

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.26601 of 2014
Date of Decision: April 06, 2017

Harish Kumar Dhingra

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr.Siddharth Batra, Advocate,
for the petitioner.

Mr.Rajbir Singh, AAG, Haryana,
for the State.

Mr.S.S.Dalal, Advocate,
for respondent No.4.

AMIT RAWAL, J. (Oral)

The grievance of the petitioner in the present writ petition in short is that by virtue of the conveyance deed dated 15.4.1982, he was allotted plot No.47-B measuring 387.22 sq.yards, though the possession of only 300 sq.yards was given.

There was a dispute between the Society and other members in respect of the remaining land and as per the decision dated 7.7.2004 rendered by this Court in **Regular Second Appeal No.2952 of 1979 (K.D.Kataria (deceased) Versus The Mianwali Gurgaon Cooperative House Building Society Limited)**, the Society was held to be in possession. The possession was taken by the Society on 29.5.2011. The petitioner submitted a request in 1994 for handing over the possession of balance area

and ultimately raised the dispute under Section 102 of the Haryana Cooperative Societies Act, 1984 (for short “1984 Act”), resulting into passing of the award (Annexure P-7). The same was assailed by the Society before the Deputy Registrar. Vide impugned order dated 29.11.2012 without condoning the delay, appeal has been accepted and the revision preferred before the Principal Secretary to Government Haryana has also been dismissed. The prime reason for dismissal of the revision was that the sale deed could not be looked into for want of registration. In this regard, reference has been made to the provisions of Section 43 of 1984 Act, which reads as under:-

*“43. Exemption from compulsory registration of instruments:-
Nothing in clauses (b) and (c) of sub-section (1) of section 17
of the Registration Act, 1908, shall apply to –*

*(i) any instrument relating to shares in a co-operative
society notwithstanding that the assets of the society
consist in whole or in part of immovable property; or*

*(ii) any debenture issued by any such society and not
creating, declaring, assigning, limiting or extinguishing
any right, title, or interest to or in immovable property,
except in so far as it entitles the holder thereof to the
security afforded by a registered instrument whereby the
society has mortgaged, conveyed or otherwise
transferred the whole or part of its immovable property
or any interest therein to trustees upon trust for the
benefit of the holders of such debentures; or*

(iii) an endorsement upon or transfer of any debenture

issued by any such society.”

Thus, according to Mr.Siddharth Batra, learned counsel for the petitioner, the order is totally erroneous, much less devoid of merit on the ground that there is no adherence to the aforementioned provisions of law.

Per contra, Mr.S.S.Dalal, learned counsel representing respondent No.4 submits that the petitioner had woken up in the year 1994, vis-a-vis conveyance deed of 1982 and, therefore, his claim was denied. The petitioner has made payment of Rs.12,20,000/-, which was accepted, but later on, it was refunded, therefore, no interest/right has accrued in favour of the petitioner to claim the balance area. The orders, Annexures P-8 and P-9, under challenge are perfectly legal and justified.

The provisions of Section 43, *ibid*, could not have been looked into as the conveyance deed is required to be registered and, thus, prays for upholding the orders.

I have heard the learned counsel for the parties and appraised the paper book.

The operative part of the order dated 20.9.2014 reads thus:-

“Now, I have considered the facts and circumstances of the case file and gone through the pleadings and written arguments of both the parties. The only issue before me is whether the Society can auction the plot or not. The point of petitioner is that originally the plot measuring 387.22 square yards was allotted and a conveyance deed was made in his favour on 15-04-1982 which was executed through the then President DR Lakhani. It has also been pleaded by him that he paid an amount of Rs.12,20,000/- vide receipt dated 30-03-2012. The stand of the respondent Society is that the Hon'ble High Court has gave the title of the land in the favour of the Society and accordingly the possession has been given to the

Society on 29-05-2011. The respondent Society referred to the receipt dated 30-03-2012 and submitted that the petitioner never paid any amount to the Society earlier. Further, the said amount was refunded to the petitioner vide letter dated 11-2-2013. A perusal of the impugned order reveals that the Hon'ble High Court has given the title of the disputed land in the name of the Society. The petitioner had not paid any amount towards this disputed land before 30.03.2012 as he paid an amount of Rs.12,20,000/- on 30.3.2012 (Annexure A-11). The conveyance deed dated 15.4.2011 referred by the petitioner is an un-registered conveyance deed which has no meaning in the eyes of law. Further, the possession of plot has been given to the Society on 29-05-2011 in compliance of orders passed by Hon'ble High Court. Hence, it is the Society to allot this land by sale after adopting the due procedure as per law. The mode of auction of the land cannot be disputed in this case.

In view of the above, the present revision petition is dismissed.”

The aforementioned observations do not envisage adjudication or reference to the provisions of Section 43 of 1984 Act. Had it been noticed, perhaps the order, according to the counsel for the petitioner, would have been different. All these points are required to be pondered upon/decided as a valuable right has accrued in favour of both the parties. Therefore, I deem it appropriate to set-aside the order of the Principal Secretary to Government of Haryana and restore the Revision Petition bearing No.10 of 2013 with a clear cut indication that all the points raised by the petitioner shall be dealt with by adopting a most objective and pragmatic course.

This Court is sanguine of the fact that the Principal Secretary shall decide the matter within a period of three months from the date of receipt of certified copy of this order.

Till then, there shall be status-quo order qua the nature of the property.

The parties, through their counsel, are directed to appear before the Principal Secretary on 1.5.2017.

The writ petition is disposed of in terms of the aforementioned observations.

April 06, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No