IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-23932-2024 (O&M).
Date of Decision: 28.11.2024.

IMPROVEMENT TRUST LUDHIANA

... Petitioner

Versus

PERMANENT LOK ADALAT (PUBLIC UTILITY SERVICES), LUDHIANA AND ANOTHER

... Respondents

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

Present: Mrs. Kavita Arora, Advocate,
for the petitioner-Improvement Trust.

VINOD S. BHARDWAJ, J. (ORAL)

CM-19121-CWP-2024

Application is allowed as prayed for subject to all just exceptions.

Annexures P-12 to P-16 are taken on record.

The Registry is directed to tag the same at an appropriate place.

Main case

Challenge in the present petition is to the award dated 04.12.2023 (Annexure P-1), passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana, in case No.149 of 10.05.2022 titled as 'Maninderjit Singh Vs. Improvement Trust, Ludhiana'.

2 Briefly summarized, the facts of the present case are respondent No.2-applicant-Maninderjit Singh became owner of plot No. 358 G measuring 250 Sq. yards at BRS Nagar Ludhiana vide judgment and decree dated 13.01.2016 in a suit for specific performance filed on the basis of agreement to sell dated 06.04.2007 executed by the previous owner Darshan Singh. During execution proceedings thereof, it transpired that a sum of Rs.8,19,131/- was due against the vendor of respondent No.1-applicant regarding non-construction charges levied by the petitioner-Improvement Trust, Ludhiana. On the basis of decree for specific performance of the agreement to sell, respondent No.1-applicant had deposited the balance sale consideration of Rs.11,88,270/- with the treasury, for payment to the judgment debtor. As the liability towards pending non-construction charges of Rs.8,19,131/- was of the previous owner, the executing Court allowed the applicant to deposit Rs.8,19,131/- with the Improvement Trust, Ludhiana, out of the balance sale consideration. The construction of the house was thereafter raised by respondent No.2-applicant in the year 2016 and electricity and sewerage connection was also released, however, Improvement Trust raised a further demand of Rs.12,12,099/- vide Memo dated 10.06.2021, Rs.14,33,760/- vide Memo

dated 13.03.2020 and Rs.11,88,270/- dated 25.06.2019 towards development and non-construction charges. Impugning that the demands were illegal and had been wrongly imposed, respondent No.1-applicant approached the Permanent Lok Adalat (Public Utility Services), Ludhiana, by filing an application under Section 22-C of the Legal Services Authorities Act, 1987 and praying that levying of any non-construction charges after 2016 was not maintainable and that the 'no objection certificate' be issued to him.

3 The respondent No.2-applicant had filed an application for staying the proceedings of recovery. The operative contents thereof Trust read as under:-

> *"1. That the applicant has filed Application for settlement of the dispute regarding illegally raised demand of development, enhancement and non-construction charges of Rs. 12,12,099/- imposed by Improvement Trust, Ludhiana amounting vide Notice Memo No. 3129 dated 10/06/2021 and also vide previous Notice Memo No. 1785 dated 13/03/2020 vide which Rs. 14,33,760/- and also vide Memo No. 1401 dated 25/06/2019 vide which Rs. 11,88,270/-. The contents of the application are not repeated here for the sake of brevity and the same be read as part of this application.*
>
> *2. That the respondent has now illegally raised demand of development, enhancement and non- construction charges vide Notice Memo No. 3129 dated 10/06/2021 of Rs. 12,12,099/-, Memo No. 1785 dated 13/03/2020 vide which Rs. 14,33,760/- and also vide Memo No. 1401 dated 25/06/2019 vide which Rs.*

11,88,270/-. The said demand is illegal, null and void and is absolutely unjustified.

3. That the respondent is taking hurried steps to execute the proceedings of Notice Memo No. 3129 dated 10/06/2021 of Rs. 12,12,099/-, Memo No. 1785 dated 13/03/2020 vide which Rs.14,33,760/- and also vide Memo No. 1401 dated 25/06/2019 vide which Rs. 11,88,270/-.

4. That in case the proceedings of the above said notice are not stayed, then the applicant shall have to suffer irreparably loss and injury without any reasonable and probable cause and the same shall not be compensated in any manner.

