

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8169-1995

Date of Decision: August 01, 2018

Ashwani Kumar and another

.....Petitioners

Versus

Punjab Housing Development Board and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present: None for the petitioners.

Mr.Rupinder Khosla, Sr.Advocate with
Mr.Sarvesh Malik, Advocate for the respondents.

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SURYA KANT, J.(ORAL)

The petitioners, who are real brothers, seek quashing of the communication dated 16.03.1995 issued by Punjab Housing Development Board, Chandigarh (For brevity,'the Board'), informing that the sale-deed in respect of House No.HM-26, Phase-II, Mohali could not be executed 'jointly' in their favour without obtaining 'No Objection Certificate' from the Board, for as per the Policy of the Board 'the transfer of house is only made in the name of both wife and husband'. In other words, the sale-deed executed in favour of the petitioners, who are real brothers, without 'No Objection Certificate' from the Board was not valid and that as per the Policy of the Board, the house can be transferred only in favour of one person except in a case of husband and wife.

[2] The brief facts are like this:

[3] The petitioners purchased the residential House bearing No.HM-26, Single Storey, Sector 54, SAS Nagar (Mohali) vide registered sale-deed dated 04.10.1988 (Annexure P1). The house was sold by the original allottee of the respondent-Board. The petitioners, vide application dated 05.12.1988, requested the Board for transfer of the house in their name alongwith a copy of the sale-deed. They received communication dated 31.08.1989 from the Board observing that their request for transfer of the house could be considered only if the sale-deed was executed in favour of 'one person', as per the policy of the Board. Since the house was purchased by the petitioners jointly, hence it could not be transferred in their favour. The petitioners thereafter urged, inter alia, that there was no such policy of the Board to restrict transfer of ownership of a house only in the name of one person. After some correspondence, vide the impugned communication the Board eventually turned down their request.

[4] The short question that falls for consideration is whether there is any legal embargo against the execution of sale-deed in favour of two persons in respect of an immovable property and if so, whether such an executive policy can sustain in law? From the perusal of the written statement or the arguments advanced on behalf of the respondents, neither any provision of law which prohibits the Board to transfer an immovable property in favour of two persons, nor any rationale behind such provision could be pointed out. What will happen in a case where the sole owner dies intestate leaving behind more than one legal heir? Can the Board say that it will not transfer the property in favour of all the legal heirs? The answer would be in negative only.

[5] That apart there is no inter-se dispute between the brothers, who are joint vendees. They have already acquired 'ownership' of the house and have applied jointly to enter the house in their names in the record of the Board. Once the sale-deed has been executed by the original allottee, all rights and privileges in respect of the subject property stood transferred in favour of the petitioners, free from all incumbrances. There can be, thus, no legal impediment unless expressly spelt out by the Board with some sound reasons against the recording of ownership of the house in favour of petitioners. No such reasons have come forth.

[6] In view of the above discussion, the writ petition is allowed; the impugned communication dated 16.03.1995 is quashed and the matter is remitted to the respondent-authorities for re-consideration of the request of the petitioners. Let an appropriate order be passed in the light of the observations made hereinabove within four months from the date of receipt of a certified copy of this order.

(SURYA KANT)
JUDGE

August 01, 2018
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(SUDIP AHLUWALIA)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |