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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: April 28, 2023

Punjab State Power Corporation Ltd. and another

....Appellants

versus

Vaneet Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Dhruv Walia, Advocate for the appellants.

Mr. Sherry K. Singla, Advocate for the respondent.

ARUN MONGA, J. (ORAL)**CM-4357-C-2023**

For the reasons stated in application, same is allowed, subject to all just exceptions.

Main case (O&M)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, appellants/defendants are in second appeal before this Court assailing learned trial Court judgment and decree dated 29.11.2022, as upheld by learned First Appellate Court vide its judgment and decree dated 27.02.2023, decreeing the suit of plaintiff and *inter alia* directing defendants to release permanent electricity connection in the name of plaintiff in place of temporary connection as per Rules and also restraining defendants from disconnecting temporary connection till the release of permanent connection, subject to regular payment of electricity bill by plaintiff.

3. Briefly stated, facts, as noticed by learned Courts, are as below:

“2. Briefly stated, the facts of the case of the plaintiff are that he has purchased one plot No.18 at Friends Enclave

across Badi Nadi (Punjab Govt. approved) falling in the limits of village Tafajalpura Tehsil and District Patiala vide sale deed dated 02.04.2019 from Jaspreet Kaur. The aforesaid Jaspreet Kaur has purchased the property from Sohan Lal Garg vide sale deed dated 10.07.2012 and Sohan Lal Garg had purchased the property from one Jagdeep Singh vide sale deed dated 08.03.2010. In all the sale deeds, it has been mentioned that the property in question is free from all types of encumbrances and disputes of the Govt. or NonGovt. Organizations. The defendants had issued a temporary meter to the plaintiff and the plaintiff is also regularly making the payment of the said temporary meter. Now the construction of the house has been completed and the plaintiff applied for the permanent meter, but to the utter shock of the plaintiff, the defendants denied to take even the application of the plaintiff inter-alia pleadings that some charges are due from the colonizer Jagdev Singh. The ground so mentioned by the defendants is totally false and baseless and it is far from reality and it is pertinent to mention here that from the year 2008 to 2020, the 49 permanent connections were released to the residents of the locality which is totally contradictory to the stand taken by the defendants. Further, nothing has been done by the department and if the department was vigilant, then the department could have approached the revenue authorities for giving the note in the jamabandi with regard to the charges view of the department of the said land but nothing of this kind was done by the defendants-department. It is further submitted that the property has been purchased by the plaintiff after going through the revenue record and also by checking earlier sale deeds, there is no mention of any charges/encumbrance of the defendants-department. If at all, any amount of the defendants is due then the same is against the colonizer and the plaintiff being the end user cannot be fastened with any type of the liability and if at all there is any liability, the same is inter-se between the defendants and colonizer. The plaintiff has got the necessary approvals from the Municipal Corporation Patiala with regard to construction of the house and nothing of this order has come into the light. The plaintiff was forced to live at the rented accommodation for which the plaintiff is paying Rs.11,500/- per month because of non-release of the electricity connection by the defendants-office. Finding no other alternative, the plaintiff got served a legal notice dated 20.10.2020 upon the defendants, but all in vain. The plaintiff has now moved in suit house along with his family and he is facing much hardship due to the illegal acts of the defendants as the defendants are not ready to install the permanent electricity connection and also bent upon to disconnect the temporary connection despite the fact that the electricity is basic amenity. The officials of the defendants came to the spot and tried to disconnect the temporary electricity connection but due to intervention of the respectable persons, the illegal act of defendants was foiled, but they threatened the plaintiff to disconnect the temporary connection at the earliest. The defendants have no right and authority to disconnect the

temporary connection, rather it is incumbent upon the defendants to install the permanent electricity connection which is need of the plaintiff. Hence, the plaintiff has filed the present suit.”

