

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

RSA No.4500 of 2012 (O&M)

Date of Decision: November 27, 2015

Gunwant Kaur and others

.... Appellants

vs.

Satnam Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Prateek Pandit, Advocate for the appellants.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes*
2. *To be referred to the Reporters or not? Yes*
3. *Whether the judgment should be reported in the Digest? Yes*

Kuldip Singh J.(Oral)

CM-12581-C-2012

There is delay of 108 days in filing the present appeal.

For the reasons mentioned in the application, supported by an affidavit, delay of 108 days in filing the present appeal is condoned, subject to all just exception.

Application stands disposed of.

RSA-4500-2012

Impugned in the present regular second appeal is the judgment and decree dated 01.12.2012 passed by learned Addl. District Judge, Kapurthala, affirming the judgment and decree dated 01.12.2010 passed by learned Addl. Civil Judge (Sr. Divn.), Kapurthala, vide which the suit of the plaintiffs-appellants was partly decreed and the sale deed dated 09.09.1994 executed by defendant No.4 in favour of defendant Nos.1 and 2 was set aside. It being against the provisions of the Nazool lands (Transfer) Rules, 1956, the suit land was reverted back to the State of Punjab. The Collector,

Kapurthala was competent to resume back its possession. The parties were restrained from its further alienation.

The brief facts, required to be noticed for the purpose of disposal of the present appeal are that defendant No.4 Ram Singh being a member of Scheduled Caste, was allotted the land including the suit land measuring 8 kanals by the State of Punjab in accordance with the Rules (*ibid*). The sale certificate dated 28.10.1980 (Ex. P1) was issued in continuity of an order passed by the Collector, Kapurthala on 20.06.1967. As per terms and conditions of the bond executed by defendant No.4, on 19.10.1966 (Ex.PW3/D), there was a condition provided in Clause 4 that defendant No.4 Ram Singh will not be competent to sell, mortgage or otherwise transfer or part with possession of the whole or any part of the said nazool land except with the express permission in writing of the State Government.

There was a condition No.5 in the said agreement, which is reproduced as under:

“In case the society shall commit default in the payment of the any to installments on due dates or if the society shall at any time fail or neglect to perform and observe any of the terms and condition herein forthwith on its part to be observed and performed then the Collector, Kapurthala may without prejudice to any other rights and possession of the said Nazul land by evicting and society therefrom . In such an event, the society shall be liable to apply the amount of installments for the

period the land remained with it or the amount of lease money for the aforesaid period to -- by the Collector, whichever may be lesser.”

There was a ban on transfer of land for the period of 10 years from the date of sale certificate i.e. 28.10.1980 and there was further restriction also. Even thereafter, the alienation can be made to the scheduled castes only. Later on, the said ban of sale of 10 years was extended forever.

In violation of the said conditions, defendant No.4 Ram Singh transferred the part of allotted land measuring 8 kanals to defendant Nos.1 and 2, vide sale deed dated 09.09.1994. The plaintiffs, who happen to be the wife and children of Ram Singh, challenged the said sale deed. The lower court decreed the suit and set aside the sale sale. But at the same time, it was held that ownership will revert to the State of Punjab and the Collector, Kapurthala was held to be competent to resume back its possession.

The lower court made the following observations:

“57. In the case in hand after execution/registration of the sale deed in question defendant No.4 has divested himself of the right to occupy the property and the defendants No.1 and 2 have further not acquired any right, title or interest in the same on account of having been procured the same against the law as observed above. Therefore, for declaring the State of Punjab as owner of the land and asking the Collector, Kapurthala, to proceed in accordance with law in resuming of its possession, the law of limitation cannot come in between duty of the court

to protect the public lands from being usurped against the express statutory provisions and mandate of law. No party has a right to further alienate it to complicate the matter including the defendant No.1 and 2 who are no more its owners. Through the transfer of the land by the defendant No.4 in express violation of the terms and condition's, under which it was transferred to him, neither he nor the plaintiffs and nor defendants No.1 and 2 have remained its owners. The ownership has reverted back to the State of Punjab.”

The defendants did not file any appeal against the said judgment and decree. However, the plaintiffs filed the appeal before learned Addl. District Judge, Kapurthala, which was dismissed and the findings recorded by the learned Addl. Civil Judge (Sr. Divn.), Kapurthala, were affirmed. Now, the plaintiffs have come up in the present regular second appeal, mainly assailing the said directions of the court that the land stands reverted to the State of Punjab and the Collector, Kapurthala was directed to resume back its possession.

I have heard learned counsel for the appellants and have also carefully gone through the case file.

Since the relief is sought against the Collector, Kapurthala, who is not party and the defendants did not contest the appeal, therefore, there is no need to issue notice to the respondents.

Learned counsel for the appellants has argued that under the Rules (*ibid*) and the condition No.5 of the bond, the Collector,

Kapurthala may resume the land. For that purpose, a procedure has been laid down, which has to be followed and the allottee is to be heard before deciding the matter. Therefore, the lower court erred in holding that the land stand reverted to the State of Punjab.

After going through the said condition of the bond, I am of the view that in case of violation of the condition, the Collector was given power to resume the land. The principle of natural justice otherwise requires that allottee should be heard before passing the resumption order. There is no condition of automatic reversion of the suit land to the State, in case of violation of the terms and conditions of the agreement.

It being so, while upholding the judgment and decree passed by the lower court, its direction that the land stands back reverted to the State of Punjab stands modified to the extent that the Collector, Kapurthala may initiate the proceedings for resumption of the allotted land to Ram Singh for violating the terms and conditions of the bond and after giving an opportunity of hearing to the LRs of said Ram Singh (since deceased), the matter be decided in accordance with law.

The judgments of both the courts below stand modified to the aforesaid extent and the present regular second appeal stands allowed to the abovesaid extent.

November 27, 2015
sarita

(KULDIP SINGH)
JUDGE