstances adverse inference is drawn that there was no such authorization or consent of the members to institute the present suit.”

- ix) Further, the petitioner-Trust has produced a copy of the list of the members of the respondent society as Annexure P-23. As per the information given by the office of Sub-registrar of Cooperative Societies, Ludhiana (West), the details of the members of the Society, at the time of registration, have been annexed which shows that the society consisted of only 19 members out of which only Sh. Amrinder Pal Singh was an Engineer.

All the other members are shown to be labourers. The petitioner-Trust alleges that these members are fictitious. This court has already observed that before the Civil Court, the Society refused to give the details of its members. Therefore, even the genuineness of the Society, itself, is under suspicion. However, no final opinion in this respect is being expressed while leaving the respondent society to prove the same before the court of competent jurisdiction.

- (x) Still further, it is apparent that the respondent-Society filed a suit on 23.11.1993 for refund of the development charges deposited by it with the petitioner-Trust on the

basis of the decision of release of its land. The aforesaid suit was decreed on 13.05.2005 and the amount has already been refunded. Thus, the respondent-Society has not paid even the development charges.

8. Keeping in view the aforesaid discussion, it is clearly established that the allotment of the plot procured by the respondent-Society was a result of fraud carried out in connivance with the officials/officers of the Trust. An FIR has already been registered. It is a different matter that the Government after having registered the FIR in the year 2001 did not take any action for a period of 20 years. It is a sad reflection of the officials of the State who have miserably failed to discharge their duties. The prosecution has swung into action only after this fact was pointed out to the State's counsel and the Principal Secretary, Local Government, Punjab, was requested to appear. This court does not wish to comment any further except expressing its anguish.

9. As a sequel to aforesaid discussion, both questions framed in the beginning of the judgment are answered in favour of the petitioner-trust. It is declared that once the court comes to a conclusion that the order/orders of the tribunal were obtained by playing fraud, then, it is the bounden duty of every court to declare the same to be nullity and non est in the eyes of law. Still further, an omission to disclose insignificant/irrelevant facts does not, necessarily, lead to the dismissal of petition under Article 226 of the Constitution.

10. Hence, with these observations, the writ petition is allowed.

However, before concluding, certain observations are required

to be necessarily made:-

- (1) It is expected that in view of the affidavit dated 20.04.2021, the Commissioner of Police, Ludhiana, would impress upon the members of the Special Investigation Team (SIT) to conclude the investigation, positively, within a period of 3 months and file a report before this Court along with his own affidavit disclosing the detail of the steps taken from date of registration of the FIR till the day the report. In the affidavit, the names of the Investigating officers with their current status, the time taken by each of them alongwith the steps taken to complete the investigation shall also be disclosed.
- (2) A miscellaneous application has been filed for permission to implead and hear the applicant as intervener. The applicant claims that he is a bona-fide purchaser and has constructed a house on the said property. It may be noted here that the aforesaid controversy is alien to the subject matter of this writ petition. Therefore, the application is disposed of. However, the applicant shall be at liberty to avail the alternative remedy.

Let a copy of the judgment be forwarded to the Commissioner of Police, Ludhiana and Principal Secretary, Department of Local Bodies, Punjab.

12th May, 2021
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO