

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

**CWP No. 11874 of 2016 (O&M)
Date of decision: 07.12.2016.**

Manmohan Singh Petitioner.

Versus

State of Haryana and others Respondents.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MS. JUSTICE LISA GILL**

Present: Mr. Jagmohan Singh Bhatti, Advocate, with
Mr. Rajendar Chhokar, Advocate, for the petitioner.

S.S. SARON, J.

The petition has been filed by Manmohan Singh - petitioner under Articles 226/227 of the Constitution of India for directing the official respondents to protect the State interest and not allow illegal transactions of sale of plots by labelling them as gift-deeds and thereby causing financial loss to the State exchequer.

The grievance of the petitioner is that the Haryana Urban Development Authority ('HUDA' - for short) allots plots to the oustees whose land has been acquired. The said allotment of plots to oustees contains a condition to the effect that the allottee would not sell the plot for a period of five years. However, the allottees of the plots thereafter execute gift-deeds in favour of the persons to whom the plot is to be transferred and thereby the transfer that is effected circumvents the condition of allotment. This, according to the petitioner, causes huge financial loss of stamp duty to the State exchequer inasmuch as stamp duty to the extent of 25% only that

is to be paid in case a sale deed is executed, is actually paid by execution of a gift-deed. Therefore, it is submitted that the condition of allotment by HUDA in favour of the oustees is being circumvented.

The petitioner had earlier filed CWP No.15660 of 2015 raising a similar grievance. The said petition was disposed of by a Coordinate Bench of this Court on 03.08.2015 (Annexure P12). After hearing learned counsel for the petitioner and without issuing notice to the other side, the said writ petition was disposed of with a direction to respondent No. 5 in the said petition to consider and decide the representation made by the petitioner by passing a speaking order in accordance with law.

The necessary speaking order has been passed by the Administrator, HUDA, Faridabad on 18.04.2016 (Annexure P15). The Administrator, HUDA, Faridabad, agreeing with the arguments advanced by allottee and transferee and also by the ADA, observed that as per definition of Section 122 of the Transfer of Property Act, 1882 ('the Act' - for short), there was no restriction of execution of gift-deed out of blood relation. The gift-deed could be executed by a person in favour of any person out of love and affection without consideration. It was observed that as per HUDA policy, only administrative charges were payable for transfer of plot on the basis of gift-deed within blood relations. In the present case, it was observed, three plots had been transferred after charging the transfer fee as well as administrative charges. Further, as per allotment letter, there was restriction only for sale for a period of five years and there was no restriction with regard to gift-deed in the allotment letter. The transfer of

above-said three plots had rightly been done and legally on payment of transfer fee and administrative charges. Therefore, the same did not warrant any interference. Besides, it was observed that no documentary proof regarding payment of consideration amount in lieu of the execution of the gift-deed was produced by the complainant/petitioner or any other person. Accordingly, it was held that the complainant had failed to prove the allegations of sale of plot raised in the given complaint.

As already noticed, the grouse of the petitioner is that the conditions of allotment letter, which prohibits the sale of plots allotted to an oustees are being circumvented. However, it is to be noticed that the condition of allotment letter is that the sale is prohibited for a period of five years to an oustee allottee and not that a gift deed or other modes of transfer are also prohibited. Therefore, it is primarily for HUDA to take a decision as to what policy it has to adopt and observe. It could well be contended on behalf of the allottees that in fact the said condition of prohibiting the sale of plots for a period of five years is arbitrary as firstly the allottees were deprived of their land by acquisition and then a part of the same land was allotted to them being oustees and yet a condition had been imposed prohibiting them not to sell the plots that had been allotted, for a period of five years.

In the circumstances, since the issue is not before the Court, we leave it for HUDA to take a rational and a balanced policy decision in the matter of sale of plots by allottees who were allotted plots as oustees. In case the petitioner is aggrieved against the manner in which the plots are

transferred by way of a gift deed by an oustee and thereby there is evasion of stamp duty inasmuch as stamp duty on gift deed instead of sale deed is paid, he may, if so advised, represent before the HUDA for incorporating a condition in the HUDA policy for providing a check to safeguard the payment of stamp duty in case a plot allotted to an oustee is to be transferred. The HUDA of course would be free to take necessary decision as to whether a check is required for the purpose of saving stamp duty on the transfer of plots or even whether such a condition of five years for selling the plot from the date of its allotment is required to be continued or not.

In the circumstances, learned counsel appearing for the petitioner submits that he would make a more comprehensive representation before HUDA so as to prevent the transfer of outstee quota plots in a manner which deprives the State of its revenue by way of stamp duty. The petitioner may, if so advised, seek such a remedy.

The writ petition, in the circumstances, is disposed of. However, the question regarding *locus standi* of the petitioner to file a PIL is kept open.

(S.S. SARON)
JUDGE

(LISA GILL)
JUDGE

07.12.2016
Ramesh

Note: 1. Whether reasoned/speaking : Yes
 2. Whether reportable : Yes