4. Upon notice, defendants No.1 and 2 appeared and filed written statement admitting factum of issuance of temporary connection to the plaintiff but denied factum of construction of house for want of knowledge. It was pleaded that in view of letter No.548-52 dated 05.06.2008, the Colonizer was asked vide memo No.190 dated 18.06.2020 to rectify some of the work already done and also to complete pending work as per approved site plan, so that electric connections could be released at the site.

4.1. It was submitted that Sr. Town Planner-cum-Competent Authority was also informed vide Memo No.1153-55/STP (PTA) Friends Enclave Dated 15.07.2008 regarding Grant of Final NOC/ Clearance of PSEB for license U/S 5 of PAPR Act 1995 to Sh. Jagdev Singh for 9.77 Acre Colony Friends Enclave at village Tafazalpura, Distt. Patiala.

4.2. It was further asserted that in view of clause (9) i.e. “It is made clear that in case the Promoter/ your office fails to provide the requisite electrical LD system, PSEB will consequently not be able to give electrical connection(s) to the prospective consumer(s) (owners/residents of the plots), responsibility of which shall lie solely on your office/Promoter. Further as per Clause (10), the NOC shall not mean any commitment on the part of PSEB to release the load. The load shall be released as per rules, seniority and as per policy/ regulations at the time of release of load.” It was further submitted that earlier electric connections were released wrongly and no new connection had been released after February, 2021 in view of Letter/Memo as mentioned above.

4.3. It was averred that thus permanent connection also could not be released to plaintiff. No legal valid notice had been received in the office of

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defendants. The defendants had not committed any illegal acts since permanent electric connection could not be released in view of the Letter and Memo as fully described above. The defendants got every legal right to act as per rules and regulations of PSPCL. The connection had to be released as per Rules and Regulations of PSPCL read with the Electricity Act 2003 as amended. Remaining averments were also denied and prayed for dismissal of the suit.

5. Based on the rival pleadings, following issues were framed:

- “1. *Whether plaintiff is entitled to mandatory injunction as prayed for? OPP*
2. *Whether plaintiff is entitled to permanent injunction as prayed for? OPP*
3. *Whether the present suit is not maintainable in present form? OPD*
4. *Whether plaintiff has got no cause of action to file the present suit? OPD*
5. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issues No.1 to 4 in favour of plaintiff. Consequently, suit filed by plaintiff was decreed.

8. Feeling aggrieved against the said judgment and decree dated 29.11.2022, appellant-defendants preferred first appeal.

9. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

10. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“18. *After giving my thoughtful consideration to the submissions put forth by learned counsel for the appellant, learned counsel for the respondent, perusal of the record of learned lower court, coupled with due assistance rendered, the Court does not find any merit in the submissions put forth by the learned counsel for the*

appellant. Appellant being aggrieved from the impugned judgment and decree passed by the learned lower Court whereby suit filed by plaintiff for relief of mandatory injunction and permanent injunction has been decreed, has preferred the present appeal.

19. It is worth making mention that as per the defendants, promoter/colonizer from whom the property has been purchased by the plaintiff has not completed the work as per the site plan and further that in case the promoter fails to provide the requisite electrical LD system PSPCL then PSPCL will consequently not be able to give/release the electric connection(s) to the prospective consumers. Memo dated 15.7.2008 Ex.D2 when taken glance of shows that final NOC was granted subject to the conditions detailed therein. In case the promoter does not adhere to the conditions, a report of the same shall be made promptly by concerned PSPCL Field Officer to the Office of Senior Town Planner-cum- Competent Authority. There is no document to substantiate that the Memo dated 22.6.2020 Ex.D3 vide which the promoter was called up to complete the requisite work and the conditions having been elucidated therein, that in case the promoter fails to provide requisite electrical LD system PSEB will consequently be not able to release electric connections to the prospective consumers and that the responsibility of the same shall lie solely on the promoter. It has been further mentioned therein that NOC shall not mean any commitment on the part of PSEB to release the load. The load shall be released as per rules and regulations.

