IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2431-1989 (O&M)
Date of decision :25.02.2025

S.S. BHATIA AND OTHERS …Appellants

Versus

JALANDHAR IMPROVEMENT TRUST …Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ankur Bansal, Advocate
for appellants No.17, 18 and 20.

Ms. Kavita Arora, Advocate
for the respondent.

HARSH BUNGER, J.

For convenience, parties herein are being addressed as per their status in the original suit.

2. This is the plaintiffs' second appeal against the judgment and decree dated 02.06.1989 passed by the learned Additional District Judge, Jalandhar; whereby, he reversed the judgment and decree dated 29.09.1986 passed by the learned Sub Judge Ist Class, Jalandhar and dismissed the suit of the plaintiffs.

3. Briefly, the plaintiffs, who are the practicing lawyers in District Courts, Jalandhar, filed a suit for permanent injunction for restraining the defendant (Jalandhar Improvement Trust) from making alteration in its 55 Acres' Scheme by transferring/alienating, in any manner, whole or any part of the said land or the said scheme, except to demarcate the chambers allotted to the plaintiffs, who had paid the consideration in advance.

4. It is the pleaded case of the plaintiffs that the Bar Association,

Jalandhar, on behalf of the plaintiffs and other lawyers, had represented to the Improvement Trust, Jalandhar that the District Courts had become congested and the lawyers had no respectable accommodation in or around the Court; therefore, a space be demarcated adjoining the Bar Room in the 55 Acres' Scheme of the Jalandhar Improvement Trust, for lawyers' offices. According to the plaintiffs, the said request of the lawyers was acceded to and a resolution dated 02.09.1977 to that effect was passed by the Jalandhar Improvement Trust, authorizing its Chairman to allot the space to the lawyers. It was stated that the afore-said resolution was sent to the Bar Association, Jalandhar; which was further notified to its members and on `first come first serve' basis, certain lawyers deposited a sum of Rs. 2,000/- each with the Secretary Bar Association, Jalandhar; which was forwarded to the Jalandhar Improvement Trust, vide Memo dated 03.02.1978. It was claimed that the Jalandhar Improvement Trust accepted the drafts and issued allotment orders to each of the lawyers that had deposited the amount on `first come first serve' basis. Plaintiffs state that a binding contract came into force between the Jalandhar Improvement Trust and each of the plaintiffs and other lawyers; however, the Improvement Trust did not comply with the Scheme. It was averred that the Improvement Trust threatened to alter the scheme and use the land for other purposes, although the land had already been earmarked and allotted to the plaintiffs for their chambers.

4.1 According to the plaintiffs, since the defendant did not accede to the request of the plaintiffs for not altering the scheme and for allotting the space for lawyers' chambers, hence, the suit was filed.

5. On the other hand, the defendant-Jalandhar Improvement Trust contested the suit of the plaintiffs by raising various preliminary objections,

including that the necessary party i.e. the Punjab State, had not been impleaded as a party to the suit as the same was the competent authority for allotment of plots/chamber. It was stated that the necessary sanction/approval has to be accorded by the Punjab State, which is mandatory under the utilization of land and allotment of plots by Improvement Trust, Jalandhar. It was next submitted that no description of the property had been given in the plaint and in fact, out of the land in question, *2 kanals-2 marlas* and *2½ sq. ft.* area has already been allotted to the Jammu and Kashmir Government, after the sanction was accorded by the Punjab Government; therefore, the suit of the plaintiffs had become infructuous. It was also stated by the defendant that since plaintiffs' claim to have deposited amounts separately in respect of separate units; therefore, one suit on behalf of all the plaintiffs was not maintainable. It was maintained that without the sanction of the Punjab Government, no allotment could have been made. The Improvement Trust admitted that the layout plan for the lawyers' booths was prepared by the Improvement Trust and the same was submitted to the Punjab State for approval, however, Punjab State did not accord its sanction to the scheme, therefore, no binding contract came into existence between the parties. Accordingly, prayer for dismissal of the suit was made.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court :-

> *"1. Whether the permission of State Government as needed before a binding contracts of sale could come into existence between the parties? OPD*
>
> *2. Whether the defendant has an authority to convert a part of the suit land to use other than lawyers*

