

CWP No.999-1993

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.999-1993

Date of Decision: 04.02.2015

Mohinder Singh and others

... Petitioner(s)

Versus

The Financial Commissioner (appeals), Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. G.S.Nagra, Advocate,
for the petitioners.

Dr. Deepa Singh, Addl. A. G. Punjab.

Ms. R.K. Manaise, Advocate,
for LR's of respondent no.3.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 05.03.1992 (Annexure P-4) passed by respondent no.1-Financial Commissioner (Appeals), Punjab.

Shorn of unnecessary details, the facts relevant for disposal of present writ petition are to the effect that on 17.07.1965, evacuee land measuring 39 kanals 14 marlas including the land in dispute was sold in

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public auction by Tehsildar (Sales) in favour of respondent no.3 which was confirmed by the Settlement Commissioner. On 01.08.1972, respondent no.3 sold 24 kanals 4 marlas of land in favour of the petitioners for valuable consideration amounting to Rs.21,000/- by way of registered sale deed and possession was delivered to the petitioners. In the year 1977, Tehsildar (Sales), Kapurthala made reference under Section 10 of the Punjab Package Deal Properties (Disposal) Act, 1976 in respect of the land purchased by respondent no.3. Thereafter, Chief Sales Commissioner cancelled the auction sale vide order dated 30.01.1979 (Annexure P-1) without affording any opportunity to the petitioners on the ground that land has been sold prior to expiry of ten years. Against that, the petitioner preferred revision before the Commissioner, Jalandhar Division, Jalandhar which was dismissed vide order dated 22.10.1980 (Annexure P-2). The petitioners also filed revision before respondent no.1-Financial Commissioner which was also dismissed vide impugned order dated 05.03.1992. Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

The controversy involved in the present writ petition has already been dealt with by this Bench in CWP-10518 of 1994, titled '*Nirmala Devi vs. State of Haryana and others*', decided on 03.07.2014, wherein, it has been held as under:

“From the perusal of record and arguments of learned counsel for the parties, following question arises for consideration by this Court:

(i) Whether condition of 10 years' ban with regard to sale is in direct conflict with Sections 10 and 11 of Transfer of Property Act?

Before proceeding further, it would be appropriate to reproduce Sections 10 and 11 of the Transfer of Property Act:

“10. Condition restraining alienation.--Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him; provided that the property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Restriction repugnant to interest created.-- Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof”.

Perusal of above sections reveals that such a ban as in the present case is in conflict with Sections 10 and 11 of the Transfer of Property Act. In common parlance, when a property is purchased by a person, he becomes absolute owner and all rights and title vest in him. Mere imposing such a condition without legislative support which the State Government has failed to show to this Court, cannot be said that condition put in the conveyance deed has any effect on the right of the purchaser for further sale. It is the categorical averment of the petitioner that he had verified the record and there was no such condition in the record, therefore, the petitioner is a bona fide purchaser for valuable consideration. Respondents no.1 and 2 have failed to show any statutory provisions with regard to imposition of ban of 10 years.

In Smt. Sarbjit Kaur's case (supra), a coordinate Bench of this Court has dealt with the similar issue and held as under:

“19. So far as the second question is

concerned, counsel for the respondent has failed to show any statutory force in respect of the ban imposed for 10 years. In fact, under Rule 4 (1) of part II of the Punjab Package Deal Properties (Disposal) Rules, 1976 (framed under Section 18 of the Punjab Package Deal Properties (Disposal) Act, 1976, the widows of disabled soldiers etc. killed in Chinese Aggression of 1962 were entitled for allotment of land up to limit of 10 ordinary acres of cultivable land @ to be fixed by the State Government. The aforesaid rule is reproduced below:-

4.1)Allotment of land in rural area to permanently disabled soldiers widows etc. of the soldiers killed in action- (i) permanently disabled soldiers, widows or parents or children of the soldiers killed in the Chinese aggression of 1962 and Pakistan aggression 1965, shall be entitled to the allotment on payment of the cultivable land as far as possible up to the limit of 10 ordinary acres inclusive of their own holding, if any, at such rate per standard acre as may be fixed by the State Government from time to time;

(ii) If any widow or a soldier killed inaction has remarried before the allotment of the land, she shall lose her right to get the allotment and in that case, allotment shall be made in the name of her children from the deceased soldier and in case, the widow is issueless, the allotment shall

be made to the parents of the killed soldiers irrespective of the fact, whether or not, they have submitted separate applications by the prescribed date. In such a case, the application submitted by a widow, by the prescribed date, shall be deemed to have been duly submitted in time by the children or the parents of the deceased soldier, as the case may be:

Provided that in the case of the minor children of the deceased soldier, the allotment of land shall be made through their guardian.

(iii) If any allottee of land, who was a widow, remarries within a period of 10 years from the date of allotment, the land allotted to her shall be liable to be cancelled by the Tehsildar (Sales) or Naib Tehsildar (Sales) after due notice even if full price thereof had been paid and the area thus received shall be allotted to the children of the deceased soldier, if any, through their guardian or to the parents of the deceased soldier, as the case may be.

(iv) The price of the land shall be recovered in 20 half yearly interest free instalments; the first instalment equivalent to 5 percent of the price, payable at the time of allotment of the land by the Tehsildar (Sales) or Naib Tehsildar (Sales). The next instalment shall be payable at the end of the first crop after the expiry of one year from the date of allotment.

