



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

115

CWP-31146-2024 (O&M)
Date of decision: 25.11.2024

The Ludhiana Improvement Trust

...Petitioner

VERSUS

Permanent Lok Adalat (Public Utility Services), Ludhiana and others

...Respondents

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

Present :- Ms. Kavita Arora, Advocate for the petitioner.

Mr. Vineet Sehgal, Advocate for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the award dated 14.05.2024 passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana, whereby the application filed by respondent No.2 under Section 22-C of the Legal Services Authorities Act, 1987 (hereinafter referred to as '**the Act**') has been allowed.

2. Learned counsel appearing on behalf of the petitioner has argued that the petitioner-Improvement Trust had floated a self-financed scheme known as Bhai Randhir Singh Nagar Scheme, Ludhiana (550 acre development scheme), hereinafter referred to as '**the Scheme**' in the year 1999. Applications were invited from the general public for allotment of various categories of flats including Super Delux Flat(s). One Smt. Balbir Kaur, widow of late Sh. Surjeet Singh, had applied for a flat and was



successful in the draw of lots held on 10.09.1999 whereupon a Super Delux Flat No.44, 4th floor, in the said Scheme, was allotted to her vide allotment letter dated 08.10.1999 (wrongly typed as 1995) with a tentative cost of Rs.12,50,000/-. It is averred that as per the letter of allotment dated 08.10.1999, an allottee was required to make payment of installments as per the schedule mentioned therein from the year 1999 till the year 2002. The allottee Smt. Balbir Kaur, however, submitted a request to the petitioner-Improvement Trust for change of her flat from 4th floor to the ground floor in view of her old age and her health. Keeping in view her request, the same was allowed by the Improvement Trust, on humanitarian ground, vide resolution No. 27 dated 22.05.2000. An approval was also granted by the Government for exchange of said flat on 11.12.2000 and a fresh letter of allotment dated 12.12.2000 was issued and Flat No.3 at Ground Floor under the Scheme was allotted to Smt. Balbir Kaur in exchange of Flat No.44, subject to an additional amount of Rs.1,00,000/- towards differential cost of flat. Thereafter, an agreement to sell was executed with the petitioner-Improvement Trust on 18.03.2002. The allottee i.e. Smt. Balbir Kaur, however, died on 02.02.2003 and her daughter Smt. Baljinder Kaur sought transfer of the above flat in her name on the basis of a registered Will executed in her favour by her mother. However, there were two more legal heirs, namely, Sh. Rajdeep Singh and Sh. Narinder Singh sons of Smt. Balbir Kaur. Hence, the petitioner-Improvement Trust sought verification of the complete record and asked Smt. Baljinder Kaur to provide affidavit/certificate to the fact that she was the sole legal heir of Smt. Balbir



Kaur. A request letter dated 27.04.2006 (Annexure P-3) was thereafter submitted by Smt. Baljinder Kaur in response to the same seeking transfer of the flat in her name. However, before an actual transfer of the flat in her name, Smt. Baljinder Kaur died on 01.07.2006. Her husband Sh. Kanwar Jagdeep Singh submitted a request of transfer of the flat in his name vide letter dated 22.01.2010. The request however remained pending since he was a Class-II heir.

3. Learned counsel for the petitioner further contends that subsequently one Sh. Harmandeep Singh-son of Smt. Baljinder Kaur also submitted an application for transfer of the said flat on 24.05.2018 in favour of all legal heirs. Apart from the aforesaid claim for transfer of the flat in their respective names, one Smt. Damini Sharma, wife of Sh. Harish Sharma, also submitted an application seeking transfer of the said flat in her name on the basis of a registered Will dated 20.01.2004 executed by Smt. Baljinder Kaur in her favour. She argued that the flat in question had never been actually transferred in favor of Smt. Baljinder Kaur and hence, in the absence of any proprietary right over the flat, there is no occasion for Smt. Baljinder Kaur to execute a Will or transfer the said property in favour of Smt. Damini Sharma.

4. She further contends that now Sh. Harish Sharma moved the above application under Section 22C of the Act on 23.01.2020 before the Permanent Lok Adalat (Public Utility Services), Ludhiana seeking transfer of the same flat in question in his favour, notwithstanding that there was a dispute between the parties with regard to the Will as well as to the



succession to the estate. The original legal heirs of Smt. Balbir Kaur had not been brought on record and as per the prevailing rules, a public notice had to be published in the newspaper(s), with a copy to be sent to all Class-I legal heirs of an allottee about the proposed transfer of flat lest there may be a fraud. She further contends that notwithstanding the aforesaid procedural guidelines prescribed under the Punjab Town Improvement (Utilization of Land and Allotment of Plots) Rules, 1983, a direction was issued by the Permanent Lok Adalat (Public Utility Services) to transfer the flat in favor of the respondent-applicant.