Chambers? And it has legally transferred a part of suit area to J&K Govt.? OPD

3. Whether the State Government is a necessary party to the suit? OPD

4. Whether the plaintiffs are stopped by their own acts and conduct from bringing the present suit? OPD

5. Whether the plaintiffs have been willing and ready to perform their part of contract? OPP

6. Whether the plaintiffs are entitled to the injunction prayed for? OPP

7. Whether the suit is bad for non-joinder of parties? OPP

8. Whether the suit is not maintainable? OPD

9. Whether the plaintiff has no locus standi to file the present suit? OPD

10. Relief."

7. In order to substantiate their claim, the parties led their respective evidence.

8. The learned trial Court, vide judgment and decree dated 29.09.1986, while returning the findings on issues No.1 to 4, came to the conclusion that no sanction from the government was required for allotment of booths to the plaintiffs, in terms of Section 43 of the Punjab Town Improvement Act, 1922 (in short `the 1922 Act') and that the Improvement Trust was not competent to transfer any part of the land reserved for lawyers' chambers to Jammu and Kashmir Government. It was further held that the Improvement Trust was a body corporate and the Punjab State was not the necessary party to the suit because only sanction of the scheme is to be had from the Punjab Government, otherwise, the Improvement Trust is at liberty to change or alter the scheme, provided the expenditure is not more than Rs.50,000/-.

8.1 On the basis of the afore-said findings, the suit of the plaintiffs was decreed.

9. Feeling aggrieved against the afore-said judgment and decree dated 29.09.1986 passed by the learned trial Court, the Jalandhar Improvement Trust preferred an appeal before the learned Additional District Judge, Jalandhar.

10. The lower Appellate Court framed the point of determination as to whether under Section 43 of the 1922 Act, any alternation in the scheme prepared by the Trust requires the sanction of the State Government.

10.1 The afore-said issue was decided by the lower Appellate Court, in the affirmative, by returning the following findings on issues No.1 to 3, as under :-

> *"iii. The findings of the learned lower court and the submissions of the learned counsel for the respondents seem to be quite untenable as the Appellant is a statutory body incorporated under the Act and all of its acts and deeds are regulated by an act. Section 43 of the Act, inter alia lays down, "the Scheme under this Act can be altered by the Trust at any time between its sanction by government and its execution with the prior approval of the State Government." Admittedly, the Scheme in dispute is a residential scheme. DW1 Manmohan Singh categorically stated that 55 acres Development Scheme is a residential Scheme and it was duly approved by the State Government. A reference to Section 42 of the Act shows that the initial scheme when prepared is also to be sanctioned by the State Government and duly notified. The notification is conclusive with regard to the framing of the Scheme under Section 42(2) of the Act. Alteration in the Scheme can only be done between its sanction by the Government and its execution. That too with the prior approval of the government.*

The scheme in question here had already been sanctioned being for residential purposes and duly notified under Section 42(2) of the Act, as such the Trust was not competent to alter the Scheme in any manner, once the same had been duly sanctioned and gazette and the sanctioned plan is Ex.D1. The trust was quite powerless to issue letters to the plaintiffs or any of the plaintiffs for setting up lawyers' Chambers. In an analogous proposition where the Panchayat wanted to exchange land, it was held that the sanction of the State Government is must (1970 P.L.J. 442 Gram Panchayat Vs. Haryana State). Resultantly, the findings of the learned lower Court on issue No.1 are patently erroneous and beyond the provisions of the Statute. As such the findings on issue No.1 are set aside and the verdict on the same is returned in favour of the appellant-defendant, repugnant to the plaintiff-respondent. Findings on issue No.2 are also reversed as land to J.K. Govt. had been given after sanction from Government.

<u>Issue No.3.</u>

8. It has been vehemently contended that the State Government was necessary party to the suit whereas the learned counsel for the respondents contended that the Trust is a corporate body and it can be sued or sued in its own name, as such the State was not a necessary party. However, I find that a Scheme under the Trust is to be sanctioned under Section 42 of the Act by the State Govt. and under Section 43 of the Act, an alteration in the Scheme is to be made by the Government. In the present case, the plaintiffs claim alteration in the Scheme and that it may be altered. Unless the Scheme is altered, no relief can be afforded to the plaintiffs. Resultantly; the State of Punjab is a necessary party. The findings of the learned lower Court are quite perverse and without taking into consideration the provisions of Section 42 and 43 of the Act. The findings on issue No.3 are reversed and the verdict on the same is returned in favour of the defendant-appellant and repugnant to the plaintiffs."

