IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126 & 127

Date of decision: 06.08.2024

(1) **CWP-18698-2024**

IMPROVEMENT TRUST RUPNAGAR

......Petitioner

VERSUS

PERMANENT LOK ADALAT RUPNAGAR AND ANOTHER

.......Respondents

(2) **CWP-18714-2024**

IMPROVEMENT TRUST RUPNAGAR

......Petitioner

VERSUS

PERMANENT LOK ADALAT RUPNAGAR AND ANOTHER

.......Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

*****

Present: - Mr. Kamaldeep S. Sidhu, Advocate
for the petitioner.

*****

VINOD S. BHARDWAJ, J. (Oral)

Raising identical dispute arising from two different awards passed by the Permanent Lok Adalat (Public Utility Services, Rupnagar on the application filed by the respondents pertaining to SCF No. 32 and SCF No. 31 in Giani Zail Singh Nagar, Rupnagar, both these writ petitions have been filed. Since other than the property description or money involved, all other issues are identical, hence, both these writ petitions have been taken up together for adjudication by a common judgment.

2. For facility of reference, facts are however being extracted from ***CWP-18698-2024*** titled as ***"Improvement Trust Rupnagar versus Permanent Lok Adalat (PUS), Rupnagar and another".***

3. Challenge in the above writ petition is to the Award dated 27.03.2024 passed by the Permanent Lok Adalat (Public Utility Services), Rupnagar whereby the petitioner-Improvement Trust has been directed to refund the amount of Rs. 24,57,919/- paid by the respondent No.2-Charandeep Singh-applicant to the petitioner against SCF No. 32, Giani Zail Singh Nagar, Rupnagar alongwith interest @ 12 % per annum from the date of last payment made till the date of Award.

4. Briefly summarized the facts of the said case are that the respondent-applicant had purchased SCF No. 32, admeasuring 121 sq. yds situated in Giani Zail Singh Nagar, Rupnagar in an open auction conducted on 15.12.2010 against a total sale price of Rs.41,14,400/-. A sum of Rs. 1,90,000/- was deposited by receipt No. 7516 dated 15.12.2010 towards earnest money and a further sum of Rs. 10,03,060/- was paid so as to make up 25% of the bid vide receipt No. 7545 dated 15.12.2010. Accordingly, an amount of Rs. 11,93,060/- towards the price of the plot had already been paid by the respondent-applicant in December, 2010.

5. Undisputedly, the earlier allottees of the respective plots had filed CWP-22789-2013 titled as ***"Kavita Adlakha versus State of Punjab and others" and*** CWP-23081-2013 titled as ***"Kailash Devi versus State of Punjab and others"*** challenging the resolution passed by the Improvement Trust dated 10.05.2013 whereby the allotment of the aforesaid site had been cancelled and the plot had been resumed. An order regarding maintaining status quo had been passed by this Court. Eventually, vide order dated 09.09.2014, the resolution passed by the petitioner-Improvement Trust for resumption of the site was set aside and the Trust was directed to re-consider the case afresh and to pass an order/decision after complying with the principles of natural justice. A fresh resolution is stated to have been later passed on 23.12.2015 re-affirming the resumption. The same was challenged by the previous allottee(s) vide CWP-641-2018 and CWP-27617 of 2017. In the meanwhile, the petitioner herein issued the letter of allotment to the respondent-applicant vide Memo No. RIT/435 dated 29.08.2016. The first installment was also deposited by the respondent-applicant towards the cost of the SCF on 14.12.2017. However, on coming to know of the fresh writ petition having been filed, a decision was taken by the respondent-applicant to give up on his plans of carrying out business operations from the above said premises considering a history of litigation and the matter being under consideration before the High Court afresh and he made a plan for another plot in a different area. The communication with respect to giving up claim for the aforesaid plot(s)-SCF No. 32 in question was sent by the respondent-

applicant to the petitioner-Improvement Trust and praying also for the refund of his amount but the same was not done. Resultantly, an application was filed under Section 22–C of the Legal Services Authorities Act, 1987 before the Permanent Lok Adalat (Public Utility Services), Rupnagar.

6. A reply was filed by the petitioner wherein it took a stand that the Improvement Trust has already offered possession of the plot in question and that the instalments have not been deposited by the allottee as per the schedule of payment mentioned therein. It is contended that as there is a default by the respondent-applicant himself in not complying with the terms and conditions hence, they have every right to resume the plot in question. Reference was also made to a communication bearing letter No. 104 dated 18.10.2017 calling upon the respondent-applicant to come to their office and comply with the terms and conditions of the letter of allotment.

7. An effort for an amicable resolution of the dispute was undertaken by the Permanent Lok Adalat, however, as the same failed to fructify in any agreed settlement amongst the parties, adjudication under Section 22-C (8) of the Legal Services Authorities Act, 1987 was undertaken.

