

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

COCP No.396 of 2014

Date of Decision:-30.03.2017

Freedom Park Life Apartment Owners Association (Regd.).

.....Petitioner.

Versus

Kabul Chawla, MD M/s Business Park Town Planners Ltd. & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- None for the Petitioner.

Mr. Kul Bhushan Sharma, Advocate for respondent nos.1 & 2.

Mr. Hemant Saini, Advocate for respondent nos.3 & 4.

JASWANT SINGH, J.(ORAL)

Petitioner has filed the present contempt petition under Section 12 of the Contempt of Courts Act, 1971 by alleging a violation of order dated 08.11.2012 passed by this Court in CWP No.22243 of 2012 (P-1).

Perusal of the record reveals that petitioner had filed a CWP No.22243 of 2012 before this Court whereby it had challenged the action of defendants no.1 & 2 for converting the stilt and basement area into shops and gymnasium. Although, initially stay was granted in favour of the petitioner in the aforementioned writ petition wherein the respondents therein were restrained from taking third party interest in the shops in question, however, vide order dated 25.11.2014 the aforementioned writ

petition was admitted and previous order was modified to the effect that any

further sale of any common area to any third party shall be subject to the decision of writ petition. The operative part of the order dated 25.11.2014 reads as under:-

“ In modification of the interim orders passed from time to time, it is ordered that further sale of any common area to the residents shall be subject to the decision of the writ petition. The building lay out plan, if necessary to the modified future, shall be revised in term of Policy dated 28.01.2013. ”

It is stated that the aforementioned writ petition is still pending adjudication.

It is the averment in the petition that despite the stay on creation of third party interest, the respondents have sold of the property as is evident from documents Annexure P-3 Colly executed during the operation of stay granted by Division Bench of this Court .

On the other hand learned Counsel for the respondents have referred to the documents Annexure R-1/1 to R-1/3 to contend that no third party rights were created during the operation of order dated 08.11.2012. In fact by relying upon the said receipts it has been argued that allotment/alienation was made in the year 2010 itself and this fact was never brought to the notice of the Court while issuance of notice of motion as well as grant of stay on 08.11.2012. These facts were brought to the notice of the Division Bench in the writ petition by moving an application for vacation of Stay. Accordingly the Division Bench while admitting the writ petition had modified the order dated 08.11.2012 whereby it was observed that any sale would be subject to the decision of the writ petition.

Accordingly, it was prayed that there is a clear misstatement of fact by the

petitioner association and therefore, no case for contempt is made out.

After hearing learned Counsel for the respondent and perusing the paper book, this Court is in complete agreement with the arguments raised by learned Counsel for the respondent which are duly supported by documents.

Perusal of the record reveals that indeed an application was moved by the respondents for vacation of the stay order by mentioned the aforementioned facts and it was under these circumstances, the order dated 08.11.2012 was modified. A perusal of the documents Annexure R-1/1 to R-1/3 also reveals that allotment etc. has been done to the concerned parties in the year 2010. The document Annexure P-3 only confirm the said allotment by handing over of possession. Meaning thereby, no alienation has been done by the respondents during the operation of order dated 08.11.2012.

In view of the above, no ground to continue with the present contempt is made out and the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

March 30, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>