10.2 That apart, the learned Appellate Court also examined the findings of the learned trial Court on issue Nos.5, 6, 8 and 9 and returned the following findings thereon :-

> *"11. The plaintiffs here claim permanent injunction on the ground that there was contract between the parties for the sale/transfer of the land in dispute. In such cases if the contract is violated, a suit for specific performance is to be filed being the appropriate and efficacious remedy. The suit for permanent injunction is not maintainable. When a special remedy of specific performance of the contract is provided under section 19 of the Specific Relief Act, the recourse to the remedy of permanent injunction under Section 38 of the Specific Relief Act is quite misconceived and ill founded. The present suit for permanent injunction is barred and no injunction can be granted in view of the provisions of Section 41(h) of the Specific Relief Act. Moreover, the plaintiffs are not in possession of the land. When the plaintiffs are entitled to seek further relief and omits to do so, the suit would be not maintainable. The plaintiffs here had devised a novel method to hoodwink the provisions of Indian Court Fees Act by filing suit simpliciter for permanent injunction instead of a suit for specific performance, and the learned lower court had traversed beyond the pleadings and committed illegality in granting the relief for mandatory injunction which is not either claimed or prayed in the plaint. A suit for specific performance of the contract is covered under Section 7(x) of the Court fees Act and advolerm court fee is to be paid on the plaint. It is well settled that the court is not to look to the artistically worded presentation of the plaint when it is intended to hoodwink the fiscal enactment. The Court should look to the allegations in the plaint and the substance of the relief claimed. The court fee accordingly would be payable on the substance of the relief claimed. To butteress, reference may be made to 1975 Revenue Law Reporter 1(S.C.). The sum and substance of the plaint and the relief claimed in the present suit is the relief for specific*

performance. Resultantly; the findings on issue No.8 are patently erroneous. The suit as framed is neither maintainable nor had been properly stamped.

ii. For claiming a relief from the Court, a party is to establish the existence of a right and the infringement thereof; as the rights and remedies are co-related. In the instant case, no concluded contract inter parties had taken place. The Magna Carte of the plaintiffs' case is Ex.P6 the allotment letter dated 20.12.1979 and in para 2 of the same it is categorically mentioned. "It is a matter of pleasure to inform you that you have been allotted the lawyer's chamber in the Scheme cited as subject on provisional basis subject to eh approval of the State Government as a condition precedent and other terms and conditions of the Improvement Trust Rules, 1975 and 1954 are also to be followed. Admittedly no sanction from the State Govt. had been accorded to the resolution of the Trust. As such there is no alteration in the Scheme initially prepared by the Trust and duly approved by the State Government under Section 42 of the Act. For a binding contract to come into existence, the proposal as well as the communication of the proposal has to be absolute and unqualified. Ex.P6 can by no stretch of imagination be dubbed as proposal and as such the deposit and payment of Rs.2000/- by the lawyers mentioned in para 4 of the plaint do not bring into existence a concluded contract inter parties. Acceptance is a lighted match to the train of dry gun powder. But here the train of gun powder is completely lacking and no concluded contract had taken place. As such the plaintiffs are not entitled to the relief for permanent injunction and have no locus standi to file the suit. No question of readiness and willingness to perform their part of the contract arises. The findings of the learned lower Court on issue Nos.5, 6 and 9 too are liable to be and are hereby reversed. The residential property could not be given on reserved price."

10.3 On the basis of the afore-said findings, the learned trial Court's judgment was reversed by the lower Appellate Court and the suit of the plaintiffs was dismissed.

10.4 In the afore-mentioned circumstances, the present regular second appeal has been filed by the plaintiffs.

11. Heard.

12. The issue for consideration before this Court is as to whether the sanction of the State Government is required for any alteration in the scheme prepared by the Trust, in terms of Section 43 of the 1922 Act.

13. At the outset, it is required to be noticed that the learned trial Court has proceeded to decide the case on the basis of the provisions contained in Section 43 of the 1922 Act, which were existing on the statute prior to the enforcement of Punjab Act No.7 of 1974, inasmuch as, that Section 43 of the 1922 Act, came to be amended by the Punjab Act No.7, whereby a new provision was substituted in place of the earlier provision Section 43 *ibid*. Both the said provisions are reproduced below for ready reference :-

Section 43 of the Punjab Town Improvement Act, 1922	
Prior to Punjab Act No.7 of 1974	*After Punjab Act No. 7 of 1974*
43. A scheme under this Act may be altered by the trust at any time between its sanction bythe [1][State] Government and its execution : *Provided as follows :--* *(a) if any alteration is estimated to increase the estimated net cost of executing a scheme by more than Rs. 50,000 or twenty per cent of such cost such alteration shall not be made without the previous sanction of the [1][State] Government.* *(b) if any alteration involves the acquisition, otherwise than by agreement of any land the acquisition of which has not been sanctioned by the [1][State] Government the procedure prescribed in the poregoing sections of this chapter shall, so far as applicable, be followed as if the alteration were a separate scheme.* *1.Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950*	*[43. Alteration of scheme after sanction. - A scheme under this Act may be altered by the trust at any time, with the prior approval of the State Government, between its sanction by the State Government and its execution.][2]*

14. In the present case, since the resolution of the Improvement Trust was passed on 02.09.1977 i.e. after the enforcement of Punjab Act No.7 of 1974; therefore, the case, in hand, was required to be considered in the light of the provisions contained in amended Section 43 *ibid* as it stood on the statute book after the year 1974 and not as per the provisions existing prior to the year 1974.

