



In the High Court of Punjab and Haryana at Chandigarh

CWP No. 420 of 2025
Reserved on: 14.1.2025
Date of Decision: 24.1.2025

Sonika Mahajan @ Palak

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI

Argued by: Mr. R.S.Bains, Senior Advocate assisted by
Mr. Aarushi Garg, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner seeks the quashing of the order dated 12.12.2024 (Annexure P-3), passed by respondent No. 3, whereby the application moved by the petitioner in compliance of the order dated 16.10.2024 (Annexure P-1) for regularizing the allotment of Flat No. 28FF- Block-C, Nirmal Shaya Apartment, Rishi Nagar, Ludhiana, became declined, thus on the ground that the petitioner has failed to show any document with regard to her continuous possession for the last 12 years over the said property.

Submissions of the learned senior counsel for the petitioner

2. The learned senior counsel for the petitioner has argued, that earlier the petitioner had preferred CWP No. 14120 of 2024, before this Court, thus seeking the issuance of directions upon the authorities concerned, to regularize the allotment of Flat No. 28FF, Block-C, Nirmal



Shaya Apartment, Rishi Nagar, Ludhiana. Through an order made thereons, on 16.10.2024, the said petition was disposed of by a Division Bench of this Court. The relevant paras of the order (supra) passed by the Division Bench of this Court on the petition (supra) become extracted hereinafter.

“x x x x

2. *Having argued the matter at some length, parties have arrived at a consensus. Learned counsel for the petitioner submits that within a period of two weeks from today, the petitioner shall move an application under the provisions of the Punjab Management and Transfer of Municipal Properties Act, 2020 (for short ‘the 2020 Act’) seeking proprietary rights of flat No.28 FF, Block-C, Nirmal Shaya Apartments, Rishi Nagar, Ludhiana.*

3. *Learned counsel for respondents No.3 and 4 submits that on receipt of the said application alongwith the requisite documents as envisaged under the 2020 Act, a decision shall be taken within a period of four weeks thereafter and a speaking order shall be passed after affording due opportunity of hearing to the petitioner.*

4. *Learned counsel for the parties are ad idem that the writ petition be disposed of in terms of the statements made by them.*

5. *The writ petition is accordingly disposed of in terms of the statements made by learned counsel for the parties binding them to the same. This Court is sanguine that the authority concerned shall deal with the matter in accordance with law after complying with the principles of natural justice.*

x x x x”

3. The learned senior counsel further submits, that in pursuance to the order (supra) the petitioner has moved an application before the authorities concerned. However, vide impugned order dated 12.12.2024 (Annexure P-3), the claim of the petitioner became rejected. The relevant



paras of the order (supra) become extracted hereinafter.

“In the present case the petitioner has submitted electricity bills of only few dates and the same are not in the name of the petitioner. Moreover the said bills do not prove that she was in continuous possession of the property for the last 12 years. The petitioner was informed about the same that she was required to provide the said bills or proof showing the documents that she was in continuous possession of the property for the last 12 years. But till date she failed to provide any documents in lieu of the same.

Thus, in view of the above-mentioned facts, the claim of the petitioner for considering her case to be covered under the Rules of 2020 is rejected and the petitioner is held not entitled to get the benefit under the said Rules as the proof regarding her continuous possession for the last 12 years has not been submitted by the petitioner. The speaking order has been passed in compliance of the order dated 16.10.2024 passed by the Hon’ble High Court.”

4. He further submits that the impugned order (supra) is against the provisions of the Punjab Management and Transfer of Municipal Properties Act, 2020 (for short ‘the Act of 2020’), and, that the same has been passed without considering the documents submitted by the petitioner, thus showing her holding continuous possession for the last more than 12 years, over the subject flat. It is further contended, that the petitioner along with her three children are residing in the above flat since 2008, which was stated to be purchased by the husband of the petitioner. However, the husband of the petitioner filed a divorce petition and had abandoned his family. Furthermore, the learned senior counsel submits, that the instant case is covered by the provisions as embodied in Sections 5 and 7 of the Act of 2020, provisions whereof become extracted hereinafter. Therefore, it is prayed that the impugned order be quashed and set aside.

