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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CWP NO. 21694 of 2012
Date of Decision: 17.07.2019

Sudhir Bhatia and another ....Petitioners

versus

State of Haryana and others ....Respondents

AND

2. CWP No. 1423 OF 2014

Prem Chand Gupta ....Petitioner

versus

State of Haryana and others ....Respondents

CORAM HON'BLE MR. JUSTICE ARUN MONGA

Present Mr.Suryakant Gautam, Advocate for the petitioners.
Mr. Sushil Kumar Vashisth, DAG, Haryana.
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ARUN MONGA, J (ORAL)

1. Since in both the writ petitions common question of law and facts are involved, therefore, both are being decided by common order. For brevity facts are being taken from CWP No.21694 of 2012.

2. Petitioners herein seek quashing of order dated 28.08.2012 (Annexures P-12 and P-13) respectively pursuant to Instructions dated 13.07.2012 (Annexure P-11) which is in contravention of judgment rendered in CWP No. 6513 of 2011 whereby it is held that the sale executed in view of Instructions dated 07.04.2010 (Annexure P-4) would not be effected.

3. The grievance of the petitioners is that they became members of a Resident Group Housing Society namely Indian Railway Welfare

Organization (for short 'IRWO') - respondent no.5. Pursuant thereto, they were allotted flats no.11GB Type III and 2A Block No.10, Type III respectively in Rail Vihar Phase-I, Mansa Devi Complex, Sector 4, Panchkula. Thereafter, the petitioners executed Conveyance Deeds dated 10.12.2009 (Annexure P-2) and 19.10.2010 (Annexure P-3) respectively with the Group Housing Society. The said Conveyance Deeds were executed as per Instructions letter dated 07.04.2010 (Annexure P-4) and requisite stamp duty was accordingly affixed. However, vide impugned order dated 28.08.2012 (Annexure P-12) both the Conveyance Deeds were impounded and the petitioners were directed to pay stamp duty in accordance with collector rates on the premise that they were not the original members of the society. Even in the impugned order, it has been noted as submitted by the petitioners themselves, that they were not the original allottee of the flat since before the completion of the Group Housing Project, the earlier members of the society had surrendered their membership to society and they were substituted as new members by respondent no.5 Group Housing Society and pursuant thereto, they were allotted their respective flats.

4. Similar are the facts in CWP No. 1423 of 2014, wherein the order dated 23.11.2013 (Annexure P-10) passed pursuant to Instruction dated 13.07.2012 (Annexure P-9) is under challenge.

5. I have heard learned counsel for the petitioners as also the respondents and have also gone through the rival pleadings as well as the relevant instructions applicable in the case.

6. Before proceeding further, it would be relevant to reproduce the relevant extracts of Instructions dated 07.04.2010 (Annexure P-4) readwith Instructions dated 13.07.2012 (Annexure P-11), which read as under:-

"*<u>Instructions dated 07.04.2010 (Annexure P-4)</u>*

In this regard, it is clarified that when a flat is transferred to a member of a Group House Society through a conveyance deed, then the member has to pay stamp duty on the execution of conveyance deed on the allotment price of land with respective to his share only. This does not include the cost of construction.

<u>Instructions dated 13.07.2012 (Annexure P-11)</u>

"The entire issue has been examined afresh. While letters/instruction dated 25.01.2011 is withdrawn the entire issue regarding the charging of stamp duty is clarified as under:-

(i) As per the provisions of Stamp Act and the decision taken by the government while in case of first transaction between a Group Housing Society or its member, or between a colonizer/HUDA and its original allottee, the stamp duty is to be levied on the basis of original price charged by the seller. In case a Cooperative Group Housing Society the stamp duty will be on the allotment of the price of the land with respect to share of the member but shall not include the cost of flats/apartments are transferred the stamp duty will be the total sale price charged by colonizers/HUDA.

(ii) In case of subsequent proceedings whether it is a Group Housing Society or a colonizer/HUDA the stamp duty would be as per the collector rates. In case before conveyance deed is executed the allottee transfers the apartment shall be charged as per the collector rate."

7. A conjoint reading of the above Instructions leaves no manner of doubt that in case of Group Housing Societies, benefit of original sale

price charged by the society, at the time of construction, has to be given to its member. Neither the Instructions of 2010 nor of 2012 in any way specify that the benefit of first transaction is not to be given in case society changes the first member and inducts a second member and instead of giving the membership to that matter to 3rd and 4th and so on till the project has been completed. What has to be kept in my mind is that even if a member of the society is unable to bear the cost of construction for whatsoever reason, society has a right to accept the surrender of the membership instead of inducting a new member, which has been done in the present case. Therefore, the premise that the member was changed by the society, before the construction could be completed and flats could be handed over, would not mean that the benefit of first transaction is to be denied to the subsequent allottee / member on the ground that he is not an original allottee as long as it is established on record that it is a first transaction between the Government / Registering Authority of Conveyance Deeds and members of the society.

8. Furthermore, if the argument of the learned State counsel is to be accepted that being a second member, the benefit of first transaction cannot be given to petitioners in any case which should have been clearly provided, as per the Instructions of 2010 and/or of 2012, that first transaction shall be confined only to first members whereas plain reading of the text suggests that first transaction as contemplated is the one between the Group Housing Society and its member and it nowhere states that it has to be with its first member.

9. In view of my discussion above and reasons contained therein, the impugned orders dated 28.08.2012 (Annexure P-12 and P-13),

Instruction Letter dated 13.07.2012 (Annexure P-11) and order dated 23.11.2013 (Annexure P-10) in CWP No. 1423 of 2014 are quashed. Petitioners are held entitled to collect their benefits from the office of Registering Authority, in accordance with law.

10. Petitions stand disposed of.

17.07.2019 **(ARUN MONGA)**
mamta **JUDGE**

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No