5. Learned counsel for respondent-applicant, who is on Caveat, contends that the allotment of the aforesaid flat in favour of Smt. Balbir Kaur is not a subject matter of dispute. He submits that Smt. Balbir Kaur had executed a registered Will in favor of Smt. Baljinder Kaur (wife of Sh. Kanwar Jagdeep Singh) on 10.12.2002. The said legal heir-Smt. Baljinder Kaur had entered into an agreement to sell with the respondent-applicant on 20.01.2004 but in the name of his wife Smt. Damini Sharma. The entire consideration amount in lieu of the aforesaid agreement dated 20.01.2004 was duly paid by respondent-applicant. In continuation of the same, Smt. Baljinder Kaur further executed the Will in favour of Smt. Damini Sharma and actual physical possession of the property was also handed over to the respondent-applicant on 20.01.2004 itself. Despite the physical possession being with the respondent-applicant in part performance of agreement to sell, the actual transfer of the ownership in the record could not take place due to lack of probate of Will executed by Smt. Balbir Kaur in favour of



Smt. Baljinder Kaur. It was further averred that a petition under Section 276 of the Indian Succession Act, 1925 was filed by the heirs of Smt. Baljinder Kaur for probate of the Will in which Rajdeep Singh and Narinder Singh (her brothers-sons of Smt. Balbir Kaur) had also been made parties alongwith general public. The said petition was also allowed in favor of the vendors of the applicant-respondent but the flat in question was transferred in favour of Smt. Baljinder Kaur in the year 2009, in the records of the petitioner-Improvement Trust. It is contended that the respondent-applicant also had a matrimonial dispute with his wife-Smt. Damini Sharma and a petition for divorce had been filed. On account of the said dispute, the flat in question became a part of the disputed property. During the course of amicable settlement of the divorce proceedings between respondent-applicant/Sh. Harish Sharma and his wife Smt. Damini Sharma, the latter released the flat in question in favour of the respondent-applicant. She also got her statement recorded in the family Court giving up the ownership right of the flat in question in favour of the respondent-applicant. It was also argued that the respondent-applicant has since then been in actual and exclusive physical possession of the flat in question. It is also contended that Sh. Harmandeep Singh had submitted an application for seeking transfer of the flat in favour of all the legal heirs and that the probate had been granted in their favour by the competent Court vide order dated 10.06.2011 by the Court of Additional District Judge/Appellate Authority, Amritsar. The said respondents i.e. Sh. Kanwar Jagdeep Singh, Sh. Harmandeep Singh and Dr. Navjot Kaur, the LRs of Smt. Baljinder Kaur were parties in the



proceedings before the Permanent Lok Adalat (Public Utility Services), Ludhiana and that they did not oppose the transfer of the said flat in favour of the applicant and in fact admitted execution of the relevant documents in his favour. Certain disputes were also raised with respect to the undue demands raised by the petitioner-Improvement Trust.

6. On completion of the pleadings, the Permanent Lok Adalat (Public Utility Services) made an attempt to resolve the issue by mutual negotiation and conciliation. The said efforts, however, failed to fructify in any mutual settlement. Consequently, an adjudication under Section 22C(8) of the Act was undertaken by the Permanent Lok Adalat (Public Utility Services), Ludhiana.

7. Upon consideration of all the documents produced on record by the respective parties and hearing the arguments, the application preferred by the applicant-respondent was allowed by the Permanent Lok Adalat (Public Utility Services) and the petitioner-Improvement Trust was directed to transfer the flat in question in favor of the applicant-respondent. The operative part of the award dated 14.05.2024 passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana reads thus:-

“19. The first point for determination before us would be about pecuniary jurisdiction of this Permanent Lok Adalat to deal with the matter in dispute which according to the respondent has value of more than Rs. 10 lacs but as per section 22-C (1) the pecuniary jurisdiction of the Permanent Lok Adalat is only to the extent of Rs. 10 lacs and thus



jurisdiction of this court is ousted. We have considered such plea of the respondent which is not acceptable. It seems that the respondent no. 2 is oblivion of a notification no. A-60011/37/2004-Admn-III (LAP)-JUS dated 20.03.2015 issued by the Ministry of Law and Justice, Department of Justice, vide which jurisdiction of Permanent Lok Adalat has been raised to Rupees one crore. So in view of such notification of the Government of India such objection of the respondent is negated at the very outset.

