IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2024:PHHC: 018069

(220) **CWP-30649-2018**

Date of Decision: 08.02.2024

Improvement Trust Sangrur --Petitioner

Versus

Prem Singh Walia --Respondent

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

Present:-

Mr. K.S. Sidhu, Advocate for petitioner.

Mr. Ajay Pal Singh, Advocate &
Mr. Mandeep Singh, Advocate for respondent.

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VINOD S. BHARDWAJ.J (Oral)

Challenge in the present petition is to the award dated 03.04.2018 (Annexure P-3) passed by the Permanent Lok Adalat (Public Utility Services) Sangrur, in the application preferred by the respondent-applicant bearing no.84-258/27.1.2014-21.8.2017, whereby the petitioner has been directed to refund an amount of Rs.2,25,000/- to the respondent-applicant, within a period of two months, failing which the respondent-applicant has been held entitled to recover the said amount along with interest @ 9% per annum from the date of application i.e. 27.01.2014 till the payment and a cost of Rs.5,000/- was also levied as litigation expenses. A separate minority judgement has been passed by the Chairperson of the Permanent Lok Adalat (PUS), Sangrur dismissing the application of the respondent-applicant and in favour of the present petitioner.

2. It is evident from the facts of the case and from the documents on record, that at the time of issuance of letter of allotment on 18.9.2012, the allotment was made @ Rs.9,000/- per sq. yards along with an additional Rs.90,000/- to be paid.

3. The undisputed facts in brief which emerge from the pleadings are that the petitioner-Improvement Trust, Sangrur had developed a residential colony known as Manshahia Nagar, Sangrur and applications were invited for allotment of plots from the applicants in the said scheme at the rates fixed by the Govt. which was then @ Rs.5400/- per sq. yards for the plots of 200 sq. yards and @ Rs.8100/- per sq. yards for plots which were more than 200 sq. yards. The respondent-applicant was successful in the draw of lots and plot no.26 measuring 250 sq. yards on 18.9.2012 was allotted to him. The above said rates were later on increased as per the Resolution No.75 passed on 16.12.2011 which were approved by the Punjab Govt. on 21.8.2012. The respondent-applicant deposited the amount as demanded by the petitioner. He preferred an application under Section 22-C of Legal Services Authorities Act, 1987 after a period of more than two years before the Permanent Lok Adalat (PUS), Sangrur. The said application was dismissed by the Chairperson of the Permanent Lok Adalat (PUS), Sangrur, in his minority judgement, however, the majority Members ruled in favour of the respondent-applicant. Hence, the application in question was allowed vide order dated 3.4.2018 passed in favour of the respondent-applicant. The said award is now a subject matter of challenge in the present case.

4. Counsel for the petitioner has argued that the terms and conditions of the brochure issued by the petitioner-Improvement Trust made a declaration in Clause 29 thereof which reads as under:-

> *"29. This allotment is being made on temporary reserve price and if there is any increase in compensation, interest, solatium etc. of the acquired land from any competent court then the increased amount or balanced amount will be*

> *taken from the allottee and he will be liable to pay till the decision of Hon'ble Apex Court. Trust has the right to fix the time for deposit of amount of compensation. This condition will applicable to the next plot holder."*

5. He contends that the price listed in the brochure was only a tentative reserved price and the same could be revised/altered at the time of letter of allotment and even later. He further contends that the mere fact that the respondent-applicant was successful in the draw of lots would not create any estoppel against the petitioner-Improvement Trust to make allotment of the plot at the rate mentioned in brochure. Further, an allotment price was stated in the letter of allotment at Rs.9,000/- per sq. yard. The respondent-applicant accepted the said letter of allotment and after having accepted the said letter of allotment, he cannot raise a challenge to the price mentioned thereunder and the allottee is liable to pay the said price. It is also submitted that the respondent-applicant in fact alienated the plot on the very same date. Reliance is also placed by the counsel for petitioner on the minority award passed by the Chairperson of the Permanent Lok Adalat (PUS), Sangrur, whereby the contention of the petitioner has been accepted and the eminent domain of the seller to determine the price has been accepted. It was further noticed that clause 12 of the letter of allotment stipulated that the allotment is governed by the Punjab Town Improvement Act, 1922 and Punjab Town Improvement (Utilization of Land and Allotment of Plots) Rules, 1983 as amended from time to time and that the present petitioner are competent to revise the rate of the property. The last date for filing of an application to participate in the land allotment scheme was 7.3.2011, the draw of lots was held on 28.6.2011 and the allotment was issued on 18.9.2012. Hence, the allotment in question had been made after

