

CWP No. 20491 of 2010 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 20491 of 2010 (O&M)
Date of Decision : 28.10.2015.

Sushila Nagpal and another ...Petitioners

Versus

The State of Punjab and others ...Respondents

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. Ajay Jain, Advocate for the petitioners.

Mr. Suresh Singla, Addl. A.G., Punjab.

Mr. M.S. Bedi, Advocate for respondent No. 4.

Paramjeet Singh, J.(Oral)

The instant writ petition has been filed by Smt. Sushila Nagpal wife of L.N. Nagpal through Dinesh Aggarwal son of R.K. Aggarwal, resident of H. No. 656, Phase 1, Dugri, Opposite Durga Mata Mandir, Ludhiana and by petitioner No. 2, Puneet Aggarwal son of R.K. Aggarwal.

When the case came up for hearing, following order was passed on 17.11.2010 :-

"Notice of motion for 07.02.2011.

In the meantime, further alienation of the plot

shall remain stayed.

Let the file be put up before the Registrar Judicial (Bench II) for completion of service and pleadings."

Thereafter another order was passed on 08.07.2013, which reads as under :-

"Learned counsel for the petitioners submits that petitioner No. 1 became member of the Society in the year 1975 and was allotted plot measuring 300 Sq. Yards by way of resolution dated 09.05.1993. Incidentally, the allotment was not reflected in record of the Society. Thereafter, she entered into an agreement to sell the said plot with petitioner No. 2 in the year 1994 and executed relevant documents. From the year 1995 to 2001, Society remained under the control of Administrator. In the year 2002, the petitioner applied for the transfer of plot in her name but she was surprised to find that the allotment in her favour was cancelled. She raised a reference for arbitration which has been rejected by the Courts below against which the present writ petition has been filed.

Counsel for the petitioners has, inter alia, argued that the reference has been dismissed on the ground of delay in raising it and also that petitioner No. 1 was given a notice to complete the formalities which she had failed to do. He submits that no notice was given to petitioner No. 1 either for completing the formalities or before the cancellation of allotment. This fact is denied by learned counsel for the Society, who submits that

notice was given which is accepted in the proceedings recorded by the Arbitrator. He prays for time to place the said notice on record for perusal of the Court.

On his request, adjourned to 06.09.2013.”

An objection was raised by the learned counsel for respondent No. 4 regarding the validity of the GPA and it was pointed out that original allottee, Sushila Nagpal has not been heard of for the last more than 20 years and on 31.03.2015, following order was passed by a Coordinate Bench of this Court :-

“Learned counsel for the petitioners prays for adjournment.

Learned counsel for the respondent No. 4-Society points out that the present petition has been filed by the original allottee Sushila Nagpal through her GPA and as per the records of the society, the original allottee has not been heard of for the last more than 20 years.

He, thus, submits that there is a serious doubt regarding the validity of the GPA as on today.

In the light of the assertion of the society, it is deemed appropriate to direct the GPA to submit the proof of validity of the GPA by producing the original allottee.

List on 21.05.2015.”

Thereafter another opportunity was given on 21.05.2015 and on 14.09.2015, this Bench passed the following order which reads as under :-

“On 31.03.2015, a direction was issued to prove the validity of the GPA by producing the original allottee, petitioner No. 1 before the Court. However, till today, the said allottee i.e. petitioner No. 1 has not appeared.

Learned counsel for the petitioner seeks time to produce petitioner No. 1 in Court on the next date of hearing.

Adjourned to 28.10.2015.

In case the petitioner No. 1 is not produced before the Court on the adjourned date, presumption will be drawn that the petition has been filed on the basis of false and fabricated GPA.”

In this order, it is specifically mentioned that in case the petitioner No. 1 is not produced before the Court then presumption will be drawn that the petition has been filed on the basis of false and fabricated GPA.

It has been pointed out by the learned counsel for the respondent No. 4 that similar objection was raised before the Additional Registrar Cooperative Societies, Punjab. The Additional Registrar Cooperative Societies, Punjab had passed the order dated 19.10.2007, the relevant extract of which reads as under :-

“23. On the basis of the evidence produced and arguments of the opposing counsels, it has been found that the General Power of Attorney on behalf of Sushila Nagpal is dated 20.12.1994, however, this reference/application has been filed in the year 2005. The counsel for the petitioner did not

produce Mrs. Sushila Nagpal in person even once during the course of whole proceedings, even though he had committed during the hearing dated 03.04.2006 to produce her for recording her statement during the next hearing i.e. 01.05.2006. He even did not produce her during the subsequent hearings which creates serious doubts whether she is alive or not."

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

Learned counsel for the petitioners vehemently contended that General Power of Attorney had been executed by petitioner No. 1 in favour of Sh. Dinesh Aggarwal. Though the objection was raised from the very beginning specifically before the Additional Registrar Cooperative Societies, Punjab with regard to availability of Sushila Nagpal but she was not produced. Ultimately, Additional Registrar Cooperative Societies, Punjab decided the case on 19.12.2007. In spite of the order passed by a Coordinate Bench of this Court on 31.03.2015, wherein the direction was issued that original allottee be produced in Court to prove the validity of GPA, the same has not been complied with. This Court also passed order dated 14.09.2015, wherein, it has specifically been mentioned that in case the petitioner No. 1 is not produced before the Court, presumption will be drawn that the petition has been filed on the basis of false and fabricated GPA. In spite of lapse

of sufficient time, petitioner No. 1 has not been produced. The only argument advanced by the learned counsel for the petitioners is that there is no requirement of producing the petitioner No. 1 before the Additional Registrar Cooperative Societies or this Court in view of registered Power of Attorney and this petition cannot be dismissed for non-production of petitioner No. 1 in the Court.

I have considered the contentions raised by the learned counsel for the petitioners.

This Court does not intend to decide the issue on merit. The petition is being dismissed only for the reason that in spite of specific directions issued by this Court, petitioner No. 1, Sushila Nagpal, who is the original allottee, has not been produced in Court. It is the specific objection of the Society that she is missing for more than 20 years. It was specifically mentioned in the order dated 14.09.2015 passed by this Court that in case the petitioner No. 1 is not produced before the Court, presumption will be drawn that the petition has been filed on the basis of false and fabricated GPA. It is a settled principle of law that GPA only survives till a person is alive, otherwise also, this Court is satisfied that for the reasons best known to the petitioners, the petitioner No. 1 is not coming to this Court.

In view of this, an adverse inference has to be drawn

that GPA is a false and fabricated document. In proceedings under Article 226 of the Constitution of India, when objection is raised that the petition has been filed by impersonation or on the basis of any forged and fabricated document, this Court can issue direction to the petitioner to satisfy the conscious of the Court with regard to the impersonation, forging and fabrication of the document. It is what this Court has done by directing production of petitioner No. 1 in Court which is directly related to the issue. Since the petitioners have not complied with the order, presumption is strongly in favour of the objection raised.

In view of the above, there is absolutely no need to consider the merits of the case as that would be a futile exercise.

In the result, the writ petition is dismissed.

October 28, 2015
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(PARAMJEET SINGH)
JUDGE