

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

L.P.A. No.1311 of 2019 in
Civil Writ Petition No.9236 of 2019
Date of decision: July 22, 2019

Resham Singh

...Appellant

Versus

The Financial Commissioner, Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Vishal Sharma, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

For the reasons stated in CM No.2862-LPA of 2019, the delay of 62 days in filing the appeal is condoned.

This Letters Patent Appeal has been filed against the judgment dated 05.04.2019 in CWP No.9236 of 2019 titled 'Resham Singh vs. The Financial Commissioner, Punjab and others' whereby the writ petition filed by the appellant was dismissed.

The appellant had filed the writ petition for quashing the order dated 03.03.2017 passed by Chief Sales Commissioner-cum-Deputy Commissioner, SBS Nagar whereby the allotment of land in favour of father of the appellant Darshan Singh under the Punjab Package Deal Properties (Disposal) Act, 1976 (for short "the Act") was cancelled. He had also impugned the order dated 18.05.2018 passed by the

Commissioner, Roopnagar Division, Roopnagar upholding the order of the Chief Sales Commissioner-cum-Deputy Commissioner and the order dated 05.12.2018 passed by the Financial Commissioner, Punjab whereby the revision petition filed by him had also been dismissed.

Darshan Singh, the father of the appellant was allotted land measuring 31 K 11 M 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) situated at village Cheta/Kaggroor, Tehsil and District Nawanshahar, Punjab, vide sale certificate transfer dated 13.05.2003. A petition under Section 10 of the Act was preferred by respondents No.4 and 5 seeking cancellation of the allotment. It was stated by them that an agreement to sell dated 03.03.1993 had been entered into between father of the appellant (Darshan Singh) and Dalvir Singh- respondent No.4 for selling 01 K 10 Marlas of land for which he had received the total sale consideration of Rs.10,000/-. The sale deed was to be executed as and when the land was transferred in the name of Darshan Singh by the Government. Another agreement to sell dated 10.10.1999 had been entered into by Darshan Singh with Baldev Singh – respondent No.5 for 04 Kanals of land for Rs.1,80,000/-. Possession of the land was delivered to him. Sale deed was to be executed in his favour when the land was transferred in the name of Darshan Singh by the Government. It was alleged that though the land measuring 31 Kanal 11 Marlas had been allotted to Darshan Singh on 13.05.2003 and conveyance deed had been executed in his favour he did not get the sale-deed executed in their favour as per the agreements to sell. Instead

Darshan Singh was threatening to get the land vacated. It was prayed that the allotment in favour of Darshan Singh be cancelled and the conveyance deed of land measuring 1 Kanal 10 Marlas and land measuring 4 Kanals be executed in their favour.

The Deputy Commissioner-cum-Chief Sales Commissioner referred to the conditions of the sale certificate dated 13.05.2003 as per which the allottee will not alienate land for twenty years to any person by way of lease, sale, mortgage with possession. He noted that Darshan Singh had entered into written agreements to sell dated 03.03.1993 and 10.10.1999 for land measuring 1 kanal 10 marla and 04 kanals in favour of respondents No.4 and 5 and had handed over possession to them. The possession of respondents No.4 and 5 had been held proved by the report dated 21.05.2015 of the Tehsildar-cum-AC First Grade Banga as per which respondents No.4 and 5 were in possession of the land. From this the Ld. Deputy Commissioner-cum-Chief Sales Commissioner concluded that Darshan Singh had violated the conditions of the sale certificate. Consequently, the allotment in his favour was ordered to be cancelled.

The Commissioner affirmed the findings of the Deputy Commissioner-cum-Chief Sales Commissioner.

The Ld. Financial Commissioner while affirming the aforesaid orders also referred to the judgment of the Civil Court dated 31.05.2016 in Civil Suit titled as 'Darshan Singh Vs. Dalbir Singh and Baldev Singh'. This was a suit for permanent injunction filed by Darshan Singh for restraining the defendants therein (respondents No.4 and 5) from interfering

in his possession of the house in Khasra No. 30// 22(8-0). The Civil Court held that Darshan Singh was not in possession of the suit property. It was held that Darshan Singh had executed agreements to sell with the defendants and he had also delivered possession of the land to them as per the agreements. The Ld. Financial Commissioner thus concluded that the conduct of Darshan Singh was not fair. In spite of the agreements to sell having been proved before the Civil Court, he still denied execution of the same. Accordingly, the revision petition filed by him was dismissed.