more than one year of the scheme being floated. In terms of the notification Ex.R5 issued by the Govt. of Punjab, there is a provision for a minimum increase in the price fixed by the Trust. Hence, by applying the above said principle, an amount of Rs.8910/- is permissible to be added to the floating price as mentioned in the brochure, whereupon the minimum price would work out to Rs.8910/-. The price of Rs.9,000/- per sq. yards has thus been reasonably fixed in terms of the applicable Govt. notification and that the terms and conditions of the brochure, being subject to overall regulatory control of the provisions of Punjab Town Improvement Act, 1922 and the regulations thereunder, the revision in the price cannot be held to be bad or suffer from want of jurisdiction and competence.

6. Learned counsel for the respondent-applicant controverts the arguments by saying that the clause 29 of the brochure would be applicable only in an eventuality of an increase in compensation, interest, solatium etc. of the acquired land from any competent court and not on their own initiative and in the absence of any such exigency i.e. enhancement of compensation for acquisition of land. He refers to the award passed by the majority on the application preferred by the applicant to contend that the hardships of the applicant/respondent were duly noticed by the Permanent Lok Adalat (PUS), Sangrur and it was observed that the above said clause is exhaustive and not inclusive. Revision of price could not have taken place under general circumstances and/or in the absence of any incidence of enhancement of acquisition/compensation. It is contended that the petitioner-Improvement Trust could not have unilaterally revised the price, after inviting applications from the willing persons @ Rs.8100/- per sq. yard. It is further submitted that the respondent-applicant had to deposit the

above said amount under compulsive circumstances as he had no option but to purchase the plot at the price revised by the petitioner-Improvement Trust and had no right to negotiate the same. Thus, the petitioner-Improvement Trust has abused its eminent domain in dictating unilateral and arbitrary terms and conditions including an arbitrary increase in price.

7. I have heard learned counsel for the respective parties and have perused the documents appended along with the petition.

8. Any advertisement/brochure issued by a Developer/Improvement Trust is per se invitation from general public to make an offer to purchase a property. Thus, when any desirous/intending purchaser submits an application, consequent upon a brochure published by a Developer/Improvement Trust, he expresses his offer/willingness to purchase the property offered by the Improvement Trust at the terms and conditions stipulated thereunder. The draw of lots ipso facto is not an acceptance of the offer made by a willing/intending purchaser and is merely a shortlisting of the successful applicants. The acceptance of such an offer is crystalized only after the issuance of letter of allotment by the concerned Improvement Trust/Developer.

9. It is further not in dispute that an allotment rate of Rs.9,000/- per sq. yard was mentioned in the letter of allotment issued in favour of the applicant-respondent. As per the cardinal principles of the Indian Contract Act, 1872 a person is bound/required to accept the offer on the terms on which it is made and in the event of any variance in the letter of acceptance from the offer made, the person to whom such communication is sent, is entitled to not concur or accept the same and be bound to take liability on

the revised terms of the acceptance conveyed to him. Thus, a change in the terms and conditions of allotment, at variance from the offer made by the respondent-applicant, has been construed as a counter offer. The same, thus, gives a right to the applicant to exercise an option whether to accept the said offer, made by way of letter of allotment by the Improvement Trust or not. On having accepted the said letter of allotment, by necessary act and conduct, a binding contract comes into existence. There can be no repudiation or withdrawal from the contract after completion of communication. The respondent-applicant had every opportunity to not accept the letter of allotment and to refuse the allotment at rate other than the rate on which the application for seeking allotment had been submitted by him. The respondent-applicant, thus, could have withdrawn his offer on account of a counter offer made and he would be entitled to refund of his money and the petitioner-Improvement Trust could not have claimed forfeiture/deduction of any amount. Instead of taking recourse to the same, the respondent-applicant accepted the letter of allotment and deposited payments in terms thereof. The challenge to the allotment was made after completion of the communication of acceptance and accepting the terms thereof. A binding contract, thus, came into being on communication of the letter of acceptance and deposit of money, in compliance of such letter of allotment issued in favour of the applicant-respondent, without raising any objection thereto. It would, thus, not be open to the respondent-applicant to subsequently impugn the said offer price, that had been mentioned in the letter of allotment, and was fully known to the respondent-applicant at the time when the letter of allotment was made.