8. Parties were heard and the documents placed on record were perused.

9. It was noticed by the Permanent Lok Adalat (Public Utility Services), Rupnagar that during the pendency of the proceedings before the

Permanent Lok Adalat (Public Utility Services), Rupnagar a resolution was passed by the petitioner-Improvement Trust on 28.09.2023 to refund the entire deposited amount alongwith interest @ 7% and an oral statement in this regard was also made before the Permanent Lok Adalat (Public Utility Services), Rupnagar. It was also informed that the said resolution was, however, not accepted by the Government. The Permanent Lok Adalat (Public Utility Services), Rupnagar eventually directed the petitioner-Improvement Trust to refund the deposited amount alongwith interest @ 12% per annum. The operative part of the Award passed by the Permanent Lok Adalat (Public Utility Services), Rupnagar reads thus:-

> *10. As per the record produced by the applicant, it is proved that SCF No. 32 area 121 Sq. Yard situated at Giani Zail Singh Nagar Rupnagar was purchased by the applicant in open auction on dated 15.12.2010 and the same was allotted to the applicant'vide allotment Ex.A8. However, after the deposited of Rs. 24,57,919/- by the applicant, it came to his notice that the litigation of the said SCF is pending before the Hon'ble Punjab & Haryana High Court as the earlier allottee filed the writ petition before the Hon'ble Punjab & Haryana High Court vide CWP No. 22789 of 2013 and CWP 23081 of 2013 by Kavita Adhikari and Kailash Devi. The copy of the order of the Hon'ble Punjab & Haryana High Court Ex.A18 dated 09.09.2014 is on the file vide which the above said order the writ petitions were disposed of. Another order of the Hon'ble Punjab & Haryana High Court in CWP No. 27617 of 2017 and CWP No. 641 of 2018 is also on the file and the same writ petitions were also filed by the Kavita Adhikari and*

Kailash Devi. The above said writ petitions were also disposed of by the Hon'ble Punjab & Haryana High Court vide its order dated 10.01.2023. The dispute in both the writ petitions is regarding the SCF No. 32 and SCF No. 31. As such it is proved that the dispute of the SCF No. 32 was pending before the Hon'ble Punjab & Haryana High Court after the allotment made to the applicant. Even otherwise, respondents produced the copy of the resolution dated 28.09.2023 on the file vide which the respondents agreed to refund the deposit amounts to the applicant @7% p.a. interest. However despite it, the respondents passed resolution to refund the amount to the applicant as already deposited by him with the respondents, but no efforts were made by the respondents to refund the deposited amount to the applicant. Even during the proceedings of this' case, Executive Officer of the respondents personally appeared before this Adalat and made oral statement that they are going to refund the amount along with interest @7% p.a. to the applicant. However in practical, no effort were made by the respondents to refund the deposited amount to the applicant. Now the only option available with the respondents to refund amount to the applicant. Hence after considering all these facts, this Adalat comes to the conclusion that the respondents failed to deliver the possession of the SCF to the applicant as the matter was earlier pending before the Hon'ble Punjab & Haryana High Court. As such, application is partly allowed and the respondents are directed to refund the total amount of Rs. 24,57,919/- paid to the respondents along with interest @12% p.a. from the date of last payment made by the applicant to the respondents till the date of award. The respondents are further directed to pay interest @9% p.a. on the above said amount from the date of award. till its realization. The respondents also *directed to pay damages to the tune of Rs. 1 lakh to the applicant as he suffered mentally and financially. Award is passed accordingly. File be consigned."*

10. Aggrieved thereof, the present writ petition has been filed.

11. Learned Counsel appearing on behalf of the petitioner has vehemently argued that the Award passed by the Permanent Lok Adalat suffers from non-appreciation of the facts and evidence in their correct perspective. He contends that even though it is not disputed that the initial auction of the property was held in the year 2010, however, the letter of allotment was issued in the year 2016 and at that point in time there was no litigation against the plot. The respondent-applicant himself deposited the first installment but thereafter despite communication sent by the petitioner-Improvement trust, the respondent-allottee did not come forward to take possession of the plot nor deposited the balance installments. He was thus in default in complying with the terms and conditions of the allotment cast upon him. Consequently, the claim of refund was improper and that a direction issued by the Permanent Lok Adalat (Public Utility Services) to refund the entire amount alongwith interest @ 12% is uncalled for. The Award passed by the Permanent Lok Adalat (Public Utility Services), Rupnagar is liable to be set aside.

12. I have heard learned Counsel appearing on behalf of the petitioner at length and have gone through the documents available on record.