5. That as per the facts and circumstances of the present matter, restraining the respondent from continuing the proceedings of the above Notices are is even otherwise warranted by law, equity and justice.

Hence it is respectfully prayed proceedings of that the Notice Memo No. 3129 dated 10/06/2021 regarding illegally raised demand of development, enhancement and non-construction charges of Rs. 12,12,099/-, Memo No. 1785 dated 13/03/2020 vide which Rs. 14,33,760/- and also vide Memo No.. 1401 dated 25/06/2019 vide which Rs. 11,88,270/- imposed by Improvement Trust, Ludhiana may kindly be stayed."

4 A separate reply to the application for staying the proceedings of notice Memo No.3129 dated 10.06.2021, had been filed by the petitioner-Improvement Trust. The same is extracted as under:-

"1. That the contents of pars no.1 is admitted, matter of record.

2. That the contents of para no. 2 to 5 in this regard, it is within the land of Adarsh Society which was allotted to the Society by the Improvement Trust Ludhiana. According to the instructions issued by the government, NCF, Enhancement and Development charges has to be taken from the person who has not constructed the plot. According to the instructions issued by this Government, NCF is being taken.

3. That the contents of para no.3 & 4 as per rule. That the notices issued to the allottee owner of plot were as per Act, Amended Act & Instructions issued time to time by Department of Local Government.

4. That the contents of para no. 5 the trust does not have power to waive any NCF or charges. Trust cannot suspended Act or Instruction of Government."

5 The reply to the main application is extracted as under:-

"1. That the contents of para no.1 is admitted, matter of record.
2. That the contents of para no.2. It is wrong that the officials of the LIT not receive the balance amount of NCF after depositing the 8,19,131/- by the applicant because the applicant ready to deposit only 3,69,139/- NCF amount it is much more after adjusting the deposited amount due to late deposit.

3. It is wrong because applicant had not deposited any proof of consilation till date with the LIT office so the calculations of NCF are copied.

4. That the contents of para no. 4 the trust does not have power to waive any NCF or charges. Trust cannot suspended Act or Instruction of Government."

6 Efforts for an amicable resolution of the dispute, as mandated under Section 22-C (4) to (7) of the Legal Services Authorities Act, 1987 had been undertaken by the Permanent Lok Adalat (Public Utility Services), Ludhiana, however the same did not mature, hence, adjudication under Section 22 C (8) of the Legal Services Authorities Act, 1987 was undertaken.

7 Parties led their respective evidence. The evidence submitted by the petitioner-Improvement Trust, by way of affidavit of dealing Clerk, is extracted as under:-

"1. That the deponent is working as Clerk at Ludhiana Improvement Trust, Ludhiana.

2. That the respondent LIT has allotted 16 Acres land to Aadarsh Colony Co-operative House Building Society vide letter no. 3744 of 02/09/1983. Initially the said Society has allotted the said plot to one Darshan Singh son of Sh. Bachan Singh. Said Darshan Singh further sold the property in question to applicant Maninderjit Singh. But he failed to raise *construction over the said property. Moreover, as per the instructions issued by the Government, Non-construction Fee, Enhancement and Development charges have to be taken from the person, who has not constructed the said plot. As such the applicant is liable to pay the said amount to the respondent LIT. The property of applicant is not a dwelling unit and he in order to mislead the respondent as well as this Hon'ble Court, has raised some temporary constructions, which is not suitable of residence.*

3. That it is pertinent to mention here that matter/appeal bearing no.373 titled of 2011 as "Ludhiana Improvement Trust V. Darshan Singh & Another" the Hon'ble Court held that the Ludhiana Improvement Trust is entitled to demand the enhanced price of land in question from the complainant and the non-construction charges after 2004."

8 Upon consideration of the evidence led by the respective parties and the pleaded case, the application under Section 22-C of the Legal Services Authorities Act, 1987, preferred by respondent No.2-applicant was allowed by the Permanent Lok Adalat (Public Utility Services), Ludhiana, vide award dated 04.12.2023. The operative part of the award reads thus:-

"9. We have heard the Ld. Counsels for the parties and have also gone through pleadings and evidence on record.

