

CWP-9236-2019

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-9236-2019

Date of Decision: 5th April, 2019

Resham Singh

...Petitioner

Versus

The Financial Commissioner, Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Harbans Lal Sharma, Advocate and
Mr. Vishal Sharma, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASI, J.

Challenge in this writ petition is to the order dated 08.03.2017 (Annexure P-4) passed by the Chief Sales Commissioner-cum-Deputy Commissioner, Shaheed Bhagat Singh Nagar – respondent No.3, whereby, the land allotted in favour of the father of the petitioner, late Shri Darshan Singh, under the Punjab Package Deal Properties (Disposal) Act, 1976 (hereinafter referred to as '1976 Act') on a complaint submitted by respondents No.4 and 5 that the father of the petitioner has violated the terms of allotment/sale of the land by entering into two agreements to sell and handing over the possession thereof even prior to issuance of the sale certificate has been cancelled, order dated 18.05.2018 (Annexure P-5) passed by the Commissioner, Roopnagar Division, Roopnagar – respondent No.2, upholding the order passed by the Chief Sales Commissioner-cum-Deputy Commissioner, Shaheed Bhagat Singh Nagar, order dated

05.12.2018 (Annexure P-6) passed by the Financial Commissioner (Revenue), Punjab – respondent No.1 dismissing the revision petition preferred by the petitioner.

2. It is the contention of the learned counsel for the petitioner that the impugned orders cannot sustain as the Chief Sales Commissioner-cum-Deputy Commissioner, Shaheed Bhagat Singh Nagar, has cancelled the allotment of land made in favour of the petitioner vide order dated 08.03.2017 (Annexure P-4) merely on the ground that the father of the petitioner had entered into two agreements to sell within the period of restraining imposed in the terms and conditions of allotment/sale certificate. He contends that this bar with regard to non-disposal of the property prior to passing of the specified period being violative of the provisions of the Transfer of Property Act, 1882, cannot sustain. In support of this contention, he places reliance upon the judgments of this Court in CWP No.10518 of 1994, titled as '**Nirmala Devi Vs. State of Haryana & others**', decided on 03.07.2014 and CWP No.999 of 1993, titled as '**Mohinder Singh & others Vs. The Financial Commissioner (Appeals), Punjab & others**', decided on 04.02.2015, wherein, it has been held that the conditions imposed with regard to non-selling of the property within the time stipulated in the allotment/sale certificate cannot sustain being violative of provisions of Sections 10 and 11 of the Transfer of Property Act, 1882. He, thus, contends that the impugned orders, on this ground itself, cannot sustain and deserve to be set aside.

3. That apart, counsel for the petitioner contends that the validity

of the alleged agreements to sell dated 03.03.1993 and 10.10.1999 could not have been taken into consideration by the revenue authorities as the execution of the said agreements has been disputed by the father of the petitioner. He further contends that since these agreements to sell have been disputed by the father of the petitioner rather denied its execution, the question of handing over the possession in pursuance to those agreements to sell does not arise. He, thus, contends that the impugned orders deserve to be set aside and this writ petition allowed upholding the order of allotment in favour of the petitioner.

4. I have considered the submissions made by the learned counsel for the petitioner and with his assistance have gone through the records of the case.

5. Briefly, the facts are that the father of the petitioner, Darshan Singh, was allotted land measuring 31 kanal and 11 marla of inferior evacuee land in khewat No.133, khatoni No.344, Khasra No.30//30 Min. No.(7-11), 10 (8-0), 11 (8-0), 22 (8-0) mentioned in the jamabandi for the year 1990-91 situated at village Cheta/Kaggroor, Tehsil and District Nawanshahar, Punjab. As per the complaint/petition under Section 10 of 1976 Act, which has been preferred by private respondents No.4 and 5, an agreement to sell was entered into between these respondents with the father of the petitioner, Darshan Singh, dated 03.03.1993 for selling one kanal and 10 marla of land to Dalvir Singh – respondent No.4 and the sale deed was to be executed as and when the land was transferred in the name of said Darshan Singh by the Government. In a similar manner, Darshan Singh

entered into another agreement to sell with Baldev Singh – respondent No.5, dated 10.10.1999 to sell 4 kanal of land for ₹ 1,80,000/- and the possession of the land was delivered to him with the rider that the sale deed would be executed in his favour whenever the land is transferred in the name of said Darshan Singh by the Government.

6. It appears that instead of executing the sale deed, a suit was preferred by Darshan Singh against the private respondents which was dismissed by the Civil Judge (Junior Division), Shaheed Bhagat Singh Nagar, wherein, it was held that the private respondents were in possession of the property in dispute. When the possession of the private respondents was being threatened by Darshan Singh, suit for injunction was preferred by the private respondents No.4 and 5 bearing number RBT Civil Suit No.106/2016, Filing No.20018/2013, on 07.10.2013 restraining Darshan Singh and the petitioner herein (father and son) from interfering in any manner or dispossessing the said respondents. The said civil suit although was dismissed holding it be not maintainable as per the provisions of Section 41 (h) of the Specific Relief Act, 1973 as equal efficacious remedy of specific performance of the agreement to sell was available with the private respondents for execution of the sale deed, the injunction as prayed for by the private respondents could not be granted in the light of the fact that the private respondents were aware of the fact that the land has been transferred by way of sale certificate on 13.05.2003 (Annexure P-2) issued in favour of Darshan Singh and relief was further not granted to the private respondents on the plea that the agreements to sell dated 03.03.2003 and

10.10.1999 being not registered especially when the possession has been handed over to them, the said documents are hit by Section 17 (1A) of the Transfer of Property Act, 1882, which mandated compulsory registration but the execution of the two agreements to sell by Shri Darshan Singh stood duly proved as well as the possession having being delivered to the private respondents in pursuance to those agreements to sell. In this background of facts, the case further proceeds.