10. The reasons cited by the majority members in the award is

extracted as under:-

> *"Heard Ex. A4 copy of Brochure would show that the scheme was launched on 8.2.2011, Ex.A2 is the copy of allotment letter issued to the applicant by the respondent. It is dated 18.9.2012, it has been mentioned in this document original allottee. Ex.Al affidavit of the applicant would show that he had paid under protest the whole amount till 17.10.2012.*
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> *12. Clause No.29 of the brochure would show that the reserve price could be increased only in case of enhancement of compensation payable to the land owners whose land was acquired for the scheme, interest payable on the land owners whose land was acquired for the scheme interest payable on the enhanced amount and solatium etc. is cone by a competent court. Respondent in its written statement has no where disowned the brochure vide which the scheme was floated, so terms and conditions contained in the same are binding upon them. It is also not the case of respondent that the compensation of the acquired land was enhanced by any Competent Court. No order of a competent court which empower the respondent to increase the plot rate have been produced before us for perusal. Ex.R8 which is copy of agreement is showing rate at the enhanced rate. As a rebuttal of the same, the applicant has placed on file Ex.A6- copy of unfilled agreement signed by the applicant alleging that he was compelled to sign blank agreement. In the present case, the respondent has increased the rate of plot arbitrarily against the terms of brochure, without any order of the competent Court and in that situation it can be said that the respondent was not entitled to enhance the allotment price of the plot in question.*
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> *13. As this Court is to be guided by law of natural justice, and the applicant a senior citizen aged 77 years at present, unilateral enhancement of the rate on the basis of letter issued by the Government of Resolution passed by the*

respondent against the terms and conditions of the brochure, cannot be justified. Accordingly, the applicant must succeed and an Award is passed in favour of the applicant and against the respondent. The respondent is directed to refund an amount of Rs. 2,25,000/- to the applicant within two months from today, failing which applicant would be entitled to recover that amount with interest @ 9% p.a from the date of this application i.e. 27.1.2014 till the payment is made. The respondent is also burdened with cost of Rs.5000/- as litigation expenses. File be consigned."

11. The minority view in the award is as under:-

"9. It is admitted case of both the parties that respondent floated Mansaia Nagar Development Scheme Sunam road, Sangrur. In this development scheme there were different categories of 140 plots: As per brochure Ex A4, there were 41 plots of 250 Sq yard and reserved price was Rs.8100/- Sq yard. There were number of categories for the allotment of plots. Applicant had applied under Pensioner Category The draw of plots was held on 28.6.2011 and allotment letter no. 1273 dt. 18.9.12 which is Ex A2 on the file was issued to applicant. Broad features of the scheme were mentioned in the brochure. As per clause 29 of brochure, the allotment was being done on tentative reserve price The allottee was responsible to pay accordingly in case there is any enhancement of compensation, interest and solatium by a competent Court Ex.R2 is copy of item no.4 which also contains a list of successful allottees in Mansahia Nagar Scheme. Perusal of Ex R2 shows that applicant had applied two plots. He had applied in Pensioner Category for 150 Sq. yard plot but he was at no.1 in waiting list. He also applied under Pensioner Category for 250 Sq. yard plot and was successful and the name of applicant appears at serial no.3 and plot no.26 was allotted to him. On the basis of draw of plots, allotment letter dt 18.9.12 Ex A2 was issued to applicant. This allotment letter was issued @ 9000/- per Sq. yard. This

allotment letter was accepted by applicant and in consonance with this letter, he deposited the required amount. In the petition he had pleaded that he deposited the amount under protest vide letter dt. 17.10 2012. The application Ex.A3 does not carry any date but it is not disputed that applicant deposited the due amount. The applicant had relied upon a Judgment dt. 5.5.2014-Ex A5 passed by District Consumer Disputes Redressal Forum Sangrur with the title "Sandeep Garg Vs. Improvement Trust" bearing complaint no. 38 of 16.1 2014 decide on 5.5.2014. This consumer complaint pertain to allotment of plots in Mansahia Nagar Sangrur which is also subject matter of present application before us. This application no. 38 was accepted by Consumer Disputes Redressal Forum Sangrur. Although this Judgment is not binding on this Court but Hon'ble Punjab State Consumer Disputes Redressal Commission in a Judgment dt. 14.12.2016, which is Ex R10 on the file, has set aside the Judgment passed by Distt. Consumer Forum on 5.5.14. Reference regarding Judgment dt. 5.5.14 is mentioned in Ex R10 at Page no 10 bearing serial no 17 First Appeal no. 1156 fo 2014 with the title Improvement Trust Vs. Sandeep Garg. Therefore, none of the parties can draw any benefit from the observations made in the aforesaid judgment. However, Hon'ble National Consumer Disputes Redressal Commission in revision petition No. 1291-1297 & 1328/2017, date of order 31.8.17 has upheld the order dt. 14.12.16 (Supra).

