

CWP No.16901 of 2015

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

**CWP No.16901 of 2015
Date of decision:21.08.2015**

Gurdial Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. HPS Ghuman, Advocate,
for the petitioners.

Mr. J.S.Khiva, Advocate,
for the respondent-caveator.

Rakesh Kumar Jain, J.

A big chunk of land was allotted to the Chhintawala Harijan Land Owning Cooperative Society Limited, Chhintawala, Tehsil Nabha, District Patiala (hereinafter referred to as the "Society") through its members in the year 1956. The members of the Society were land-less persons. One of the members, namely, Dalip Singh was allotted land measuring 73 Kanal 14 Marlas by the Society. He entered into an agreement on 27.04.1999 and transferred his possession of 16 Kanals of land in favour of Sant Ram, father of petitioner Nos.1 to 4 in lieu of ₹3,00,000/-. Dalip Singh also transferred possession of his another 16 Kanals of land to Sushil Mittal for a sum of ₹4,60,000/- vide agreement dated 06.06.2000. Sushil Mittal further transferred his possession over the said land to petitioner Nazar Singh for a sum of ₹4,60,000/- vide agreement

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dated 14.06.2000. Dalip Singh got the girdawri of 16 Kanals of land recorded in favour of Nazar Singh vide Rapat Roznamcha dated 29.01.2001.

Hazura Singh was allotted land measuring 72 Kanal 8 Marlas by the Society. Sucha Singh, Ram Singh and Mohan Singh sons of Hazura Singh transferred their possession of 1/5th share each in the abovesaid land measuring 72 Kanal 8 Marlas through affidavits in favour of Malkiat Singh, Kulwant Singh and Harbhajan Singh on 06.05.1996. The possession of the said land was also transferred in favour of Vicky Singh S/o Avtar Singh and Rabi Singh S/o Sarban Singh by Malkiat Singh, Kulwant Singh and Harbhajan Singh for a sum of ₹2,44,666/- each vide agreement dated 31.10.2013. Rabi Singh further transferred possession of 50 Kanal 16 Marlas of land in favour of petitioners Karamjit Singh and Karam Singh sons of Surjit Singh @ Sita Singh for a sum of ₹14,60,500/- vide agreement dated 17.05.2005. The aforesaid Ram Singh, Mohan Singh and Sucha Singh got the girdawri recorded in favour of Malkiat Singh, Kulwant Singh and Harbhajan Singh vide Rapat Roznamcha dated 25.09.1996. Vicky Singh and Rabi Singh got the girdawri recorded in favour of Karam Singh and Karamjit Singh vide Rapat Roznamcha dated 12.05.2005.

Maghi Ram was also allotted land measuring 72 Kanal 8 Marlas by the Society. He transferred possession of 39 Kanal 16 Marlas of land in favour of Roop Singh and Ranjit Singh in lieu of ₹1,30,000/- per acre vide agreement dated 07.05.1996. Maghi Ram got the girdawri transferred in favour of Roop Singh and Ranjit Singh vide Rapat Roznamcha dated 25.09.1996. Roop Singh and Ranjit Singh further

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transferred possession of the above said land in favour of Balwant Singh, Baldev Singh and Pritam Kaur widow of Harbhajan Singh for a sum of ₹7,46,300/- vide agreement dated 18.11.2000. They also got the girdawri recorded in favour of the aforesaid persons.

Thus, it is alleged that the petitioners are in possession of the disputed land in view of the aforesaid agreements and there was no condition in the allotment letter of the original members of the Society that they cannot transfer possession to anybody else. It is also alleged that Dalip Singh filed a suit for permanent injunction against Nazar Singh, Gurdial Singh, Gurmail Singh, Mukhtiar Singh and Paramjit Singh. The said suit was dismissed on 30.11.2013. One Raja Ram also filed the Civil Suit for possession which was dismissed on 06.09.2013 and the appeal filed by Raja Ram was also dismissed on 01.10.2014. The Society has also filed a suit for declaration that the entries in the record of rights (Khasra Girdawri) was wrongly recorded and, thus, are liable to be corrected in the name of the Society. The Society had also prayed to dispossess the petitioners. The petitioners then filed CWP No.9502 of 2010, which was disposed of on 05.10.2010 with the following order:-

“The petitioners pray for issuance of a writ in the nature of certiorari for restraining the respondents from dispossessing the petitioners, on the basis of a communication forwarded by the Director, Consolidation-cum-Land Records Punjab, Chandigarh dated 7.4.2010/15.4.2010.