*“**Section 5.** (1) Notwithstanding anything contained in any law for the time being in force enacted by the State of Punjab, a*



Municipality may vest the proprietary rights of a municipal property in a tenant or an occupant of such a municipal property at a price determined by the Price and Rent Fixation Committee constituted for this purpose under section 7 of this Act and upon satisfaction of such conditions as may be specified by the Government from time to time: Provided that a tenant or an occupant has been in continuous possession of such a municipal property for at least twelve years:

Provided further that a tenant or an occupant should not be or should not have been an employee of the Municipality or Department of Local Government or an elected member of the Municipality or his relative or Member of Parliament or his relative or a Member of the Punjab Legislative Assembly or his relative.

(2) A tenant or an occupant shall furnish necessary proof in the form of electricity meter connection or water supply connection or ration card or any other Government issued document showing that the municipal property sought to be vested was in his continuous possession for the last twelve years.

(3) A municipal property vested in a tenant or an occupant in accordance with this section shall not be sold or leased or mortgaged with possession, wholly or partially, or otherwise alienated, in any manner, for a period of twenty years, other than by way of inheritance or by way of pledging or mortgaging such a property in favour of the State Government or Semi Government Organizations or Banks for securing loan for effecting improvements on the said property,

(4) A tenant shall be liable to pay arrears of lease rent, if any, due to the municipality along with due price before the proprietary rights are vested in him.

x x x x

Section 7. *(1) The Government shall constitute a Price and Rent Fixation Committee for every district in the State of Punjab to determine the reserve price or rent of a municipal property which a Municipality intends to transfer under the provisions of this Act.*

(2) The Price and Rent Fixation Committee shall be headed by the Collector and which shall also consist of the following members, namely:-

(a) the Members of Parliament, and all Members of the



Punjab Legislative Assembly or their nominee whose constituency comprises part or whole of the area of the Municipality;

(b) Mayor or President of the Municipality; and

(c) Officer of the Municipality, duly deputed by the Government.

(3) The price of the municipal property determined by the Price and Rent Fixation Committee and duly approved by the Government shall be commensurate with the prevailing Collector rate.

(4) The lease money or the rent of a municipal property shall be the rate fixed by the Price and Rent Fixation Committee as duly approved by the Government or the price discovered by a Municipality through an open e-auction, whichever is higher.

(5) The lease money or the rent of a municipal property determined in sub-section (3) shall be enhanced by at least five per cent every year.

(6) The price determined by the Price and Rent Fixation Committee for commercial municipal property as duly approved by the Government shall be the reserve price for auction of such property.

(7) The rent fixed by the Price and Rent Fixation Committee for residential municipal property as duly approved by the Government shall be the lease money or rent for such municipal property.

(8) Wherever a municipal property has been under continuous lease or occupation for a period of twelve years or more, and is intended to be transferred to the tenant or occupant, the price shall be fixed in the following manner, namely:-

(i) for Economically Weaker Sections (EWS), having an annual income not more than rupees three lakhs, at the rate of 12.5 per cent of the Collector Rate;

(ii) for Lower Income Groups (LIG), having an annual income more than rupees three lakhs but not more than rupees eight lakhs, at the rate of 25 per cent of the Collector rate;

(iii) for Medium Income Groups (MIG), having an annual income more than rupees eight lakhs but not more than rupees fifteen lakhs at the rate of 50 per cent of the Collector rate;

(iv) for High Income Groups (HIG), having an annual income



more than rupees fifteen lakhs, at the Collector rate;

(v) for the aforesaid purpose, proof of Income shall be the Income Tax Return filed by a tenant or an occupant of the previous year of the year in which the transfer is to be made. In case a tenant or an occupant is not required to file Income Tax Return, in that case, he shall get an income certificate issued from the Sub-Divisional Magistrate of the area concerned; and

(vi) for categories referred to as items (i), (ii) and (iii), the municipal property only up to fifty square metres shall be transferred at the rate specified therein. However, if the municipal property occupied is more than fifty square metres then on the area of municipal property beyond fifty square metres, collector rate shall be payable.”