10. In the present case the respondent has relied upon allotment letter Ex.A2 as well as an agreement dt. 18.10.12 executed between the parties. The applicant has raised an objection that agreement is not binding upon him as his signatures were obtained on blank proforma. He has also placed on the file blank agreement form Ex.A6 which is not signed by any responsible officer of respondent. However, the blank agreement Ex.A6 carries the signatures of applicant but it has no evidentiary value. As far as agreement dt. 18.10.12 is *concerned, it is Ex. R8 on the file. Ex.R8 is photostat copy of original agreement executed between the applicant and respondent on 18.10.12. The stamp paper was purchased by applicant and it is signed by applicant also. This agreement clearly shows that it is being executed in consonance with allotment letter no 1273 dt. 18.9.12 and clearly mentions the price of plot @ 9000/- per Sq. yard. In fact the applicant is estopped from denying this agreement. Applicant cannot say that his signatures were taken on blank papers. He is an educated an retired government employee. Hon'ble Supreme Court in* ***2009 (3) Apex Court Judgment 654 decided on 20.10.2009 with the title Grasim Industries Versus Aggarwal Steel*** *was pleaded to observe that a person signing a document is presumed to have signed after reading and understanding the document properly unless there is proof of fore or fraud." Therefore, the applicant cannot say that his signatures were taken on blank papers but at the same time he is bound by terms and conditions of the agreement Ex R8. Applicant executed an agreement with respondent agreeing to purchase plot (@9000/- per Sq. yard in consonance with letter no. 1373 dt. 18.9.12 (allotment letter) for plot no.26 measuring 250 Sq. Yard.*

11. Ex R9 are transfer papers of plot vide which applicant transferred the plot to one Piyush Singla. He filed an application alongwith Piyush Singla before the Executive Officer Improvement Trust Sangrur seeking permission to transfer plot no.26 measuring 250 sq. yard. It has been clearly mentioned in the application that the plot was allotted to him vide memo no. 1273 dt.8.9.2012. It is also mentioned that plot was under "Pensioner Category. He also submitted an affidavit dt 17.10.2012 attested by Executive Magistrate Sangrur wherein reference of memo no. 1273 dt. 18.9.12 has been given. There is another affidavit of applicant of the same date. Purchaser Piyush Singla has also submitted his affidavit dt. 17.10.12 attested by Executive Magistrate Sangrur. From the *documents on the file it is established that applicant was successful in draw of plots for 250 Sq. yard. Allotment letter was issued to him on 18.9.12. Agreement between parties was executed on 18.10.2012. But before execution of the agreement he transferred the plot on 17.10.2012 to one Piyush Singla. It shows that applicant was in a hurry to sell plot. Ours is a welfare state. The Government allots plots to various categories of persons for residential as well as commercial purpose at some reserve price by way draw of plots or public auction. Applicant who is resident of Patiala, as per his Adhar card, but he approached for a plot at Sangrur. The allotment of a plot cannot be for profiting purposes. In case applicant was not willing to purchase the plot (@9000/- per Sq. yard, he could definitely surrender his allotment letter dt. 18.9.12 and ask for return of his earnest money. Instead of surrendering allotment letter applicant opted to transfer the plot to one Piyush Singla even before execution of Agreement on 18.10.2012. lt clearly shows that applicant had applied for profiting purposes but at the same time the respondent was within its right to enhance the price of the plot. The respondent had also taken due permission from the Government. The respondent has increased the price of plot on the basis of guidelines approved by Collector Sangrur in the year 2011-12. Ex.R4 is order dt. 22.3.2004 of Punjab Government Department of Local Government which states as under- "The government has examined this matter. In this regard Trusts are directed that the reserve price for sale of property by the Improvement Trusts should be got fixed as per the present market price to be determined by the Deputy Commissioner which is to be duly approved by the government before the sale/auction is allowed. Trusts are therefore, advised to take action accordingly."*