Before the Ld. Single Judge the Ld. Counsel for the appellant had raised two contentions.

- (i) The validity of the agreements to sell could not have been taken into consideration by the authorities as the execution of those agreements had been disputed by the father of the appellant.
- (ii) The restriction in the sale certificate regarding non-disposal of the property for a specified period was violative of the provisions of the Transfer of Property Act, 1882. He relied on decisions of this Court in **CWP No.10518 of 1994** titled as '**Nirmala Devi vs. State of Haryana and others**' decided on 03.07.2014 and **CWP No.999 of 1993** titled as '**Mohinder Singh and others vs. The Financial Commissioner (Appeals), Punjab and others**' decided on 04.02.2015.

Ld. Single Judge first referred to the factual position in the light whereof the aforesaid contentions were to be decided.

A suit for permanent injunction preferred by Darshan Singh against respondents No.4 and 5 for restraining them from interfering in his possession of the house in Khasra No.30// 22(8-0) was dismissed by the Civil Judge (Junior Division), Shaheed Bhagat Singh Nagar on 31.05.2016 and it was held that the private respondents were in possession of the property in dispute.

Private respondents No.4 and 5 had filed a suit for permanent injunction bearing No.RBT Civil Suit No.106/2016 on 07.10.2013 for restraining Darshan Singh and the appellant from interfering in the land in their possession or dispossessing them. The said civil suit was dismissed as being not maintainable as per the provisions of Section 41(h) of the Specific Relief Act, 1963 because an equally efficacious remedy of specific performance of the agreement to sell was available to them which they had not invoked. Further the agreement to sell dated 03.03.1993 and 10.10.1999 which showed delivery of possession to them were compulsorily registrable as per Section 17(1A) of the Registration Act, 1908. Being unregistered they could not be read in evidence. But the execution of the two agreements to sell by Darshan Singh and the delivery of possession to respondents No.4 and 5 had been proved.

Dealing with the contention that the condition of restriction of sale was illegal and had been struck down by the High Court, the Ld. Single Judge held that the two cases relied on by the appellant were based on different facts. **Nirmala Devi's** case (supra) related to the Rehabilitation Department. Allotments in that case were made under different set of

Rules and provisions. In that judgment reliance was placed on an earlier case **Smt.Sarabjit Kaur and LRs of Mohinder since deceased and others vs. Mohinder Singh and another 2008(4) RCR (Civil) 458** where the allottee was widow of a soldier killed in Chinese aggression in the year 1962. The restriction regarding sale was waived off in the case of allotment of war widows by notification dated 01.12.2008 issued by the State of Punjab. In **Mahender Singh's case** (supra) the sale that was cancelled by the Chief Sales Commissioner was an auction sale. Moreover, the cancellation was without hearing the aggrieved party. The case of the appellant was not a case of auction, rather he had been allotted land on the basis of possession at a nominal price. Hence, there was no parity between the case of the appellant and the case of Mahender Singh.

The learned Single Judge concluded that the undisputed facts disclosed that the appellant had defrauded the State. In the cases relied on by the appellant sales were made subsequent to the allotment of the property. But Darshan Singh had entered into agreements to sell even before a sale certificate had been issued in his favour. He had parted possession with the land even before he had become owner thereof. The Ld. Single Judge affirmed the findings of the Financial Commissioner (Revenue), Punjab that the appellant had not come to the court with clean hands. He had entered into two agreements to sell and parted possession with the allotted land even before he became owner thereof. Thus, in equity also the appellant did not deserve any benefit.

Learned counsel for the appellant has urged that the civil suit

filed by the private respondents for permanent injunction had been dismissed as being not maintainable. There is no finding therein that the agreements to sell had been proved. The private respondents did not thereafter file a suit for specific performance of the agreements to sell.

There is no merit in the aforesaid contention. Even if there is no finding in that suit regarding the execution of the agreements to sell, but it has been duly proved that the private respondents are in possession of the land subject matter of the two agreements to sell. Their possession has been affirmed in the civil suit for permanent injunction filed by Darshan Singh against respondents No.4 and 5 which was dismissed by the Civil Judge (Junior Division), Shaheed Bhagat Singh Nagar. It was held therein that the private respondents were in possession of the property in dispute. Further the report dated 21.05.2015 of the Tehsildar-cum-AC First Grade Banga also confirmed that respondents No.4 and 5 were in possession of the land.

Accordingly, there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 22, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No