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

**RSA No.468 of 1990 (O&M)
Date of Order:19.01.2024**

M/s Chaudhary Motor Agency

.Appellant

Versus

The Jullundur Improvement Trust, Jalandhar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr.Akshay Bhan, Sr. Advocate, with
Mr. Santosh Sharma, Advocate
Mr. Harsh Vasu Gupta, Advocate
for the appellant.**

**Ms. Kavita Arora, Advocate
for Mr. S.C.Pathela, Advocate
for the respondent.**

<u>ANIL KSHETARPAL, J</u>

1. After hearing the learned counsel representing the parties on 16.01.2024, the following order was passed:-

> *"1. This regular second appeal poses a new challenge before this Court. On the one hand, the appellant claims that in view of Section 96(3) of the Code of Civil Procedure, 1908, the first appellate court has wrongly entertained the appeal although it was not maintainable. Whereas, on the other hand, it has come to the notice of the court that the decree passed by the trial Court is perverse and erroneous. In these circumstances, the objection with regard to maintainability of the appeal is overruled particularly when this appeal has remained pending in this court for the last 34 years. This court has also given an opportunity to the appellant to argue the suit itself.*
>
> *2. The appellant filed a suit for mandatory and permanent injunction directing the defendant to allot him a shop-cum-flat no.774. The respondent-trust is creation of statue i.e. The Punjab Town Improvement Act, 1922. The appellant claims that he is in a possession of the shop and the defendant agreed to receive Rs. 1,25,000/- towards its price. The*

respondent-trust filed a written statement admitting the stand of the plaintiff. The statement of the learned counsel representing the trust was also recorded. Hence, the suit was decreed directing the sale of public property to the appellant. The trust (respondent herein) filed the first appeal. It was alleged that the then Chairman of the Trust colluded with the plaintiff and filed a written statement admitting his claim. During the pendency of the appeal, an application under Order XLI Rule 27 CPC was also filed in order to produce the copy of the order passed by the Collector ordering the ejectment of the appellant under the Public Premises Act.

3. The first appellate court on appreciation of the material placed on record came to a conclusion that originally the shop was tried to be sold through public auction. Sh. Bakshish Singh was declared the highest bidder, however, he failed to pay the amount. Subsequently, the appellant took forcible possession and filed the suit. The allotment of plot in favour of Sh. Bakshish Singh was cancelled by the Trust.

4. The first appellate court after noticing this fact came to the conclusion that the then Chairman of the Trust filed the written statement with a malafide intention and in connivance with the appellant, thus the court set aside the judgment and decree passed by the trial Court.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

6. The learned counsel representing the appellant contends that as per Section 96(3) of the Code of Civil Procedure, 1908, the first appellate Court has erred in entertaining and deciding the appeal.

7. On the other hand, the learned counsel representing the respondent submits that the decree from the trial court was obtained on the basis of fraud played by the appellant in collusion with the then Chairman and therefore, the court shall not interfere in this appeal.

8. This court has considered the submissions of the learned counsel representing the parties.

9. Undoubtedly, the appeal filed before the first appellate court was not maintainable as per Section 96(3) of the Code of Civil Procedure, 1908 as the trial court's decree was a consent decree. However, at this stage, it will not be appropriate to remit the matter back to the trial Court for fresh decision particularly when this appeal has remained pending in this court for 34 years. Hence, this court considers it appropriate to hear and decide this particular case on merits.

10 The Trust, as already noticed, is a creation of the

Punjab Town Improvement Act, 1922. As per the enabling power provided in the Punjab Town Improvement Act, 1922, the State of Punjab has notified the Punjab Town Improvement (Utilization of Land and Allotment of Plots) Rules, 1983 (hereinafter referred to as 'the 1983 rules'), while laying down the procedure for disposal of the trust property. In Rule 8 of the 1983 Rules, it has been provided that the commercial property shall be sold only through a public auction and the said rule is extracted as under:-

"8. Mode of sale. *- [(1) Unless otherwise provided in these rules, the Trust shall dispose of residential pots, multi-storeyed houses or commercial plots/other properties in a Scheme in the manner own in the Table below: -*

Serial No.	***Category of plot or house***	***Manner of allotment by***	
		auction	*draw of lots*
1.	*Residential plots up to 100 square yards size*	*Eighty percent*	*upto twenty percent*
2.	*Residential plots beyond 100 square yards size*	*Fifty percent*	*upto fifty percent*
3.	*Multi-storeyed houses*	*Fifty percent*	*upto fifty percent*
4.	*Commercial plots*	*Hundred percent*	*nil:*

Provided that in the case of a local displaced person, a residential plot or a multi-storeyed house, shall be allotted in the manner as specified in sub-rule (2) of rule 4.]

(2) The land for the institutional purposes shall be allotted by the Trust on the recommendation of a Committee consisting of the following for bona fide use of the institutions :-

(1) The Chairman or the Administrator of the Trust, as the case may be;

(2) The Deputy Commissioner or his representative in the case of a Trust at the district headquarters and Sub-Divisional Officer (Civil) in the case of Trust at Sub-Division level; and

(3) The Regional Deputy Director, Local Government."