10. It stands established from the unrebutted statement of the applicant in the form of affidavit Ex-A1/1 (examination-in-

chief) corroborated by photographs Ex-P10 to Ex-P12 that construction over the plot has already been raised by the applicant. Now the first question to be decided would be the duration of such construction over the plot in question. It is proved from demand notice Ex-P16 dated 22.03.2016 and electricity bills dated Ex-P4 to Ex-P6 that electricity meter has been installed in the premises in question right from March 2016 onwards and the applicant is making payment of the electricity bills regularly. There is no rebuttal from the side of the respondent to this effect. Simple statement of Rama Shankar Clerk of the LIT is there to rebut the aforesaid evidence of construction led by the applicant. He simply deposed that the premises is not a dwelling unit and only temporary construction is there but nothing has come into his testimony that he ever personally visited the premises in order to ascertain the nature of construction which admittedly is there and has been established from the installation of regular electric connection in March 2016. It is therefore, concluded that the construction has been raised by the applicant on the plot in question in March 2016.

11. As per check list Ex-P18 prepared by the LIT there were arrears of Rs. 5,33,750/- towards the plot in question under head Non-Construction Charges. As per latest notice Ex-P13 issued to the applicant on 10.06.2021 there is balance of Rs. 1,050,014/- towards non construction charges Rs. 1,20,050/- towards development charges and Rs. 41,685/- towards enhancement charges up to 10.06.2021. Once it is proved that construction has been raised right from March 2016 and at that time the non-construction charges, as per check list Ex-P18, were only Rs. 5,33,750/- the recent notice Ex-P13 *containing non construction charges after March 2016 is definitely illegal and against the facts established on record. However, the applicant is liable to pay non construction charges up to 2016 as per check list Ex-P18 which comes to Rs.5,33,750/- plus development charges of Rs.1,20,050/- and enhancement charges of Rs. 41,685/-as referred in latest notice Ex-P13 and the total amount due towards the applicant comes to Rs. 5,33.750/- 1,20,050/--41,685 the total of which comes to Rs.6,95,485/-, It is established on record that during execution proceedings the applicant has already deposited a sum, of Rs.8,19,131/- vide receipt Ex-P19 towards the balance non construction charges, development and enhancement charges. So once the LIT was entitled to recover only a 6,95,485/- up to year 2016 towards non construction charges up to 2021, the respondent has no right to claim any other amount from the applicant on the basis of impugned notices Ex.P13 dated 10.06.2021 Ex-P14 dated 13.03.2020 and Ex-P15 dated 25.06.2019 and subsequent notice Mark-A dated 16.11.2022 which has been issued during the pendency of these proceedings. Such demands of LIT are totally unfair and unjust. Rather the LIT is liable to refund the excess amount which the applicant is liable to deposit in executing court for payment to the judgment debtor the aforesaid decree because the said amount was paid from the balance sale consideration which the applicant had already deposited in the treasury with the permission of executing court. Thus non issuance of NOC certificate to the applicant is also high handedness of the respondent Improvement Trust when the applicant has rather already deposited more amount than the amount of his liability. So in view of our aforesaid observations and also in the interest of justice, we pass the following award:-*

> *"Respondent Improvement Trust is directed to refund an amount of Rs.1,23,646/- to the applicant within a period of 4 months from today and on refund of that amount the applicant shall deposit the same in the executing court for payment to the judgment debtor of that decree of specific performance. In case the respondent fails to refund the aforesaid amount within the aforesaid stipulated period it shall be liable to pay interest @9% annum from the date of application till passing of the award Cand further interest @6% per annum from the date of award till actual-realisation. The respondent is also directed to issue NOC to the applicant within two months from today failing which it shall be liable to pay a sum of Rs. 100/- to the applicant for each day delay."*

Copies of award be supplied to the parties free of costs and File be consigned to the records."

9 Aggrieved of the award passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana, the present writ petition has been filed.