Submissions of the learned State counsel

5. The learned State counsel submits, that initially vide allotment letter dated 11.12.2002, the subject flat was allotted to one Ms. Daisy Khatri for a tentative cost of Rs. 7,65,000/-. However, the said allottee had neither made the payment of 1/4th of the total amount, nor paid any installment within a period of 30 days, whereas, as per the terms and conditions of the allotment letter, in case the allottee concerned, thus fails to make the payment of 1/4th of the total amount within the prescribed period of 30 days, thereupon the said allotment is deemed to be cancelled and the earnest money is available to become forfeited. The learned counsel further submits, that Ms. Daisy Khatri yet further illegally sold the subject flat to one Vijay Mahajan, and, the said fact came to the knowledge of the department concerned, only in the year 2017, when the said Vijay Mahajan made a request to the department concerned, for deposit of money with regard to the said flat and for transferring the same in the name of his wife. However, the said request was not accepted by the department concerned.

Therefore, it is prayed that the instant petition be dismissed.



Inferences of this Court

6. Initially, for the present petitioner becoming entitled to seek the beneficent grace of the supra extracted provisions borne in the Act of 2020, she was required to prove that the subject flat, thus is owned by the Municipality/Improvement Trust.

7. In the said regard, a reading of the affidavit sworn by the Executive Officer of the Improvement Trust, Ludhiana (in CWP No. 14120 of 2024) reveals, that neither the initial allottee one Ms. Daisy Khatri acquired any valid right, title and interest over the subject flat, nor her alienee one Vijay Mahajan, the husband of the present petitioner, acquired any valid right, title and interest over the subject flat. Resultantly therebys, the subject flat does fall to the ownership of the Municipality concerned, or falls to the ownership of the present Improvement Trust. The effect of the above, is that, the provisions embodied in Section 5 (supra) whereby, empowerment becomes vested in the concerned, to vis-a-vis a tenant or an occupant over the subject flat owned by the Improvement Trust concerned, thus consider the vesting of proprietary rights qua an occupant over the subject flat, but at a price to be determined by the Price and Rent Fixation Committee constituted for this purpose in terms of Section 7 of the Act (supra), thus naturally become available to become galvanized by the occupant concerned, however, yet upon satisfaction of such further condition as may be specified by the Government from time to time.

8. Be that as it may, the supra vested empowerment in the authority concerned, is subject to the condition that the occupant concerned, has been in continuous possession of the subject flat for the last 12 years.



occupant is required to furnish proof in the form of electricity meter connection or water supply connection or ration card or any other government issued document, thus displaying that the municipal property sought to be vested in the occupant concerned, was in his/her continuous possession for the last 12 years.

9. In the instant case, the present petitioner was married to one Vijay Mahajan, the supra alienee from one Daisy Khatri. However, both the supra for the reasons (supra) did not acquire any valid right, title and interest over the said flat, wherebys this Court has drawn an inference, that as such the said flat becomes the property of the respondent concerned, whereupons this Court has also concluded that therebys the present petitioner becomes entitled to receive the beneficial effect of the supra extracted provision.

10. Be that as it may, the supra condition, rather becomes declared in the impugned order, to not become satisfied at the instance of the present petitioner, whereupons the respondent has drawn a conclusion that the petitioner is not entitled to receive the beneficent grace of the supra provisions.

11. The imperative reason for the said conclusion becoming so made, becomes founded upon the factum, that she was unable to place on record any document revealing that she was in continuous possession of the said flat for the last 12 years. The said conclusion became further premised on the ground, that she was unable to place on record, rather in terms of sub-Section (2) of Section 5 of the Act (supra), thus any document revealing that she had liquidated electricity and water tariff to the State departments concerned.



worth, and though the supra conclusions if become yet contested by the present petitioner, thereby rather the said made contest but becomes a disputed question of fact, which does not require to be either delved into, nor is required to be adjudicated upon by this Court in the exercise of extraordinary writ jurisdiction. Contrarily, though thereby the remedy available to the present petitioner was to raise a civil suit before the Civil Court of competent jurisdiction. However, the supra prima facie inference does not yet gather any immense worth. The reason for stating so becomes garnered from the hereinafter extracted relevant portion of para 5, as occurs in the affidavit sworn by the Executive Officer of the Improvement Trust concerned, (in CWP No. 14120 of 2024), wherein, there is a pointed echoing that the present petitioner is in unauthorized occupation of the said flat for the last 21 years.

