

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

CWP No.11221 of 2014
Date of decision : 08.02.2017

Ram Singh and others

...Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. M.K. Singla, Advocate for the petitioners.

Mr. Yatinder Sharma, Addl. A.G. Punjab.

Mr. G.S. Sandhu, Advocate for respondent No.4.

AMIT RAWAL, J. (Oral)

CM No.1578-CWP of 2017

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

Annexures P-17 to P-22 (Agreements to sell) as mentioned in the application are taken on record, subject to all just exceptions.

Main case

The petitioners are aggrieved of the impugned order dated 21.04.2014 (Annexure P-12) passed by the Assistant Registrar Cooperative Society on the basis of the application moved by respondent No.4 being the members of the Rai Dharana Schedule Caste Land Owning Cooperative Society Ltd. and for issuance of appropriate direction and taking the

possession of the land measuring 44 kanals situated in Village Rai Dharana, Tehsil Lehra, District Sangrur, as per jamabandi for the year 2011-12 on the premise that aforementioned land was allotted to the society and there was embargo of selling the same within a period of 10 years.

Mr. M.K. Singla, learned counsel appearing on behalf of petitioners submits that petitioners are the agreement holders of land by virtue of an agreement to sell. Since their possession has been threatened, compelled to file a civil suit for injunction. Even suit for injunction was filed by the society. However the suit of the petitioners was proceeded with a direction that dispossession shall be except in due course of law. Injunction (Annexure P-16) was granted by taking into consideration Section 53-A of the Transfer of Property Act, and throughout the pendency of the suit, there was an ad interim injunction. The Registrar did not have any jurisdiction in law to entertain the application and pass an order of warrant of possession. The order is totally without jurisdiction, even if in illegal possession, cannot be dispossessed except in due course of law and thus urges this Court for setting aside the order.

Mr. Sandhu, learned counsel appearing on behalf of respondent No.4 submits that since it was a *nazool* land and was transferred to the Society, the *Nazool* Land Transfer Rule would apply and if at all there was a dispute with regard to the interpretation of the Rule, the matter was required to be referred to the FCR and, therefore, the members could not have alienated the property, even if the petitioners have not sought any specific performance of the agreement to sell. It is not the sale in the eyes of law. It is in this background of the matter, the application was moved and thus

urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that order under challenge is not only cryptic, fallacious, perverse but illegal, for, once there is injunction in favour of petitioners by way of a judgment and decree dated 30.07.2015 in civil suit No.307 of 28.01.2014, relevant portion of which reads as under:-

“13. In sequel to my above issue wise findings, I am constrained to hold that the plaintiffs have been able to establish their case as set up in the plaint. Consequently, the suit of the plaintiffs for grant of permanent injunction is hereby decreed with costs and the defendants are restrained from forcibly and illegally interfering in the possession of the plaintiffs over the suit property. However it is made clear that the defendants are at liberty to adopt the due process of law for the eviction of the plaintiff out of the suit property. In case due legal process is adopted by the defendants for the eviction of the plaintiffs then the observations made above would automatically become inoperative and would not prove as a roadblock in the legal proceedings in any manner. Decree sheet be prepared accordingly. File be consigned to the judicial record room.

Pronounced 30.7.2015”

the application before the Assistant Registrar was not maintainable. The law regarding settled possession is no longer res integra, as per ratio decidendi culled out by Hon'ble Supreme Court in case *Rame Gowda (D) LRs V/s Mr. Varadappa Naidu (D) by LRs and another*" 2004 (1)SCC 769. The arguments of Mr. Sandhu, Advocate with regard to the applicability of *nazool* Rule is totally fallacious, much less, misplaced, for,

it is only with regard to the interpretation of the Rule, the matter is required to be referred to the FCR. However, there is no dispute with regard to the interpretation as society had become owner by virtue of allotment, it is only the Punjab Cooperative Society Rules or Act framed would apply or if it does not envisage any provision for seeking eviction from the unauthorized occupant, if any, remedy would be to seek intervention of the Civil Court under Section 9 or other provisions of law, if permissible but not in the manner and mode. This aspect has not been taken into consideration, thus, impugned order dated 21.04.2014 (Annexure P-12) is hereby quashed.

Writ petition resultantly stands allowed.

08.02.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No