20. The evidence has been adduced by the plaintiff as to his having purchased the property and further in case any compliance has not been made by the colonizer/promoter, the plaintiff who has purchased the said plot in the said area/colony cannot be deprived of the basic necessity of electricity. It has been rightly observed by the learned lower court and the defendants have been rightly directed to release the permanent connection in the name of the plaintiff as per rules. It has been rightly observed by the learned lower Court that in case there is any amount due or any action has to be taken against the promoter/colonizer, defendants shall be well within its domain to take the action and the judgment shall have no bearing on the rights of the defendants. Thus, the court does not find any merit in the submissions put forth by the learned counsel for the appellants.

21. In the light of the above discussions, issues no.1 and 2 are decided in favour of the plaintiff and against the defendants. Issues no. 3 and 4 are decided against the defendants and in favour of the plaintiff. The findings accorded by the learned lower Court are hereby affirmed.”

11. Learned counsel for appellant-defendants contends that in terms of letter dated 05.06.2008, colonizer was directed to rectify some of the work already done and also to complete pending work so that electricity connections could be released to residents. He would contend that vide letter dated 15.07.2008, in a communication addressed to Senior Town Planner-cum-Competent Authority,

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intimating grant of final NOC/ clearance in respect of electricity layout submitted, the said authority was made aware that said approval was subject to the assurances of the promoter/ colonizer. He would contend that in the event of his default, burden was to be borne by the said authority.

11.1. Learned counsel for the appellant-defendants would also contend that learned Courts below did not take into consideration Regulation 6.7 of the Electricity Supply Code, 2014. He would contend that learned Courts below did not appreciate the fact that when a purchaser of a premises approaches a distributor seeking afresh electricity connection to his premises for supply of electricity, the distributor can obviously stipulate the terms subject to which it would supply electricity. It can stipulate that the charges/necessary formalities/ arrears due in regard to the supply of electricity and the infrastructure required to be raised to ensure its smooth supply, should first be redressed before a new connection is sanctioned.

11.2. Learned counsel for appellants would further contend that in the absence of such a stipulation, and in case of non-adherence to the same, an unscrupulous consumer may commit defaults with impunity, and despite not having fulfilled his obligations under law, may sell away the property and move onto another property, leaving the individuals consumers/ purchasers in a bind, all the while making it next to impossible for the distributor to recover its dues. He would further submit that therefore, learned Courts below were not justified in allowing the claim of the plaintiff, as the same amounts to giving premium to the unscrupulous tactics of the developer and even otherwise, would be a benefit granted contrary to the relevant rules and instructions.

12. On advance knowledge of pendency of appeal, learned counsel for respondent/plaintiff causes appearance and submits that respondent/plaintiff, being a *bona fide* purchaser of the premises in question, cannot be deprived of the basic

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amenity of electricity for no fault of his. Learned Courts below have rightly appreciated and analyzed the evidence of both the parties and returned findings in correct perspective. No fault can be found with the approach of learned Courts below.

13. Having heard competing arguments of learned counsel for parties, I am of the view that reasoning and the findings returned by the Courts below do not warrant any interference. It is borne out from the record that having itself remained lackadaisical in proceedings against the promoter/ colonizer for not complying with the statutory requirements, the burden of its own negligence is now sought to be fastened on the consumer that he ought to make good the deficiency, which if at all have remained un-complied, concededly required on the part of developer to be fulfilled. The defence taken before this Court is nothing but repetitive and reiteration of what was argued before the Courts below and same has been rightly dealt with and rejected giving reasons that consumer cannot be made to suffer for the fault of either PSPCL or the developer. Furthermore, it is borne out from the record that similarly situated other purchasers in as many as 49 have been given permanent connection while respondent-allottee continues to have temporary connection. I see no reason as to why respondent-allottee be not given the same benefit as given to other consumers.

14. Having perused the impugned judgments, my considered opinion is that the submissions herein were also made before learned Courts below, were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were correctly recorded by giving sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

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15. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.
16. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.
17. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.
18. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
19. Pending application(s), if any, shall also stand disposed of.
20. No order as to costs.

(ARUN MONGA)
JUDGE

April 28, 2023
mahavir

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