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Counsel for the petitioners submits that the petitioners are in possession of the land in dispute, pursuant to an agreement to sell executed by the original allottees of Nazool land in their favour. In the absence of any enquiry or order cancelling the allotment, the petitioners can not be dispossessed on the basis of letter sent by the Director, Consolidation-cum-Land Records, Punjab.

Counsel for the State of Punjab, on the other hand, submits that the complaint forwarded by the Director, Consolidation-cum-Land Records, Punjab, was considered by the Deputy Commissioner, Patiala and an enquiry has been marked to the Tehsildar Nabha. The enquiry is in progress and the petitioners would only be dispossessed, if the allotment of original allottees is cancelled.

Counsel for the respondents No.7, 9, 10 and 11 submits that as the suit filed by the petitioners for permanent injunction has been dismissed, the writ petition should also meet the same fate.

I have heard Ld. Counsel for the parties and perused the impugned order.

Admittedly, an enquiry with respect to the allotment is pending before the Tehsildar, Nabha. The

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petitioners are admittedly in possession and, therefore, can only be dispossessed upon conclusion of the enquiry and then also in due course of law.

In this view of the matter, the present petition has been rendered infructuous and is disposed of with a direction to the Tehsildar, Nabha to conclude the enquiry, preferably within a period of three months from today and forward the report to the Deputy Commissioner, Patiala, forthwith.”

In pursuance to the aforesaid order, the Tehsildar, Nabha, has submitted his inquiry report to the Deputy Commissioner, Patiala, about possession of the non-members for which the Society had submitted an application to the Deputy Commissioner, Patiala, for taking possession from non-members of the Society. It is alleged that the Assistant Registrar, Cooperative Societies, Nabha, has also written a letter to the Deputy Commissioner, Patiala, to provide police help and one Revenue Officer at the time of taking possession.

The petitioners have, thus, filed this petition with a prayer that they may not be dispossessed from the land in question pursuant to the communication/letters dated 08.06.2015 and 15.07.2015 and have prayed that in the meantime, the dispossession shall be stayed. It is alleged that the Civil Court has no jurisdiction, therefore, the writ petition is maintainable.

I have heard counsel for the parties and examined the available record.

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Even if the facts narrated by the petitioners in the petition and explained here-in-above are taken to be correct on their face value, the petitioners cannot be allowed to file the writ petition, asking for the relief prayed therein which is virtually their prayer for stay. If the petitioners are allegedly in possession and the respondents are trying to dispossess them, they have a remedy of filing the suit for permanent injunction. Even otherwise, the petitioners are not the owners of the property in dispute because there is no sale deed in their favour, whereas it has been held by the Supreme Court in the case of **Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and another**, 2011(4) R.C.R. (Civil) 669 that the ownership rights cannot be transferred except by way of a registered conveyance deed, whereas the petitioners are claiming their right over the property in dispute only on the basis of agreement to sell. The relevant portion of the aforesaid judgment in **Suraj Lamp and Industries Pvt. Ltd.'s case (supra)** is as under:-

15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in **Asha M. Jain v. Canara Bank**, 94 (2001) DLT 841, that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are

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some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is

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put to the pernicious practice of SA/GPA/WILL
transactions known as GPA sales.”

In view thereof, the present petition is not maintainable as the
petitioners cannot invoke the extraordinary writ jurisdiction of this Court
under Articles 226/227 of the Constitution of India as they have the
ordinary remedy of civil suit for permanent injunction.

Dismissed.

August 21, 2015
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(Rakesh Kumar Jain)
Judge