(v) No allottee shall be permitted to sell or alienate in any manner, the land allotted to him

or her before the expiry of a period of ten years, even if the full price had been paid.

(vi) In the event of default in the payment of any instalment by an allottee, he shall be liable to pay interest at the rate of 7percent per annum for the over due period and in the extent of default of two successive instalments, the Tehsildar (Sales) or Naib Tehsildar (Sales) shall be competent to cancel the allotment, resume the land and forfeit the money already paid:

Provided that no order shall be made against any person until after the issue of a notice, in writing to the person calling upon him to show cause within such time, as may be specified in the notice, why such order should not be made.

(2)Deed of conveyance to be executed:- Where any land is allotted to any person under this chapter and full price thereof has been realized, a Deed of Conveyance shall be executed in form specified in Appendix 'A' to these rules.

However, by notification dated 20.1.1979 published in the Punjab Gazettee Legislation, dated 16.2.1979, clause (v)of the above rules whereby ban imposed for sale up to 10 years was deleted and clause (vi) Supra was renumbered as clause (v) and was reframed. The amended rule (4) is reproduced below:-

4. In the said rules, in rule 4, in sub-rule (1),- (i) for clause (i), the following clause shall be substituted,namely

“(i)Permanently disabled soldiers, widows or

parents or children of the soldiers killed in the Chinese Aggression of 1962 and Pakistan Aggression of 1965 and widows of the personnel of the Armed Forces, Border Security Force and Punjab Armed Police killed in the Indo-Pakistan Conflict of 1971, shall be entitled to the allotment on payment of the cultivable land as far as possible, upto the limit of ten ordinary acres inclusive of their own holdings, if any, at such rate, per standard acre as may be fixed by the State Government from time to time. For the purpose of valuation of land, ordinary acres shall be converted into standard acres, in accordance with the prescribed scale.”;

(ii) in clause (ii), for the words “ inaction, has remarried”, the words and figures “ the Chinese aggression of 1962 or Pakistan aggression of 1965 remarries a person other than real brother of her deceased husband, shall be substituted;

(iii) for clauses (v) and (vi), the following clause shall be substituted,namely:-

“(v) in the event of default in the payment of any instalment by an allottee, he shall be liable to pay interest at the rate of seven per cent per annum for the over due period and in the event of default of two successive instalments, the Tehsildar (Sales) or Naib-Tehsildar (Sales) shall recover the amount of defaulted instalments with interest as arrears of land revenue”.

20. Since the Conveyance Deed mark A was

issued by Tehsildar (Sales) on 09.12.1981 long after deletion of original clause (iv) of Rule 4 (1) of 1976 rules, vide amended rules of 1979, there is no statutory force of imposing the ban.

21. In the case of B.Anjaneyulu (Supra), the Hon'ble Andhra Pradesh High Court while interpreting Section 10 of the Transfer of Property Act, held that where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void. It was further held that every citizen under the Constitution of India has a right under Article 300-A of the Constitution to property and such a right shall not be curtailed unless it is in accordance with law. If there should be any restriction on such a right, the same could be only by appropriate legislature i.e either by parliament or of the State Legislature. It was further held that one of the most important rights of a owner is a right to alienate the property, which cannot be taken away without the statutory force of law. Similarly, the decision rendered in the case of Puran Chand's Case (Supra), it was further held that stipulation in the sale deed regarding reversion of the land to the vendors in case of non-construction within a stipulated period was void and unenforceable. In the case of Smt.Lilawati (Supra), it was held that the

vendee is entitled to ignore a condition which cuts down his enjoyment of the absolute right of property and any direction in the sale deed which is contrary to the enjoyment of such absolute estate is void and unenforceable. In the case of Manohar's Case (Supra), while interpreting Section 10 of the Transfer of Property Act, it was held that sale deed including clauses prohibiting sale to some one outside family was void. Moreover, the plaintiff himself cannot take the plea that he had no right to sell the land once it is proved that the land has been sold on his behalf by his duly authorized power of attorney. It was, in fact, for the State or the department concerned to have raised the objection who had allotted the land to the plaintiff. Moreover, the conveyance deed Mark 'A' provides that even in case of such a sale, the penalty is of resumption, therefore, the power to sell is not curtailed."

*In view of Sections 10 and 11 of the Transfer of Property Act and in view of law laid in **Smt. Sarbjit Kaur's case (supra)** which fully covers the matter in hand, the aforesaid question is answered in favour of the petitioner.*

Resultantly, instant petition is allowed and impugned order dated 15.06.1994 (Annexure P-2) and reference (Annexure P-1) are set aside."

The matter in hand is squarely covered by the judgment

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rendered in *Nirmala Devi (supra)*. Accordingly, following the reasons mentioned in *Nirmala Devi (supra)*, instant petition is allowed and impugned order dated 05.03.1992 (Annexure P-4) is set aside. As a necessary consequence, reference made by Tehsildar (Sales), Kapurthala, order dated 30.01.1979 (Annexure P-1) passed by Chief Sales Commissioner and order dated 22.10.1980 (Annexure P-2) passed by the Commissioner, Jalandhar Division, Jalandhar are also set aside.

No order as to costs.

04.02.2015

parveen kumar

**(Paramjeet Singh)
Judge**