10 Learned counsel appearing for the petitioner-Improvement Trust has vehemently argued that the Permanent Lok Adalat (Public Utility Services), Ludhiana, has allowed the application filed by respondent No.2-applicant and has directed to refund the non-construction charges collected by the petitioner-Improvement Trust notwithstanding that the provisions as enshrined in the Punjab Management and Transfer of Municipal Properties Act, 2020, necessitated that for issuance of an 'occupation certificate,' the

minimum construction required to be raised should comprise of one habitable room, kitchen, bathroom and water transit along with taking permanent connection of water and sewerage supply in case of residential building. She contends that the construction raised by respondent No.2-applicant did not have any kitchen and the washroom and as such, the same was not a habitable unit. Accordingly, the application submitted by the respondent No.2-applicant was liable to be dismissed. She further contends that the specific affidavit that had been filed by the petitioner-Improvement Trust, wherein it has been specifically averred that the property was not a dwelling unit and that only a temporary construction had been raised which was not suitable for residence, has not been properly appreciated. Hence, the award has been passed ignoring the requirements prescribed as per law.

11 No other argument has been raised.

12 I have heard learned counsel appearing for the petitioner-Improvement Trust and have also gone through the documents appended along with the present petition as also with the application for stay.

13 A perusal of the reply filed by the petitioner-Improvement Trust as also the evidence by way of an affidavit shows that it has nowhere pleaded that the 'requisite construction' as mandated under the Punjab Management and Transfer of Municipal Properties Act, 2020, had not been adhered to. Even though, an expression has been used during the arguments that it was not 'habitable' however, no such expression has been used under the above rules.

14 Counsel for the petitioner has failed to refer to any provision in the rules which defined the dwelling Units requirements as per the applicable rules. Additionally, apart from an oral averment during the course of argument, no evidence or pleading has been referred to either before the Permanent Lok Adalat (Public Utility Services), or before this Court. In the absence of any specific pleaded case or evidence, it cannot be said that the same have not been considered by the Permanent Lok Adalat (Public Utility Services).

15 Even otherwise, another question which comes up for consideration before this Court is that the aforesaid rules were notified by the Government on 22.10.2021 whereas the construction in question is claimed to have taken place in the year 2016. The rules thus cannot be applied retrospectively. Even though counsel contends that the Rules of 2016 were then applicable, however, the argument seems unworthy of acceptance since the said Rules are not in suppression of any earlier rule and there is no repeal or saving clause. Moreover, the Rules have been notified under the Punjab Management and Transfer of Property Act, 2020, hence, there is no occasion for rules to have preceded the Act. The argument of any other rule being applicable has thus not been established by the petitioner.

16 Still further, even though, an emphatic effort has been made by the counsel for the petitioner-Improvement Trust to contend that kitchen and washroom had not been constructed, however, in the absence of any specific pleading in this regard having been raised or evidence led by the

petitioner-Improvement Trust, there is no basis for this Court to accept the argument.

17 This Court, in exercise of powers of judicial review, against the award passed by the Permanent Lok Adalat (Public Utility Services), would not infer a fact which has not pleaded and qua which no evidence has been led.

18 The contention of the petitioner-Improvement Trust that it was not a habitable construction is not the requirement prescribed in the rules.

19 It thus appears that the argument advanced before this Court is at variance from what has been specified in the Statute and the basic necessary ingredients for establishing the argument advanced have neither been pleaded nor any evidence led.

20 Under the given circumstances, it cannot be said that the award passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana, as per the guiding principles prescribed under Section 22-D of the Legal Services Authorities Act, 1987, is illegal, improper or suffering from non-appreciation or mis-appreciation of the evidence adduced before it. Once two views are possible, on the basis of the evidence brought before the Court, High Court would not ordinarily supplant its own opinion for that of the view adopted by the Permanent Lok Adalat (Public Utility Services). If the view is probable and plausible on the strength of the evidence, the same would ordinarily be accepted.

21 Finding no illegality, impropriety, perversity or failure in appreciation of the evidence or the law by the Permanent Lok Adalat

(Public Utility Services), Ludhiana, the present writ petition is dismissed. The award dated 04.12.2023 (Annexure P-1), passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana, in case No.149 of 10.05.2022 titled as Maninderjit Singh Vs. Improvement Trust, Ludhiana is affirmed.

November 28, 2024 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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