13. I find myself unable to agree with the Counsel for the petitioner

for the following reasons:-

i) It is not in dispute that the auction of the property was held in the year 2010 and 25% of the amount alongwith the statutory Cess was duly deposited by the respondent-applicant by 15.12.2010 which was to the tune of Rs. 11,93,000/- (approx.)

ii) That undisputedly, the prior allottee of the SCF/plot had filed a CWP-22789-2013 before the High Court wherein a status quo had been granted. Hence, the letter of allotment in respect to the plot could not be issued in favour of the petitioner.

iii) Undeniably, the resolution passed by the petitioner-Improvement Trust for resumption of the said plot against the prior allottee was set aside by a Division Bench of this Court and the petitioner-Improvement Trust was directed to take a fresh decision. A resolution for resumption was eventually passed afresh in the year 2015. The letter of allotment could be issued in favour of respondent-applicant only after a period of nearly 06 years of the auction having been undertaken and a deposit of 25% of the bid money.

iv) That it would even otherwise be unreasonable for the petitioner-Impovement Trust to contend that even though a person/entrepreneur has invested money into buying a property for carrying out his business or ventures which he intends to profess for earning a livelihood himself in the year 2010, however, he is required to wait till such time that the petitioner is in a comfortable position to actually make an offer of allotment for deliver possession. The very fact that the letter of allotment itself was issued in the year 2016 clearly shows that the delay in issuing allotment itself was inordinate.

v) Even otherwise, it is further not disputed that even the subsequent resolution of the petitioner-Improvement Trust was also subject matter of challenge. Although the petitioner-Improvement Trust defends its claim by stating that there was no interim order passed, however, it can not be lost sight of that a person who is making an investment has his own fears. The said fears would definitely be aggravated considering that the earlier resolution passed by the petitioner-Improvement Trust had already been set aside by a Division Bench of this Court.

vi) An allottee cannot be compelled to await the ability and comfort of the Developer to deliver possession and cannot be expected to post-pone his project or the vocation that he wishes to undertake. The respondent-applicant himself had so stated in the application preferred before the Permanent Lok Adalat (Public Utility Services) that he had taken up another premises in a different location so as to start his business. Such an act on the part of the allottee cannot be termed as unreasonable or uncalled for. The request of the respondent-applicant was thus objective and based on reasonable apprehensions with respect to the future prospects of the site and considering the history of litigation and also taking into consideration that the letter of allotment itself was issued after a delay of nearly 06 years. Besides, the subsequent writ petition was decided in favour of the petitioner-Improvement Trust only in the year 2023 and the resolution was upheld. Such inconsistencies in any business venture are preferred to be avoided by a person having limited capital at his disposal as he intends to invest the same for carrying out a business. Prudent and objective businessmen would often prefer to invest in a property that does not have a potential dispute due to the fear of losing out.

vii) It was in the said background that the respondent-applicant sought for a refund of the amount deposited by him which was duly considered by the petitioner-Improvement Trust, during the pendency of the application before the Permanent Lok Adalat (Public Utility Services), and a resolution was passed to refund the amount alongwith interest @ 7% but even the same was not accepted or even given effect. The intention of the petitioner-Improvement Trust thus at one point of time was definitely to refund the said amount.

14. Be that as it may, a bidder/intending purchaser of a property cannot be held hostage to the convenience of the Developer and his plans

and cannot be left at the mercy of the Developer. Execution of the plans for carrying out any business operation is in the mind of the investor and is not dependent upon the convenience of the developer. Hence, the demand of refund cannot be held to be unreasonable or uncalled for.

15. Insofar as the question of interest @ 12 % per annum is concerned, I find that the said interest cannot be termed as excessive or harsh. The petitioner-Improvement Trust had itself calculated the instalments to be deposited by the allottee by demanding interest @ 12% per annum. It would be in equal to contend that even though the petitioner-Improvement Trust is entitled to demand the instalments/payments alongwith interest @ 12% per annum, however, it would be harsh if the amount so deposited is required to be refunded alongwith the same rate of interest.

16. The Permanent Lok Adalat (Public Utility Services) is guided by the principles as enunciated in Section 22 (D) of the Legal Services Authorities Act, 1987. The said principles have seemingly been followed by the Permanent Lok Adalat in partly allowing the application filed by the respondent-applicant.

17. The High Court, while exercising a power of judicial power on an order passed by the Permanent Lok Adalat does not substitute its opinion for that of the Permanent Lok Adalat unless such opinion suffers from illegality, perversity, impropriety or gross-mis-appreciation of the evidence and documents available on record. I do not find any such error in the said

judgment. Accordingly, there are no reasons as to why this Court should interfere with the discretion so exercised by the Permanent Lok Adalat (Public Utility Services), merely because another view may also be probable. The **CWP-18698-2024 is accordingly dismissed.**

18. Learned Counsel appearing on behalf of the petitioner points out that in CWP-18714-2024 that the respondent-applicant had claimed an amount which was actually not deposited by him and that there is a difference of about Rs. 3,26,000/- on comparison of the receipts.

19. So far as the question of calculation is concerned, the Award passed by the Permanent Lok Adalat (Public Utility Services) is modified (without prejudice to the right of the respondent-applicant), to the extent that the petitioner shall first issue a notice to the respondent-applicant to establish the payments made by him and that in the event of the respondent-applicant establishing the amount claimed to have been deposited, the Award passed by the Permanent Lok Adalat shall be enforced with respect to the amount so established to have been deposited with the petitioner-Improvement Trust alongwith all other benefits already awarded. The **CWP-18714-2024 is accordingly partly allowed.**

(VINOD S. BHARDWAJ)
JUDGE

AUGUST 06, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No