

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.9726 of 2016
Date of Decision:29.05.2018

Smt. Santosh Mehta and another

. Petitioners

Vs.

The State of Haryana and others

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Akshay Jindal, Advocate,
for the petitioners.

Mr.Saurabh Mohunta, DAG, Haryana,
for respondents No.1 to 4 and 6.

Ms.Gunneet Kaur, Advocate, for
Ms.Ranjana shahi, Advocate,
for respondent No.5.

RAKESH KUMAR JAIN, J.

Jagan Nath (since deceased), father of the petitioners, was allotted the land and building in question by the Rehabilitation Department, Government of India on 1.9.1959 which was followed by a regular agreement executed on 28.09.1959. Jagan Nath died on 24.12.1990. He left behind his widow Ram Kaur, who died on 16.2.2000, and two daughters namely, Santosh Mehta (petitioner No.1) and Pushpa Devi (petitioner No.2). Jagan Nath, during his life time, requested the Tehsildar (Sales), Department of Rehabilitation Ambala to issue the conveyance deed in respect of the property in question. Since his request was not accepted, therefore, he filed a civil suit for mandatory injunction which was dismissed by the Trial Court but the appeal was allowed by the Additional District Judge, Ambala on

28.1.2014 with a direction that *“the respondents/defendants are directed to execute the conveyance deed in respect of the suit property, House No.175-RA Bazaar, Ambala Cantt. in favour of the appellants/plaintiffs as per the allotment letter on receipt of all the payment as per law within a period of one month from the date of order.* Thereafter, the Department of Rehabilitation through Tehsildar (Sales), Ambala executed the sale certificate on 21.8.2014. The petitioners presented the sale certificate before the Joint Sub Registrar, Ambala Cantt. for its registration who neither refused the registration nor registered the sale certificate but it transpired that the Chief Executive Officer, Cantonment Board, Ambala Cantt. vide his letter dated 29.8.2014 apprised the Joint Sub Registrar, Ambala Cantt. that the entire land situated in Cantonment Board, Ambala Cantt. is owned by the Ministry of Defence and thus the Joint Sub Registrar, Ambala Cantt. was directed not to register the sale certificate.

Learned counsel for the petitioners has submitted that the Joint Sub Registrar, Ambala Cantt. cannot refuse to register the sale certificate and in this regard he has relied upon a decision of the Division Bench of this Court rendered in the case of *“Hari Singh Vs. Sub Registrar Narnaul” 1999(1) RCR (Civil) 362* and a decision of the Division Bench decision of the Andhra Pradesh High Court rendered in the case of *“G. Narasaiah Vs. State of Andhra Pradesh, Registration and Stamps Department” 2011(8) RCR (Civil) 808.*

Respondent Nos. 1 to 4, 5 and 6 have filed their separate replies.

In the reply filed by respondents No.1 to 4, it is averred that respondent No.5 had requested respondent No.4 not to register the sale deed on the ground that the Tehsildar (Sales) is not competent to transfer the land/house in question as it belongs to the Cantonment Board.

In the reply filed by respondent No.5, the same stand has been taken that the land is owned by the Ministry of Defence, Government of India and the evacuee (Khadam Hussain, Mohd. Hussain and Samookhan s/o Maula Bux) were having only the occupancy rights.

In the reply filed by respondent No.6, it is submitted that the sale certificate was issued because of the decree passed by the Civil Court dated 28.1.2014 in which there was a clear direction, that the balance money of ₹79/- as well as interest of ₹641/- was deposited by the daughters of Jagan Nath and as such the conveyance deed was issued in their favour.

Learned counsel for respondents No.1 to 4 & 6 has submitted that the registration has been declined because the property in question does not belong to the Department of Rehabilitation.

Learned counsel for the petitioners has submitted that the Sub Registrar has the jurisdiction to refuse to register a document in terms of Section 71 of the Registration Act, 1908 [for short 'the Act']. Section 71 of the Act read as under: -

“71. Reasons for refusal to register to be recorded. - (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an

order of refusal and record his reasons for such order in his Book No.2, and endorse the words “registration refused” on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.”

It is further submitted that though the power vests with the Sub Registrar to refuse the registration of a document but he has to assign a reason in this regard. However, it is submitted that the Sub Registrar cannot refuse to entertain the document for registration on the direction of the State Functionary who has no power or control over the Sub Registrar to issue such a direction.

The argument of the petitioners is supported by a decision of the Division Bench of the Andhra Pradesh High Court rendered in the case of *G. Narasaiah (Supra)*. In the case of *Hari Singh (Supra)*, the Division Bench of this Court had held that it is not the power of the Sub Registrar to make probe into the ownership of the property sought to be transferred in any manner.

In the present case, the petitioners have the sale certificate issued by the Rehabilitation Department on the basis of a decree passed in their favour by the competent Civil Court. It is only the matter of registration of the said sale certificate to which an objection has been raised by another Department of the Government i.e. the Department of Defence on the ground that the land in question is in the Cantonment Board and could not have been allotted by the Rehabilitation Department to Jagan Nath. This objection cannot be raised by respondent No.5 before the Joint Sub Registrar, Department of Rehabilitation because respondent No.5 has no control over the Joint Sub Registrar to issue such a direction for not entertaining the said document for the purpose of its registration. If respondent No.5 is claiming the ownership of the property in question, they should establish their right over the said property before a competent authority because it would be a matter of evidence as to whether the land in question belongs to the Rehabilitation Department or the Cantonment Board. Thus, I am of the considered opinion that the present petition has a merit, therefore, a direction is issued to the Joint Sub Registrar, Ambala Cantt. to register the sale certificate dated 21.8.2014 executed in favour of the petitioners by Tehsildar (Sales), Ambala forthwith.

With these observations, the present petition is hereby allowed.

29.05.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No