

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

C.W.P.No.24630 of 2014 (O&M)

Date of Decision: March 21, 2017

Sanjeev Kumar & another

...Petitioners

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Baljinder Singh, Advocate,
for the petitioners.

Mr.Yatinder Sharma, Addl.A.G.Punjab,
for the State.

AMIT RAWAL, J. (Oral)

The grievance of the petitioners in the present writ petition is to the impugned order dated 5.11.2014 (Annexure P-6) passed by the District Collector, Fatehgarh Sahib, whereby the allotment of Nazool land in favour of the Scheduled Caste Cooperative Land Owning Society Limited, Harbanspura, from whom the petitioners are stated to have purchased the land by virtue of the sale deed dated 12.5.2006, has been cancelled.

Mr.Baljinder Singh, learned counsel for the petitioners submits that Soma Singh son of Bhajan Singh, resident of Village Harpalpura, Tehsil Rajpura, District Patiala had filed a Public Interest Litigation bearing No.5085 of 2011 for constituting a Special Investigating Team for conducting fair and impartial investigation into cases of grabbing of the

Nazool land. However, without application of mind, the District Collector had cancelled the allotment, whereas the allotment to the Society was made in the year 1968 vide Rapat No.127 dated 1.12.1968, therefore, the Nazool Land (Transfer) Rules 1956 (for short “1956 Rules”) which were in vogue at the relevant time, would be applicable and not the 1970 and 1991 Rules, which impose a bar/restriction on sale of the land within a period of ten years and thereafter no sale. Even otherwise, the registered document, i.e., the sale deed has not been taken into consideration. The allotment in favour of the petitioners cannot be set-aside in the manner and mode as indicated above. In support of his contention, relied upon the ratio decidendi culled out in **Satya Pal Anand Versus State of MP and others, 2016 (4) RCR (Civil) 904**. All these factors have not been appreciated and, therefore, the order under challenge is not sustainable in the eyes of law being without jurisdiction, much less suffers from lack of application of mind.

Per contra, Mr.Yatinder Sharma, learned Addl.A.G.Punjab, representing the State submits that 1956 Rules only envisage that allotment could be made to the Scheduled Caste persons and if not available, it has to be provided to the persons of the same community, whereas the petitioners are not belonging to the same community.

As regards the applicability of 1970 and 1991 Rules, though the learned State Counsel does not deny the factum of applicability from retrospective date, but submits that the same can always be looked into, whereas the impugned action, sought to be challenged, had been taken owing to the judgment rendered in the Public Interest Litigation and, thus, the impugned order is fair and justified.

I have heard the learned counsel for the parties, appraised the

paper book and of the view that there is force and merit in the submissions of the learned counsel for the petitioners.

1956 Rules, the relevant provision of which has been extracted in the writ petition, does not debar the sale of the land to any body by an allottee, whereas 1970 and 1991 Rules impose a limitation of ten years and thereafter no alienation. The fact remains that the Society was allotted land as per Rapat No.127 dated 1.12.1968 for all intends and purposes, thus, the rules which were in vogue at the relevant time, i.e., 1956 Rules can be made applicable and not the subsequent ones. They could have retrospective effect.

Registered document has already been executed in favour of the petitioners. By virtue of registration, the sale cannot be set-aside except by civil court. All these aspects have not been looked into in view of the ratio decidendi culled out in **Satya Pal Anand's case (supra)**, wherein it has been held that a registered document cannot be set-aside by Registering Officer or any other mode except, if the aggrieved party has any grievance, he has to avail the civil remedy. For the sake of brevity, the relevant Para Nos.22, 23, 25 & 26 of the judgment cited supra are extracted herein below:-

"22. The procedure for registration of documents is spelt out, inter alia, in part VI of the Act of 1908. Section 32 of the said Act reads thus:

PART VI

OF PRESENTING DOCUMENTS FOR REGISTRATION

"32. Persons to present documents for registration.-

Except in the cases mentioned in 24 [sections 31, 88 and 89], every document to be registered under this Act, whether such

registration be compulsory or optional, shall be presented at the proper registration office-

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assignee of such a person, or

(c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

23. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the Extinguishment Deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitly to cause loss and harm to the other party to the Deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the Act of 1908 enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the Act of 1908 can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the Civil Court.

25. The Andhra Pradesh High Court, in the case of Yanala Malleshwari (supra) was called upon to consider whether a person can nullify the sale by executing and registering a

cancellation deed and whether the Registering Officer like District Registrar and/or Sub-Registrar appointed by the State Government is bound to refuse registration when a cancellation deed is presented. The fact remains that if the stipulation contained in Sections 17 and 18 of the Act of 1908 are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations mentioned in Sections such as 19 to 22, 32 and 35. At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document. The aggrieved party can challenge the registration and validity of the document before the Civil Court. The majority view of the Full Bench was that if a person is aggrieved by them Extinguishment Deed or its registration, his remedy is to seek appropriate relief in the Civil Court and a Writ Petition is not the proper remedy.

26. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the Act of 1908. In the case of Park View Enterprises (supra) it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition."

In my view, the order under challenge lacks application of mind, much less has not taken into consideration the implication of the rules aforementioned and consequential effect thereof and, thus, the same is not

sustainable and set-aside.

Writ petition stands allowed.

March 21, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No