7. A complaint/revision was filed by respondents No.4 and 5 before the Chief Sales Commissioner-cum-Deputy Commissioner under Section 10 of 1976 Act, stating therein that the conditions of the certificate of allotment as well as the certificate of transfer having been violated by Darshan Singh, which barred lease, transfer, sale or mortgage with possession or otherwise alienate or part with the land so allotted/transferred wholly or partly, in any manner, in favour of any person prior to the expiry of 20 years from the date of transfer, would lead to cancel of the sale and forfeiture of the amount already paid leading to resumption of land. The said petition has been accepted by the Chief Sales Commissioner-cum-Deputy Commissioner, Shaheed Bhagat Singh Nagar, vide order dated 08.03.2017 (Annexure P-4) on the ground that the land has been alienated by Darshan Singh within the period which barred such alienation on the basis of the agreements to sell dated 03.03.1993 and 10.10.1999 followed by handing over the possession of the said respective land to respondents No.4 and 5, which stood not only proved on the basis of the civil suit preferred by Darshan Singh himself, which has been dismissed by holding

the private respondents to be in possession but also the civil suit which has been preferred by the private respondents, where although injunction has been declined but the execution of the agreements to sell and handing over the possession of the land stood proved, as is apparent from the judgment dated 21.12.2016 (Annexure P-3). Further, the report of the Tehsildar-cum-Assistant Collector 1st Grade, Banga, dated 21.05.2015, which was made after visiting the site, showed that the land, agreements qua which was entered into between Darshan Singh on the one hand and Dalvir Singh – respondent No.4 and Baldev Singh – respondent No.5 on the other hand, were in possession of their respective lands, which established the possession of the private respondents on the land which has been allotted to Darshan Singh, father of the petitioner. Learned Commissioner, Roopnagar Division, Roopnagar, has proceeded to uphold the order passed by the Deputy Commissioner-cum-Chief Sales Commissioner, Shaheed Bhagat Singh Nagar, vide order dated 18.05.2018 (Annexure P-5), which has been reiterated and approved by the Financial Commissioner (Revenue), Punjab.

8. The primary plea which has been taken by the counsel for the petitioner is that the bar of alienation of land allotted to his father which is violated, on the basis of which, allotment of land in favour of the father of the petitioner and the subsequent sale certificate issued, has been cancelled, is not sustainable in the light of the judgments passed by this Court in *Nirmala Devi* and *Mohinder Singh's* cases (supra) , suffice it to say that the said judgments are based on different facts than the one which are prevalent in the present case.

9. In *Nirmala Devi* case (supra), the question was of the Rehabilitation Department, which has different set of rules and provisions. The judgment on which reliance has been placed in that case was relatable to a case earlier decided by this Court in **Smt. Sarbjit Kaur and LRs of Mohinder since deceased and others Vs. Mohinder Singh & another** 2008 (4) R.C.R. (Civil) 458, which related to although the Punjab Package Deal Properties (Disposal) Act, 1976, but the allottee was a widow of a soldier who was killed in Chinese Aggression in the year 1962, the condition of sale was waived off in the case of allotment of war widows by the State of Punjab but in the case of the petitioner, even going by the notification dated 01.12.2008, amounting the provisions of Rule 3 Sub Rule 10 A of the 1976 Act, the bar continues for a period of 10 years.

10. In the case of *Mohinder Singh's* case (supra), sales were cancelled by the Chief Sales Commissioner of an auction sale and that too, without an opportunity of being heard. Present is not a case of auction rather the present case is that of an allottee where he has been allotted the land on the basis of possession at the nominal token price in a gratuitous act of the State and therefore, the judgment in the said case cannot be made applicable as there being no parity therein with the present case.

11. This case is rather based upon the undisputed facts which do not amount to anything less than fraud, which has been played on the State. The distinction between the present case and the other two cases, where the above judgments were delivered, on which reliance has been placed by the counsel for the petitioner and dealt with by this Court above is, that those

were subsequent sales which had taken place after the properties have been sold by the Government. Present is a case where even the sale has not been concluded nor has the sale certificate been issued in favour of Darshan Singh, when he proceeded to enter into two agreements to sell relating to the allotted properties on the basis of principle of evacuee land on the basis of possession in the year 1990, if seen in the light and context of the intent of Darshan Singh, after the first installment was deposited on 06.06.1990 and the first agreement to sell has been entered into by said Darshan Singh on 03.03.1993 for one kanal and 10 marlas with Dalvir Singh – respondent No.4 handing over the possession also followed by another agreement to sell dated 10.10.1999 of 4 kanals of land along with possession in favour of Baldev Singh – respondent No.5, whereas, the sale certificate of transfer was issued on 13.05.2003. This shows that he had sold the land rather parted with the possession of the land even prior to having become owner of the same as it is not in dispute that he becomes the owner of the property only on 13.05.2003 when the sales certificate (Annexure P-2) was issued to him, thus, violating the very conditions of the allotment.

12. Learned Financial Commissioner (Revenue), Punjab, has rightly come to a conclusion that the petitioner has not come to the Court with clean hands and therefore, the case is required to be summarily thrown out. Here is a petitioner, who having entered into two agreements to sell and parted possession with the allotted land even prior to he having become the owner of the land comes up with a plea that he has not executed the sale deed or parted possession, which fact has been found otherwise by the Civil

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Court as is apparent from the judgment dated 21.12.2016 (Annexure P-3), where it is admitted that the suit preferred by Darshan Singh stands dismissed holding the private respondents to be in possession of the property in question and further, in the said suit, the execution of the agreements to sell along with possession stands also proved. On equity also, petitioner does not deserve any benefit or leniency.

13. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

5th April, 2019
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No