

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

**CWP No.7215 of 2015 (O&M)
Date of decision: 28.4.2015**

Ashok Manchanda

.....Petitioner

Vs.

The Estate Officer, UT, Sector 17, Chandigarh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Alok Kumar Jain, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing the orders dated 2.5.2011, 5.8.2013, 26.9.2014, 22.3.2013 and 1.5.2014, Annexures P.8, P.10, P.14, P.12 and P.13 respectively passed by the respondent-authorities cancelling the lease in respect of Booth No.270, Sector 22-C, Chandigarh.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The Chandigarh Administration launched a scheme known as allotment/transfer of built up

booth in any Sector on lease/hire purchase basis in Chandigarh. The booth in question was allotted in the name of Shri Narottam Dass son of Shri Amar Nath vide letter of allotment dated 5.5.1993 on lease hold basis for a period of 99 years. Narottam Dass died on 4.1.1997. He during his life time had executed a Will dated 24.9.1993 bequeathing the booth in question to one Jaswant Singh, father of respondent No.6 – Jagjit Singh. The Estate Officer conducted enquiry through its Tehsildar on 8.4.2002 and found one Raju son of Jaswant Singh to be in possession of the booth in question. A show cause notice dated 7.6.2002 was issued. During the proceedings before the Estate Officer, the said Jaswant Singh moved an application for transfer in his favour on the basis of Will which was accompanied with the death certificate of Narottam Dass besides No Objection from the legal heirs of the deceased allottee. The Estate Officer passed orders of cancellation dated 19.9.2003 but in appeal, the appellate authority remanded the case to the Estate Officer and set aside the order of cancellation of lease. Jaswant Singh being the beneficiary of the Will left by Narottam Dass was in possession of the booth in question. He was suffering from cancer and was in dire need of financial help. The petitioner and his family who were very closely associated with Jaswant Singh upon his asking offered help to him and as such agreement dated 27.9.2005 was executed wherein the business from the booth in question was to be run conjointly by the petitioner as well as Jaswant Singh in the ratio of 40:60. This partnership deed was dissolved and the possession of the entire booth alongwith the business to be conducted therefrom was handed over to the petitioner vide dissolution deed dated 5.11.2007. The petitioner paid another sum of ₹ 5 lacs vide receipt dated 5.11.2007, Annexure P.4 to Jaswant Singh. Jaswant Singh

became the owner of the booth being beneficiary of the allottee Narottam Dass who executed the Will in his favour. Further, Jaswant Singh realizing that he had taken loan of around ₹ 8.50 lacs for which he had executed the receipts, executed Will dated 20.12.2007 in favour of the petitioner bequeathing the booth in question in his favour. Jaswant Singh died on 18.3.2008. The petitioner is enjoying the possession of the booth in question on account of his being the beneficiary of the Will left by Jaswant Singh after his death. He is undertaking the business of readymade garments in the name and style of Fashion Hut. After the death of Jaswant Singh, his legal heirs started disrupting the title of the petitioner. The petitioner filed suit for declaration to the effect that he is the owner of booth in question which is pending in trial court at Chandigarh. On remand by the appellate authority, respondent No.1 again passed the order of cancellation of lease vide order dated 2.5.2011, Annexure P.8. Respondent No.4 initiated proceedings under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short, "the 1971 Act") by virtue of show cause notice dated 13.9.2011, Annexure P.9. The order dated 2.5.2011 was challenged by the petitioner in appeal before the Chief Administrator which was dismissed vide order dated 5.8.2013, Annexure P.10. Still not satisfied, the petitioner filed revision petition before respondent No.3. In the meantime, respondent No.4 passed order under Section 5 of the 1971 Act dated 22.3.2013, Annexure P.12. The petitioner challenged the said order before District Judge exercising the powers of appellate authority under Section 9 of the 1971 Act. Vide order dated 1.5.2014, Annexure P.13, the appeal was dismissed by the Additional District Judge. The revision petition against the order dated 5.8.2013 was

also dismissed vide order dated 26.9.2014, Annexure P.14. Hence the instant writ petition.

3. Civil Miscellaneous application No.5455 of 2015 has been filed for placing on record list of transfers of properties on the basis of Will by the respondent authorities and photographs, Annexures A.1 and A.2 respectively. The documents are taken on record.

4. We have heard learned counsel for the petitioner.

5. Learned counsel for the petitioner placed reliance on the judgment of this Court in CWP No.27322 of 2013, ***Kuldip Chand Pathania vs. Chandigarh Housing Board and others***, decided on 13.1.2015 wherein the order declining transfer of the dwelling unit on the ground that the same was done within the lock-in period of five years, was set aside. Reliance was also placed on Annexures A.1 and A.2 to suggest that on the basis of Will by the strangers, certain transfers had been accepted by the Estate Officer.

6. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition. In the present case, the factual matrix involved herein is required to be noticed. Booth No.270 in Sector 22-C, Chandigarh was allotted in the name of Shri Narottam Dass son of Shri Amar Nath vide allotment letter dated 5.5.1993 on lease hold basis for 99 years. Narottam Dass died on 4.1.1997. He had executed Will in favour of Jaswant Singh, father of respondent No.6 on 24.9.1993. It is thereafter that Jaswant Singh had also executed Will dated 20.12.2007 in favour of petitioner bequeathing the booth in question to him. Jaswant Singh died on 18.3.2008. The transfer of the booth has been sought on the basis of the Will dated 20.12.2007. A civil suit regarding the execution of Will executed

by Jaswant Singh in favour of the petitioner is pending before the trial Court. Still further, originally, the booth in question was allotted to Narottam Dass on lease hold basis vide allotment letter dated 5.5.1993. During the enquiry conducted by the Tehsildar of the Estate Office on 8.4.2002 on receipt of vigilance enquiry report dated 17.8.2000, it was found that the booth in question was sublet to Raju son of Jaswant Singh who was running business of *gota manyari*. Thereafter, show cause notice dated 7.6.2002 was issued to the allottee. During the proceedings of cancellation of booth, Jaswant Singh, father of Raju submitted an application dated 5.2.2003 for transfer of booth in his favour on the basis of unregistered will dated 24.9.1993 executed by Narottam Dass. The Land Acquisition Officer exercising the powers of the Estate Officer, vide order dated 10.9.2003 cancelled the lease of the booth on the ground of subletting. On appeal, the Chief Administrator set aside the cancellation order and remanded the case to the Estate Officer for passing fresh orders. During the pendency of the case, Jaswant Singh passed away on 18.3.2008. The Estate Officer vide order dated 2.5.2011, Annexure P.8, cancelled the lease against which two appeals were filed - one by Jagjit Singh and the other by Ashok Manchanda, petitioner herein before the Chief Administrator. Vide order dated 5.8.2013, Annexure P.10, both the appeals were dismissed. The revision petitions filed by both of them before the Advisor to the Administrator, UT Chandigarh were also dismissed vide order dated 26.9.2014 (Annexure P.14). The operative part of the order passed by the revisional authority reads thus:-

“After hearing both the parties and going through the record, I find that the site in question has been cancelled on the ground of subletting. The booth in question has been

allotted to the allottee/lessee Shri Narottam Dass under the Rehabilitation Scheme and as such special clause No.9 was incorporated in the allotment letter. As per clause 9 of the allotment letter, the allottee shall not be entitled to transfer the building or alienate his leasehold rights or title in any manner whatsoever including giving the booth on monthly rent for a period of 15 years. Such permission shall be given, only after the lessee had paid full premium and ground rent due under the lease for the building and after expiry of 15 years from the date of allotment. The partnership for carrying business in the said booth shall tantamount to transfer which is not permissible. In the present case the allottee/lessee Shri Narotam Dass executed a Will in favour of Shri Jaswant Singh just after four months of the issuance of allotment letter. Moreover, no reason for ignoring his legal heirs as well as no detail of his heirs had been given therein. No objections tendered by the widow, two daughters and one son of the allottee by way of an affidavit prove that there was money transaction and the Will had been executed as an instrument to avoid Clause No.9 of the allotment letter. The booth in question has been allotted under Rehabilitation Schemes of administration at normal rates, therefore, a specific condition was incorporated in the allotment letter that the booth could not be disposed of or parted away by the allottees without prior approval/permission of Estate Officer. From the record of the Estate Office, it is clear that the lessee has violated the condition No.9 of the allotment letter and sold the booth in question during the prohibited period of 15 years. As regards further Will executed by Shri Jaswant Singh in favour of Ashok Manchanda, the matter is sub judice before the civil court and this court has nothing to do with that dispute. The site in question has been resumed on the ground of subletting and that has been proved from the record of the Estate Office. The Estate Officer had rightly

cancelled the lease of the site and declined the request of legal heirs of Jaswant Singh vide order dated 2.5.2011 and the said order has been upheld by the Chief Administrator. The counsel for the petitioner Jagjit Singh failed to establish his claim and as such, I see no infirmity in the order of the Chief Administrator and while upholding the same, dismiss both these revision petitions being devoid of merits.”

7. In *Suraj Lamp and Industries Pvt. Limited vs. State of Haryana and another*, (2012) 1 SCC 656, the Apex Court held that immovable property could be legally and lawfully transferred/conveyed only by 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 as valid mode of transfer of immovable property. The following observations can be read with advantage:-

“24. 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 53A](#) 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 put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

25. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

26. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under [section 53A](#) of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.

27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer

to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding 'SA/GPA/WILL transactions' are not intended to apply to such bonafide/genuine transactions.”

Thus, the transaction which was for the benefit of the petitioner was in the nature of conveyance and unregistered Will executed by total stranger without there being any relationship or circumstances for so executing, would not confer ownership rights without registration and the payment of stamp duty on the same.

8. In view of the above enunciation of legal position, Annexures A.1 and A.2 would not give any right to the petitioner. Still further, learned counsel for the petitioner was unable to show detail facts of the cases mentioned in Annexure A.1 and therefore, it shall not confer any benefit on the petitioner on that basis. The judgment in ***Kuldip Chand Pathania's*** case (supra) was relating to declining transfer of the dwelling unit in favour of the transferee on the ground that clause 13 of the allotment letter which restricted transfer within 10 years from the date of actual possession was violated. This court allowed the writ petition and the impugned order was set aside. Keeping in focus the factual matrix of the present case, no advantage can be derived by the petitioner from the said pronouncement.

9. The impugned order has been passed by the respondent authorities after considering the entire material on record and hearing all the concerned parties. Learned counsel for the petitioner has not been able to point out any illegality or perversity in the order which may call for

interference by this Court. Consequently, finding no merit in the petition, the same is hereby dismissed.

This order shall also dispose of CM Nos.5455-56 of 2015.

(Ajay Kumar Mittal)
Judge

April 28, 2015
'gs'

(Rekha Mittal)
Judge