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

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**C.W.P. No.18024 of 2015**
**Date of Decision:03.08.2017**

**Balbir Singh .....Petitioner**

**Vs.**

**State of Haryana and others .....Respondents**

**CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**

Present:- Mr. Inderjeet Singh, Advocate for the petitioner.

Mr. Saurav Mohunta, DAG, Haryana.

Ms. Amrita Singh, Advocate for respondents No.2, 4 to 8.

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**<u>Rakesh Kumar Jain, J. (Oral)</u>**

This petition is filed to challenge the order dated 10.03.2015 passed by the Financial Commissioners, Haryana by which the transfer of the property in question at the instance of the successor-in-interest of Babu Ram to the present petitioner has held to be void ab initio.

In brief, the facts given to me in Court are that the surplus land measuring 13 kanal 10 marlas was allotted to Babu Ram vide order dated 28.03.1994 passed by SDO (Civil)-cum-Prescribed Authority Jagadhri for an amount of ₹4,938/- which was to be paid by him with 5% interest in ten equal instalments. The certificate of allotment was issued on Form US3. Pursuant to the allotment, mutation No.1660 was also sanctioned in favour of Babu Ram by the AC 2nd Grade on 30.08.1994. Admittedly, Babu Ram had paid only one instalment of ₹618/- and, thereafter, did not pay any instalment. Babu Ram died on 27.04.2001 and after his death, mutation of

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inheritance No.2691 was sanctioned in favour of his successor-in-interest (respondent Nos.2 to 8) on 12.06.2006. Respondents No..2 to 8 sold the land in question by a registered sale deed No.2691 dated 12.06.2006 to the petitioner for a consideration of ₹15 lakhs. Thereafter, the land was mutated in the name of the petitioner vide mutation No.2297 on 29.12.2006.

After four years of registration of sale deed in favour of the petitioner, one Salim son of Sharifudeen moved an application dated 17.05.2010 to the prescribed Authority/ SDO alleging that the heirs of Babu Ram have sold the land in question in violation of terms and conditions of the allotment. The said application was dismissed in default on 04.02.2011. The prescribed Authority was of the view that he is not competent authority to take any decision on the application and thus referred the application for disposal to the State and disposed of the application with recommendation to the State to file a revision before the Financial Commissioner. The State Government filed the revision before the Financial Commissioner which was allowed vide impugned order dated 10.03.2015 inter-alia on the ground that the heirs of Babu Ram have violated clause 12 of the Haryana Utilization of Surplus and Other Area Scheme, 1976 ( for short, `the Scheme') as they have sold the land without paying full consideration of the land to the allotting authority.

Counsel for the petitioner has submitted that clause 12 of the Scheme, relied upon by the Financial Commissioners in their impugned order was amended vide notification No.GSR 45/HA 26/72/S15/87 dated 02.06.1987. Clause 12 after amendment, as reproduced by the petitioner in this petition read as under:-

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"12. Conditions of Allotment. The allottee-

(a) shall be liable to pay all Government dues levied in respect of land allotted to him from the date he takes over its possession;

(b) shall not be competent to transfer, sell, lease or mortgage the land allotted to him or any part thereof or transfer his rights, title or interest therein, in any manner whatsoever, to any person for a period of five years from the date of his taking possession in pursuance of the allotment, even though the full purchase price has been paid in a lump sum or in instalments along with interest within the aforesaid period;

(c) notwithstanding anything contained in sub-section (5) of the Act, shall be competent to mortgage or create a charge on the land allotted to him for raising loan from co-operative or scheduled bank or any corporation owned and controlled by the Government, for the purpose of making improvement in the land and for other agricultural purposes."

On the contrary, Clause 12 of the Scheme referred to in the impugned order by the Financial Commissioners read as under:-

"12. CONDITION OF ALLOTMENT – The allottee

(a) shall be liable to pay all Government dues levied in respect of the land allotted to him, from the date he takes over its possession;

(b) shall not be competent to transfer, sell, lease or mortgage the land allotted to him or transfer his rights therein any

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> manner whatsoever to any person till the purchase price and the interest, if any, thereon in respect of such land is paid in full."