20. *There are two types of dispute between the applicant and respondents no. 1 & 2. The dispute between the applicant and respondent no.1 would be about non payment of maintenance charges etc. pending against the flat in question and further regarding issuance of NOC and delivery of possession of such flat by the respondent no. 1 to the applicant as it is admitted case of these two parties that possession of the flat in question has been acquired by respondent no. 1 society in year 2010 because of non payment of maintenance charges due towards such flat. At the first instance the respondent no. 1 claimed a sum of Rs.62,61,017/- till 31.12.2020. Regarding that matter conciliation was tried at various stages of the present proceedings but it could not be matured but ultimately when the case was at the stage of evidence of respondent no. 2 a better sense prevailed upon*



both the applicant and respondent no. 1 and thus they arrived at a settlement according to which the applicant has paid a sum of Rs. 26 lacs to clear all the dues against the flat in question to respondent no. 1 society which the respondent no. 1 society has already accepted and admitted the applicant as it's owner on receipt of the prevalent membership fees and possession of the flat has already been handed over to the applicant amicably and the society has also given NOC if flat is transferred in the name of the applicant in the record of the Trust. So the first dispute between the applicant and respondent no. 1 has been resolved and thus need not to be adjudicated.

21. The second dispute between the applicant and respondent No.2 Trust would be about the transfer of the flat in question in the name of the applicant. It is admitted case of the parties that the flat in question was originally allotted to Balbir Kaur and she is recorded as owner in possession of such flat in it's record on the basis of such allotment. It is also admitted case of the respondent no.2 that Baljinder Kaur is daughter of Balbir Kaur and after death of Balbir Kaur she applied for transfer of such flat in her name on the basis of will dated 10.12.2002 executed by Balbir Kaur in her favour during her lifetime. According to the Trust, Baljinder Kaur was demanded certain documents but she could not produce



the same due to which flat in question could not be transferred in her name but unfortunately she too died. It is the case of the applicant that during lifetime of Baljinder Kaur she sold the flat in question in the name of his wife Damini Sharma and on the basis of document of such sale Damini Sharma approached the trust for transfer of such flat in her name but the trust did not act upon her request. In the meanwhile a matrimonial dispute arose between the applicant and his wife Damini Sharma which ultimately resulted into a decree of divorce with mutual consent which has been proved on record as Ex-P6. It is the case of the applicant that Damini Sharma surrendered her rights in the flat in question in his favour at the time of settlement of such matrimonial dispute. Such plea of the applicant has been duly corroborated from certified copy of statement Ex-P5 dated 21.07.2017 of Damini Sharma recorded by Ld. Additional District Judge in petition decided vide judgment Ex-P6 according to which she surrendered all her rights in the flat in question in favour of the applicant. She specifically deposed that on the basis of compromise she has forgone her right in the flat in question in favour of her husband Harish Sharma and shall not claim any right or interest in such flat. She further deposed hat she would not claim any ownership or right of inheritance in the said flat. So once Damini Sharma, who earlier purchased the



flat from Baljinder Kaur during her life time, has already surrendered her right in favour of the applicant, Damini Sharma cannot be said to be a necessary party to be impleaded in the present proceedings and therefore, the second objection raised by the respondent no. 2 Improvement Trust does not have any water. It is further case of the applicant that when the trust refused to transfer the flat in the name of class-1 legal heirs of Baljinder Kaur, after her death, who are respondents no. 3 to 5, on the basis of will executed by the Balbir Kaur and further on the basis of another will executed by Baljinder Kaur in their favour, the respondents no. 3 to 5 filed petition under section 276 of India Succession Act for probate. Such petition was allowed and probate (Ex-P17), regarding will Ex-P22/P23 executed by original allottee Balbir Kaur in favour of Baljinder Kaur, was issued which is proved on record as Ex-P17. It is further case of the applicant that even after death of Baljinder Kaur, respondents no. 3 to 5 have further received a sum of Rs. 38 lacs from the applicant and have sold their right in his favour regarding which the applicant has proved document Ex-P7 and their affidavits Ex-P9 to Ex-P11. Ex-P24 is legal heir certificate in favour of respondents no. 3 to 5 regarding their inheritance of Baljinder Kaur.