15. As regards the interpretation of the amended provisions of Section 43 *ibid*, is concerned, the same is no more *res-integra.*

16. In ***Bodh Raj Sharma v. Improvement Trust, Amritsar, 1982 PLJ 310***; a Division Bench of this Court was considering a question as to whether Section 43 of the 1922 Act, includes within its ambit any alteration in the lay out plan of a scheme duly sanctioned and notified by the Government under section 41 and 42 of the said Act; observed as under:-

> *" ……………………Sub-section (2) of section* 40 *which provides for the submission of an application for the sanction of the scheme by the Government, expressly requires that the same should be accompanied with a complete plan and details of the scheme and this would obviously include the lay out plan thereof. Section* 41*, which empowers the Government to sanction the scheme with modification provides that if a scheme is returned for re-consideration and is modified by the Trust, it has again to be republished in accordance with section* 36*, which would require the preparation of the requisite plans, maps, which are open for inspection to the public at reasonable hours. Lastly section* 42 *mandatorily requires the publication of the scheme by a notification. A conspectus of the aforesaid provisions spells out the fact that the lay out plan is an integral part of the scheme and is specifically envisaged by the statute itself and once it has been approved by the Government and*

duly notified, it has the sanction of the relevant provisions of the Act behind it, whereafter any change in the scheme including its lay out can be made only in accordance with section 43*, which reads as under:-*

> *"43.Alteration of scheme after sanction.-A scheme under this Act may be altered by the Trust at any time, with the prior approval of the State Government, between its sanction by the State Government and its execution."*

From the above it would appear that after the statutory sanction of the scheme by the Government, any alteration therein (and to my mind that would include within its ambit its lay out plan in particular) can be made only by the Trust and that too with the prior approval of the Government subject to the limitation that this can be done between its sanction and its execution……..”

17. Accordingly, the issue framed by this Court is answered in the affirmative. It is held that a Scheme under the 1922 Act, may be altered by the Trust at any time between its sanction by the State Government and its execution, with the prior approval of the State Government.

18. When the case in hand is tested on the touchstone of the amended Section 43 ibid, and also the judgment rendered in the case of ***Bodh Raj Sharma*** *(supra)*, it would emerge that the scheme in question i.e. 55 acres’ Development Scheme, was a residential scheme, which was initially prepared/sanctioned by the State Government under Section 42 of the 1922 Act, and duly notified. Therefore, any alteration in the said scheme could only be done between its sanction by the Government and its execution and that too, with the prior approval of the government.

19. Further, the lower Appellate Court has also examined the allotment letter dated 20.12.1979 (Exhibit P-6); wherein, in para No.2, it

was categorically mentioned as under :-

> *"It is a matter of pleasure to inform you that you have been allotted a Lawyer Chamber in the Scheme cited as subject on provisional basis subject to the approval of the State Government as a condition precedent and other terms and conditions of the Improvement Trust Rules, 1975 and the Jullundur Improvement Trust Land Disposal Rules, 1954 are also to be followed."*

19.1 Evidently, the allotments to lawyers was only on provisional basis and the same was also subject to approval of State Government.

20. In view of the above, since the Jalandhar Improvement Trust did not have the prior approval of the State Government, accordingly, the Trust was not competent to alter the 55 Acres Residential Scheme for making provisions for the Lawyers' booths. As a natural consequence, the Trust has no authority to issue letters to the plaintiffs for setting up lawyers' chambers

21. In my considered view, the findings of the first Appellate Court, are based upon appreciation of facts/pleadings as well as the evidence on record and I see no illegality or perversity in the findings returned by the lower Appellate Court. Furthermore, no question of law, much less a substantial question of law, is involved herein, so as to exercise appellate jurisdiction under Section 100 of Civil Procedure Code, 1908.

22. Resultantly, the present appeal is dismissed, being bereft of any merit.

23. All pending application/s, if any, shall also stand closed.

February 25, 2025 **(HARSH BUNGER)**
gurpreet **JUDGE**

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