Counsel for the petitioner has submitted that Clause 12(b) of the Scheme, referred to above, provides that the allottee cannot transfer the property within a period of five years. According to him, the lock in period was only five years from the date of allotment and since the allotment was made in 1994 and the property was sold in 2001, therefore, Clause 12 was not applicable and in any case, Clause 12 which has been relied upon by the Financial Commissioner was totally inapplicable because it was unamended clause which has been referred. It is also submitted that if Babu Ram had not paid the entire instalments, the State could have initiated recovery in terms of Clause 11 of the Scheme which provides that if the instalments are not paid in time then the recovery could be effected in terms of the provisions of the arrears of land revenue. It is also submitted that no such proceedings were initiated and that Babu Ram was recorded as owner by virtue of the mutation sanctioned in his favour after allotment and his children were recorded owners by virtue of the mutation sanctioned in their favour after his death. Therefore, the land in question purchased by the petitioner was free from encumbrances and the allotment made in favour of Babu Ram cannot be now set aside and cancelled as has been done by the Financial Commissioners. In support, he has also submitted that even if Babu Ram had paid one instalment and balance instalements have not been paid, he would not be deprived of ownership rights. He has relied upon a judgment of this Court in the case of **<u>Sher Singh v. Financial</u>**

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**<u>Commissioner (Revenue) and others,</u>** 2014(3) R.C.R. (Civil) 434.

On the other hand, counsel for the respondents has submitted that firstly the sale has not been completed qua Babu Ram because he had not paid the entire sale consideration and the certificate of sale was not issued in his favour. It is also submitted that mere issuance of letter of allotment does not tentamount to sale as allotment indicates that henceforth, the land would be of the particular name who would ultimately become the owner when he would pay the entire instalments.

I have heard learned counsel for the parties and perused the record. In this case, the facts are not in dispute that Babu Ram (since deceased) had paid only one instalment out of ten instalments. It is also not in dispute that no sale certificate was issued in his favour and only a letter of allotment was issued. Clause 12 of the Scheme relied upon by the respondent- State which is disputed by the petitioner on the ground that it has been further amended in 1987 says that "the allottee shall be liable to pay all government dues levied in respect of land allotted to him from the date he takes over his possession" This clause has not been amended even in 1987. All that has been amended is Clause 12(b) in which earlier it was provided that the "allottee shall not be allotted the land or transfer his rights therein any manner whatsoever to any person till the purchase price and the interest, if any, thereon in respect of such land is paid in full". The amendment brought in Section 12(b) was "the lock in period of five years only" which says that "the allottee shall not be competent to transfer, sell, lease or mortgage the land allotted to him or any part thereof or transfer his rights, title or interest therein, in any manner whatsoever, to any person for a

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period of five years from the date of his taking possession in pursuance of the allotment, even though the full purchase price has been paid in a lump sum or in instalments along with interest within the aforesaid period." The amendment in 1987 was only to relax the condition of Clause 12(2) to restrict the lock in period only for five years. Otherwise, the amended provision of Clause 12(b) puts a restriction of sale for five years even though the entire purchase price is paid by the allottee in lump sum. The fact remains that Clause 12(a) of the Scheme has not undergone any change even in 1997 as per which the allottee is made liable to pay all government dues in respect of the land allotted to him from the date of its possession. Now the question arise that as to whether the allottee who has paid only one instalment out of ten instalments can sell the property to a third party for a premium? In my considered opinion, a person who has not become the owner of the property cannot transfer the same or in other words, a person who has no title over the property cannot confer the title upon the third party. Babu Ram would have become the owner of the property only after paying entire instalments and after issuance of the sale certificate by the State and not merely on the basis of allotment much less the entry of mutation in the revenue record because mutation confers no title and is used only for the fiscal purpose. Insofar as the judgment relied upon by the petitioner is concerned, it is not applicable to the facts and circumstances of this case as in the said case, there was no dispute with regard to further transfer rather the dispute was with regard to the allotment of the land on account of non payment of the due instalments.

Counsel for the petitioner has also argued that the respondents

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should not have interfered in this matter for such a long time. In this regard, he has relied upon a judgment in the case of **Loku Ram v. State of Haryana**, 2000(1) R.C.R. (Civil) 141. This judgment is altogether on different facts because this is a case where land was allotted to Babu Ram out of surplus pool being a landless person. He was given permission to purchase the land in ten instalments but after the allotment and had deposited only one instalment and, thereafter, after his death, his children even did not care to deposit rest of the instalments and sold the land to the petitioner. It tentamounts to a fraud as they have tried to earn profit from the land which was given to their family considering them as landless persons.

No other point has been raised.

Considering the aforesaid facts and circumstances, I do not find any merit in the present petition.

Dismissed.

**August 03, 2017** **( RAKESH KUMAR JAIN )**
**renu** **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No

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