11. Thus, it is evident that the Trust or the Chairman had no power to transfer the commercial plot in any other manner except by conducting a public

> *auction. Furthermore, it is not the case of the appellant that any resolution was passed by the Trust agreeing to transfer the suit property in his favour.*
>
> *12. At this stage, the learned counsel representing the respondent submits that the appellant has continued in possession due to pendency of the appeal and an application for grant of mesne profit for use and occupation of the premises during all these years is required to be awarded in favour of the Trust.*
>
> *13. The learned counsel representing the appellant prays for short accommodation.*
>
> *14. Adjourned to 19.01.2024.*
>
> *15. To be listed in the urgent list at Sr. No.101."*

2. This court has again heard this matter at length.

3. The learned counsel representing the appellant submits that in the absence of amendment in the written statement filed by the respondent (defendant before the trial court), the court is bound to decree his suit. He submits that the defendant (respondent) has filed a written statement admitting the claim of the plaintiff and therefore, the court has no choice but to decree the suit.

4. This court has considered the submissions of the learned counsel representing the parties.

5. Order XII Rule 6 CPC empowers the court to pass a consent decree if there is no dispute between the parties and the issues are settled, however, the provision is not mandatory in nature and it does not necessarily require the court to pass a decree without looking into the evil design in filing the written statement while conceding to the claim of the plaintiff. As already noticed, the suit property is a public property. It belongs to a government instrumentality that is regulated by the provisions of the Act and the Rules framed thereunder. The public authority managing the affairs of the public property has no right to squander away public

property without following the procedure prescribed under the rules. The court cannot merely sit and spectate the nefarious design with which the parties have approached the court. The court is obligated to pass a decree after satisfying that the remedy or relief sought by the parties is not being used for the purpose which is against the public policy. The facts put forward in this court reveal that the shoulders of the Court were sought to be used to take away public property in an illegal manner. In circumstances like these, the court is not expected to sit like a silent spectator and become a prey at the hands of the parties that act like predators and help them in achieving their illegal object and facilitate squandering of public property. Hence, the argument put forth by the learned counsel representing the appellant is liable to be rejected.

6. The Apex Court has consistently held that the orders obtained by fraud and misrepresentation of facts are non-est/nullity in the eyes of law.

7. Reliance in this regard can be placed on the relevant judgment passed by the Apex Court in ***S.P.Chengalvaraya Naidu (Dead) by Lrs. vs. Jagannath (Dead) by Lrs and others, (1994) 1 SCC 1.*** The Court in this particular case relied upon the 'Doctrine of Clean Hands' and held that the litigants whose cases are based on falsehood have no right to approach the court and their cases should be summarily rejected on this ground alone. The relevant paras of the aforesaid judgment are extracted hereunder:-

> *“"Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every*

> *court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."*
>
> *"The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."*
>
> *"A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage ....A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."*

8. In the realm of legal proceedings, the well settled principle holds that the litigants whose cases are founded on falsehood forfeit the right to approach the court, and their claims shall be summarily rejected based on this ground alone. This concept underscores the importance of honesty and integrity in legal matters, aiming to maintain the sanctity of the judicial process. When litigants resort to falsehoods, they compromise the integrity of the entire legal system. Court rely on truthfulness of the information presented before them to dispense justice fairly and impartially. Decisions based on false premises erode public trust in the legal system. The requirement for truthfulness in legal proceedings is foundational to the administration of justice. In these cases summarily rejecting the claims

based on falsehoods deters the litigants to make an attempt to manipulate the legal system. Ultimately, the rejection of cases built on falsehood or frauds safeguards the integrity of judicial processes and also upholds the ethical standards essential for the fair dispensation of justice.

9. At this stage, the learned counsel representing the respondent has drawn attention of the court to the fact that an application was filed on 04.12.2019, claiming mesne profit for use and occupation of the premises. It has been stated that in the proceeding under the Punjab Public Premises and Land (Eviction and Rent Recovery)Act, 1973, the Collector in the year 1988 assessed the mesne profit @ 2000/- per month. However, the aforesaid order was set aside by the Commissioner in appeal vide order dated 19.03.1990, and was remanded back to the Collector for passing a fresh order. A copy of the order passed by the Commissioner Jalandhar Division, Jalandhar, has been produced. A perusal thereof shows that the order passed by the Collector was set aside on the ground that the appellant was not granted proper opportunity. The proceeding is still pending and it's result is not known.

10. In absence of other material particularly when the assertions made in the application for grant of mesne profit have not been denied by the appellant, it is held that the appellant shall be liable to pay tentatively mesne profit @ 2000/- per month which would increase cumulatively @ Rs.5% per annum till the possession is handed over to the respondents. This amount shall be recoverable from the appellant in execution of the decree which shall be prepared by the office. This order shall be subject to modification, if any, passed by the Collector with regard to the rate of mesne profit.

11. The appellant's plea for remand in this regular second appeal is unfounded, as the suit is wholly based on collusion and fraud. The appellant along with the former office bearers of the Trust colluded and defrauded the trial court and obtained a consent decree. The First Appellate Court appropriately set aside the trial court's decree as it was based on fraud and collusion. Consequently, the appellant's prayer for remand is denied, particularly when the plaintiff's whole case is based upon permissible possession which can under no circumstances entitle him to purchase the property except in open auction. Consequently, the suit as well as the appeal are dismissed.

12. All the pending miscellaneous applications, if any, are also disposed of.

January 19, 2024 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO