

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

CWP No.27322 of 2013

Date of decision:13.1.2015

Kuldip Chand Pathania

....Petitioner

VERSUS

Chandigarh Housing Board and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. S.S. Hira, Advocate for the petitioner.

Mr. Indresh Goel, Advocate for respondents.

HEMANT GUPTA, J.

The petitioner has invoked the writ jurisdiction of this Court for quashing of the order dated 29.11.2013 (Annexure P-4), whereby the request of the petitioner for transfer of the dwelling unit No.771, Sector 41-A, Chandigarh in his favour was declined for the reason that the dwelling unit has been transferred within the lock-in period of 5 years.

One T.C. Mittal was allotted a dwelling unit No.771, Sector 41-A, Chandigarh on 30.09.1985. The possession of the dwelling unit was given to the allottee on 14.03.1986 after the allottee submitted an affidavit accepting the terms and conditions of the allotment on 31.01.1986. The allottee transferred the plot to the petitioner on 12.02.1986 and executed a General Power of Attorney, Special Power of Attorney and Will etc. On the basis of such documents, the petitioner sought the transfer of the dwelling unit in his favour on 26.05.2010. It is the said request which has been declined vide the order impugned in the writ petition.

In the written statement, the stand of the respondents is that the unit has been transferred to the petitioner by the allottee in violation of clause 13 of the allotment letter which restricts the transfer within 10 years from the date of actual possession.

Learned counsel for the petitioner argued that the entire sale consideration in respect of the dwelling unit stands paid to the Board and No Objection Certificate was issued on 31.08.1999 (Annexure P-8). Therefore, once the price of the dwelling unit stands paid, the respondent-Board cannot decline the transfer of the dwelling unit to the petitioner as the Board cannot exercise any control over the said dwelling unit except as contemplated under the Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979 (for short 'the Regulations') as amended on 17.03.2010.

On the other hand, learned counsel for the respondent-Board argued that there was a condition that the transfer within the lock-in period is not permissible. Therefore, the execution of the General Power of Attorney, Special Power of Attorney and the Will, the documents of transfer of the title of the property executed within the lock-in period will not confer any right in favour of the petitioner it being against the condition of allotment.

We have learned counsel for the parties and find that the action of the respondents in declining transfer in favour of the petitioner suffers from patent illegality.

Regulation 4 of the Regulations contemplates disposal of property either on hire-purchase or sale on lease-hold basis for 99 years or in such other manner as prescribed by the Board. The

allotment of the dwelling unit, in the present case, was on hire-purchase basis. As per Regulation 2(20) of the Regulations, 'hire-purchase' is a system in which a hirer after having paid 25% of the price or such percentage of the price of the property as may be prescribed by the Board in the scheme, executes a hire-purchase tenancy agreement. Regulation 10, originally enacted, restricts the right of the hirer to sell, alienate, transfer any of his rights or interest in the said property for a period of 10 years, which period now stands reduced to 5 years when Regulation 16 was substituted on 1703.2010. The said Regulation further contemplates that the Administrator at his discretion for the reasons to be recorded in writing permit the hirer in genuine cases of hardship or on humanitarian grounds or on humanitarian grounds as he deems fit to sell, alienate or transfer any of his rights or interests in the said property. The relevant Regulation reads as under:

“10. Monthly instalments as Hirer's Obligations – (1) Subject to the provisions of regulation 7, the balance of hire-purchase price of the property including interest thereon at such rates as may be fixed by the Board shall be recovered in such number of monthly instalments as may be specified in each scheme. The amount of each instalment shall also be such as may be fixed by the Board in every case;

Provided that the hirer may make the payment of the balance of the consideration money in lump sum.

(2) The hirer shall not sell, alienate, transfer any of his rights or interest in the said property or otherwise part with the possession of the whole or any part of the said property till he becomes the owner or for a period of 10 years from the date of actual possession, whichever is later, subject to the under mentioned exceptions:-

- (i) A lease for a period not exceeding 5 years at a time may be created.

- (ii) The right, title and interest of the hirer can be mortgaged in favour of the Government, Life Insurance Corporation or any Scheduled Bank or any Corporate Body, provided the Board shall have first and paramount charge on the said property for the unpaid portion of purchase price and other dues outstanding against hirer including penalty, if any:

Provided further that such mortgage, lease, etc. can only be created with the prior permission of the Board and Board will be competent to impose any condition while granting such permission.

Notwithstanding anything contained in sub-regulation (2) above, the Administrator may at his discretion for reasons to be recorded in writing permit the hirer in genuine cases of hardship or on humanitarian grounds as he deems fit to sell, alienate or transfer any of his rights or interests in the said property or otherwise part with the possession of the whole or any part of the said property after he has made the full payment of the property to the Board.”

Regulation 16 as substituted on 17.03.2010 reads as under:

“16. Transfer of Registration/Property – Notwithstanding anything contained in these regulations, the Board may transfer the registration number or any property after a period of 5 years from the date of physical possession by Imposing such terms and conditions as it may deem fit.”

Regulation 44 contemplates that the hirer shall cease to be a tenant and shall become the owner of the property only after the last instalment of hire-purchase and all other dues have been paid by him. The said Regulation reads as under:

“44. Transfer of ownership to hirer – The hire shall cease to be a tenant and shall become the owner of the property only after the last instalment of hire-purchase and all other dues have been paid by him to the Board and the transfer of the

property to him has been effected through a conveyance deed lease deed executed in such form as may be prescribed by the Board and the common portions and common/services, if any, have also been taken care of.”

Admittedly, the originally allottee – the hirer has paid all the outstanding amount either by himself or by his account by the petitioner. Therefore, the hirer has become owner of the property in terms of Regulation 44 of the Regulations reproduced above. Once the hirer has become owner of the property, the hirer is competent to alienate the same in terms of Regulation 10 of the Regulations. Though the documents of transfer were executed within the lock-in period, but the fact remains that subsequent to such execution of the documents lock-in period has come to an end and also the hirer has become owner of the property. Regulation 10 empowers the Administrator to permit the transfer even within the lock-in period. Therefore, the transfer of the dwelling unit is not prohibited, but the regulations regulate the transfer. Therefore, after a regulatory period has come to an end, the respondents cannot decline the transfer of the dwelling unit only for the reason that the documents of transfer were executed during the lock-in period.

Consequently, while allowing the present writ petition, we set aside the order dated 29.11.2013 (Annexure P-4) declining transfer in favour of the petitioner. The respondents are directed to transfer the dwelling unit in favour of the petitioner on completion of the formalities, if any required.

(HEMANT GUPTA)
JUDGE

JANUARY 13, 2015
‘D. Gulati’/Vimal

(HARI PAL VERMA)
JUDGE