12. From the above Government order, it is quite clear that before sale of any property, the prices are to be approved by the Government. As observed above, if the *applicant was not satisfied, he could have refused the allotment letter. However, he chose to make the payment as per allotment order. Clause 12 of the allotment letter Ex A2 also states that "The allotment is governed by the Allotment, Punjab Town Improvement Act, 1922 and Punjab Town Improvement (use of land and allotment of plots) Rules, 1983 as amended from time to time and will follow the guidelines so issued by the government from time to time in this regard." Allotment of plot is subject to the conditions of the allotment letter and Clause 12 clearly states that allotment is subject to guidelines issued by the government. The applicant has not filed any document showing that there was any contradictory guidelines to what the respondent has followed. As per Ex.A4, scheme was started on 8.2.2011 and last date for filling applications was 7th March 2011 and craw was held on 28.6.2011 and allotment was issued on 18.9.12. Thus, the allotment has been made after more than one year. The notification Ex. R5 of Punjab Government clearly provides for a minimum of 10% increase per annum on the price fixed by the Trust. Then automatically the price originally quoted as Rs.8100/- becomes minimum Rs. 8910/-. Against this the prices have been fixed at Rs. 9000/- by the trust in the allotment letter, which seems reasonable. The respondent has increased the price of plot on the basis of guidelines approved by Collector Sangrur in the year 2011-12. Therefore, I am of the opinion that respondent was within its right to enhanced the price and applicant was bound to pay the same.*

13. From the above discussion, it clearly comes out that applicant now cannot agitate against the price mentioned in the allotment letter when he has already paid the full amount and has further sold the same to Piyush Singla. Therefore, there is no merit in the application and the same stands dismissed. File be cosigned."

12. It is evident from a perusal of the above that the majority view is legally propelled by clause 29 of Letter of Allotment and principles of

natural justice notwithstanding that the said principles are not attracted in the present case. The determination of price in a Letter of Allotment is not an adjudicatory order for which principles of natural justice are to be followed. Moreover the price is required to be re-determined as per the govt. notification and such enhancement is in consonance with the govt. decision. The reasons given by the Chairman in his minority view are backed by sound legal reasoning and objectivity.

13. Similar issue came up for consideration before the Hon'ble Apex Court in case of **S. Srinivasa Murthy Vs. Karnataka Housing Board, (2012) 8 SCC 424**, wherein it was held that *"As appellant complainant had voluntarily agreed for change in the mode of purchase and unequivocally agreed to pay enhanced cost of about Rs.5.23 lakh, he cannot subsequently make any grievance against cost specified in revised allotment letter."*

14. The respondent-applicant, thus, cannot contend that a brochure creates a binding obligation or an enforceable right in favour of an intending purchaser to claim that the price mentioned therein can never be revised or that the allotment can only be made at the price as mentioned in the brochure and that any revision of price would be hit by estoppel. Further, a notification has also been issued by the Govt. Ex.R-5 where an enhancement by a minimum of 10% is permissible for every year of delay in the allotment. It is not in dispute that the allotment in the present case was after a delay of more than one year from the last date of submission of the applications as well as the draw of lots. Clause 12 of the letter of allotment mandated that the brochure and the conditions contained therein are subject to the provisions of the Punjab Town Improvement Act, 1922 and the rules

framed thereunder. Consequently, the regulations that are issued and/or circulars issued in exercise of the powers under the Punjab Town Improvement Act, 1922 would automatically extend and can be invoked for determination of the price.

15. The enhancement in the present case is in line with the instructions/circulars issued by the petitioner and relied upon by the Chairperson in the minority award. The same being on record and a minimum increase of 10% would have increased the price of the plot @ Rs.8910/- and the demanded amount is Rs.9,000/-, I find that there is no irrational or arbitrary increase in the price. I find that the majority view of the Permanent Lok Adalat (PUS), Sangrur suffers from failure to appreciate the mandate of the Contract Act, the effect of the variation in the terms of the letter of allotment and its legal impact on acceptance of such terms and conditions by deposit of money. Once the parties have altered their position on the basis of the terms and conditions incorporated in the letter of acceptance by their act and conduct and deposited the payment, it is not open to the respondent-applicant to thereafter impugn such conditions. The minority award passed by the Chairperson is rather reasoned and has taken into consideration the relevant statutory provisions and thus, the majority award suffers from non-appreciation of the statutory provisions and is thus liable to be set aside.

9. The present writ petition is, accordingly, allowed. The majority award date 3.4.2018 (Annexure P-3) passed by the Permanent Lok Adalat

(PUS), Sangrur is set aside and the minority award passed by the Chairman, Permanent Lok Adalat (PUS), Sangrur is upheld.

(VINOD S. BHARDWAJ)
JUDGE

08.02.2024
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No