“5. That the petitioner has now filed the present writ petition before this Hon’ble Court seeking regularisation of the Flat which she is in unauthorized possession for the last 21 years. Since the petitioner is an unauthorized encroacher upon the Flat in dispute and merely regularising the Flat of the petitioner without following due procedure will set an example to all unauthorised encroachers who are in illegal occupation of their respective properties. That as per provisions of Rules of 1983 as amended vide Notification dated 28.6.2016, manner of allotment of flats/multi storied buildings can be either through Draw of Lots (Fifty percent) or through open auction (fifty percent).

x x x x”

13. The effect of the supra voicings, as made in the supra extracted paragraph, as occurs in the reply furnished to the earlier petition by the respondent concerned, is that, thereby the respondent concerned, naturally concede qua the present petitioner, thus was beyond the requisite span of 12,



rather for a span of 21 years, rather an authorized occupant over the subject flat. Resultantly therebys, irrespective of the supra conclusions, the effect of the supra acquiescence, as made by the respondent concerned, in the above extracted paragraph, but naturally, is that, the present petitioner in terms of the supra provisions, thus has firmly established qua hers being in continuous occupation of the subject flat for a period of 12 years, whereby, she was required to be endowed the benefit of the said statutory provisions.

14. Though, in contradiction to the supra acquiescence, the respondent in the last portion of the above extracted para 5 of the reply has made the hereinafter averment.

“Moreover, since the petitioner is also in unauthorised occupation of the flat of the trust since the year 2021, thus the issue regarding payment of mesne profits shall also be taken up by the trust which shall be calculated after due verification of the site.”

15. Since the said made averment by the respondent in the reply, is openly contradictory to the averment made in the supra extracted first portion of para 5, therebys it naturally does not acquire any credence. Contrarily, it is deemed to be a misfounded vacillation made by the present respondent, to somehow or the other refrain, from exercising the discretionary empowerment endowed upon the authority concerned, rather for the relevant purpose vis-a-vis the present petitioner.

16. Be that as it may, it also appears that after the husband of the present petitioner acquiring an imperfect title over the subject flat from his alienor one Daisy Khatri, thus post the allotment made to her becoming annulled, did also unauthorizedly occupy the subject flat. However, it also appears that though then he was living with the present petitioner, yet on



thereupon, the present petitioner continued to unauthorizedly occupy the subject flat. As such, initially the husband of the present petitioner was in unauthorized occupation of the subject flat, and, thereafter upon her husband abandoning her company, she continued to remain in authorized occupation of the subject flat, whereby on making totalling(s) of the said period, whereby the present petitioner is deemed to be in unauthorized possession of the subject flat for a period beyond 12 years. Resultantly whereby the supra endowed empowerment was required to be exercised vis-a-vis the petitioner, than the said bestowed discretion becoming ill exercised, upon becoming founded upon the supra flimsy pretext, thus resulting in the passing of the flawed impugned order.

Final order

17. For all the above stated reasons, this Court finds merit in the instant petition, and, is constrained to allow it. Consequently, the instant petition is allowed. The impugned order dated 12.12.2024 (Annexure P-3) is quashed and set aside. The respondent concerned, is directed to, in terms of Section 5 of the Act of 2020, fix the price vis-a-vis the subject flat, and, to also fix the other conditions. The said be ensured to be done within a period of two months. Subsequently, the deed of conveyance, if required, inter se the present petitioner and the respondent concerned, be executed.

18. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

January 24th, 2025
Gurpreet

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