22. *Now the first point for determination would be as*



to whether Baljinder Kaur (deceased) inherited such flat from her mother Balbir Kaur on the basis of will Ex-P22/23 executed by Balbir Kaur in favour of Baljinder Kaur. It has been established on record from judgement of probate Ex-P17 and probate Ex-P25/26 that after death of Baljinder Kaur respondents no. 3 to 5 approached Additional District Judge, Amritsar for the purpose of issuance of probate of will Ex-P22/23 executed by Balbir Kaur in favour of their deceased mother Baljinder Kaur and their said petition was allowed and probate has been issued in their favour meaning thereby that Baljinder Kaur became absolute owner in possession of such flat. It is well settled proposition of law that judgment/decree of probate is a judgement in rem and it is binding against the whole world even if the same is passed in absence of any of the living persons in this world. Our this view is fortified from the law laid down in case titled "Chandra Prabha Vs. Sali Chan Sharma & Ors" First Appeal Order (OS) No. 359-361/2010 decided on 12.08.2011 by the Hon'ble Delhi High Court in which it was held as that "That decision of a probate court is judgment-in-rem binding not only on the parties to probate proceedings but also on the whole world." So once such judgment of probate is binding upon the respondent no. 2 Improvement Trust, the respondent Improvement Trust has no right to deny the title of Baljinder



Kaur. So once Baljinder Kaur has died intestate, even if will executed by Baljinder Kaur in favour of her class-1 legal heirs i.e. respondents no. 3 to 5 is ignored, they are otherwise entitled to inherited such flat from Baljinder Kaur being her only class-1 legal heirs as per legal heir certificate Ex-P24 and thus they have absolute right in the flat to transfer the same in favour of the applicant.

23. *So it is stands proved on record that the applicant has purchased such flat from the legal owners and therefore, refusal of respondent no. 2 Improvement Trust to transfer such flat in it's records directly in his is unfair and unjust. The Trust has no right to refuse the transfer of such flat in his favour in it's record which he has legally acquired from the persons having legal title. After transferring the same in favour of the applicant, they are also liable to execute and get a valid title deed register in favour of the applicant on his paying the requisite fees and stamp duty. Therefore, in the interest of justice, equity and fair play, we pass the following award:-*

"Respondent no. 2 is directed to transfer the flat in question in favour of the applicant on the basis of the above referred documents with in a period of 2 months from today and then to execute valid title deed and get it register in favour of the applicant within a period of 1



month from the date of such transfer on payment of requisite fees and stamp duty by the applicant from his own pocket."".

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

9. Learned counsel appearing on behalf of the petitioner-Improvement Trust contends that the award passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana is liable to be set aside since there was serious dispute with respect to the declaration of civil rights between the LRs of the late Smt. Balbir Kaur. Since, the aspect about Sh. Narinder Singh and Sh. Rajdeep Singh being other two sons of Smt. Balbir Kaur is not a subject matter of dispute, hence, notwithstanding their *inter se* rights, the Permanent Lok Adalat (Public Utility Services) has directed transfer of flat in favour of Smt. Baljinder Kaur herself. She further contends that declaration of civil rights is not in the domain of Permanent Lok Adalat (Public Utility Services) and as such there is a transgression of authority. Second argument that has been raised by the learned counsel for the petitioner that as per the applicable Rules, the petitioner-Improvement Trust is required to make a publication in the newspaper about the transfer being sought by any person so as to rule out any possibility of fraud. She contends that notwithstanding the above said provision in the Rules, the Permanent Lok Adalat (Public Utility Services) has directed immediate transfer of the flat without ensuring compliance of the procedure prescribed as per the Rules.

10. Learned counsel for the Caveator on the other hand contends



that none of the legal heirs of late Smt. Balbir Kaur had ever raised any claim over the property in question. He further contends that Smt. Baljinder Kaur i.e. mother of Sh. Harmandeep Singh and Dr. Navjot Kaur and wife of Kanwar Jagdeep Singh had entered into an agreement to sell the property with the respondent-applicant. The aforesaid three persons preferred a petition under Section 276 of the Indian Succession Act, for seeking probate of the Will executed in favour of Smt. Baljinder Kaur and that Sh. Narinder Singh and Sh. Rajdeep Singh were parties in the said probate petition. They chose not to appear before the Court despite specific publication having been done by the Probate Court. The said documents including the probate document were furnished to the petitioner-Improvement Trust and that had there been any dispute by any of the parties, they would have contested the transfer of property in favour of Smt. Baljinder Kaur. He further submits that all the LRs of Smt. Baljinder Kaur were parties in the proceeding before the Permanent Lok Adalat (Public Utility Services) and they never raised any objection to the seeking of transfer of the flat in his favour. The requisite documents i.e. the settlement entered into between the respondent-applicant with Smt. Damini Sharma, his estranged wife and the proceedings of family Court were also brought on record. The said statement having been recorded during the course of judicial proceedings before the Court in a divorce case, the same was sufficient to establish that the right, title and interest over the property in question stood transferred in favour of the respondent-applicant. He further contends that all the payments with respect to the property have been paid to the petitioner-Improvement Trust and that the prescription of



any such conditions that are intended to delay transfer of the property are not perpetuated by any *bona fide*. It is also argued that late Smt. Balbir Kaur had died in the year 2003 and had executed the Will in December 2002. Despite a lapse of more than 20 years, none of the other two LRs ever raised any claim to the said property.

11. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents available on record. The Bye-laws of the petitioner-Improvement Trust have also been gone into.

12. The uncontroverted facts which emerge from the perusal of the chronology of events noticed above is that Smt. Balbir Kaur was the original allottee and that she had executed a registered Will in favour of her daughter Smt. Baljinder Kaur, who further executed a Will in favour of Smt. Damini Sharma, wife of Sh. Harish Sharma (respondent-applicant) with respect to the aforesaid flat. Despite the Will having been registered but due to a direction for seeking probate of the Will, the transfer of the flat in favour of Smt. Baljinder Kaur was delayed. The said transfer took place eventually in the year 2009 and probate was also granted in the year 2011 in the petition filed under Section 276 of the Indian Succession Act for seeking probate of the Will executed by Smt. Baljinder Kaur in their favour. A proper publication of the said proceedings was undertaken but Sh. Rajdeep Singh and Sh. Narinder Singh (other two sons of Smt. Balbir Kaur-siblings of Smt. Baljinder Kaur) did not chose to contest the transfer of the said flat from Smt. Baljinder Kaur in their favour. Hence, at no stage the brothers i.e. Sh. Rajdeep Singh and Sh. Narinder Singh challenged the transfer of flat either



in name of Smt. Baljinder Kaur or in favour of her children. Further, the execution of agreement to sell as well as the Will executed by Smt. Baljinder Kaur in favour of Smt. Damini Sharma is also not disputed by any party. Recording of the statement in the proceedings before the Family Court by Smt. Damini Sharma giving up her rights over the said property is also not a subject matter of dispute.

13. Under the given circumstances, I find that the insistence on a publication as a pre-requisite for transfer of the flat to determine the right of Smt. Baljinder Kaur to succeed to the estate of Smt. Balbir Kaur is an exercise which is sans any logic. The property having been transferred in favour of Smt. Baljinder Kaur in the year 2009, there is no occasion for a publication and notice being sent to siblings of Smt. Balbir Kaur, more so when a notice had been issued by the Probate Court by way of publication in the newspapers.

14. The undue insistence on publication to delay a transfer of the property to which the respondent-applicant is entitled to is an un-requested fixation to the procedure disregarding the substantive documents which clearly complete the chain of events and establish an undisputed transfer of title in favour of the respondent-applicant.

15. Even otherwise, the siblings of late Smt. Baljinder Kaur were not a party before the Permanent Lok Adalat (Public Utility Services), Ludhiana and that the award passed by it does not deter the said siblings from approaching a competent Court, in a manner known to law, in case they have any grievance. The petitioner-Improvement Trust is seemingly

using the shield of the dispute of civil rights and declaration of title notwithstanding that the siblings/children of late Smt. Balbir Kaur have never chosen to raise a claim or sought transfer of the flat in their favour. There is thus no case of a civil dispute/declaration of civil rights that is sought to be created. Actually no such civil dispute exists, on a meaningful reading of the documents that are already on record. I find that all the crucial aspects have already been taken into consideration and that an undue insistence on a procedure of publication would not be necessary in the facts of the present case when the parties have sought determination of their rights through different proceedings from the competent Courts.

16. In view of the foregoing reasons, I find that the award dated 14.05.2024 passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana does not suffer from any illegality, perversity or impropriety. The present writ petition is accordingly dismissed and the award dated 14.05.2024 passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana is affirmed.

25.11.2024

Mangal Singh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(VINOD S. BHARDWAJ)
JUDGE