

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

CWP No.25807 of 2016
Date of Decision: 18.03.2020

Om Parkash Parihar and anotherPetitioners

Versus

State of Haryana and othersRespondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Om Parkash Parihar, petitioner No.1, in person.

Mr. Ankur Mittal, Additional Advocate General, Haryana,
for respondent No.2.

Mr. Lokesh Sinhal, Advocate,
for respondent No. 3.

KARAMJIT SINGH, J.

The petitioners have filed this Civil Writ Petition for mandamus or direction directing respondent No.3 -Haryana Urban Development Authority (hereinafter referred to as 'HUDA'), respondent No.1-State of Haryana and respondent No.4-Director, Town and Country Planning, Haryana, to register the sale deed of the property in question in the name of the petitioners as required by the provisions of Registration Act.

The case of the petitioners is that they purchased flat measuring 166 Sq. Yards from respondent No.2-M/s Ansal Buildwell Ltd., vide agreement for sale-cum-allotment letter dated 06.03.2009. The possession of the flat was obtained by the petitioners from the said respondent on 25.03.2011. The ownership of the flat has not been transferred in the name of the petitioners by respondent No.2 by way of registered deed on the ground that, as per circular

(Annexure R-1) dated 27.03.2009 issued by the Special Secretary, Financial

Commissioner-cum-Principal Secretary to Government of Haryana, Town and Country Planning Department, the registration of independent floors can be allowed only regarding the plots measuring 180 Sq. Yards and above.

In the written reply, respondent Nos.3 and 4 have contended that the plot of the petitioners being less than 180 Sq. Yards, its conveyance/sale deed cannot be registered, as per the instructions dated 13.03.2009/27.03.2009 issued by the State Government.

We have heard learned counsel for the parties and gone through the record.

Learned counsel for the petitioners contended that guidelines dated 13.03.2009/27.03.2009 regarding registration of the independent floors of residential plots having size of 180 Sq. Yards or above, are not statutory in nature. The said guidelines are discriminatory and violative of the provisions of the Registration Act. The said guidelines cannot prevail upon the statutory provisions of law. It is further contended that previously also civil writ petition was filed by the petitioners to direct respondent Nos.1, 3 and 4 to register the deed regarding sale of property in question in favour of the petitioners. In the said writ petition direction was given to the respondents to consider the petitioners' application dated 10.09.2014 for registration of sale deed. Despite the said direction, no action has been taken by the respondents. It is further pleaded that necessary direction be given to the respondents to do the needful so that the sale deed regarding property in question be registered in favour of the petitioners, as per the provisions of the Registration Act. Learned counsel for the petitioners also referred to **Suraj Lamp and Industries Pvt. Ltd, through Director Vs. State of Haryana (2012) 1 SCC, 656**, wherein, it was held that immovable property can be legally and lawfully transferred/conveyed

only by a registered deed of conveyance.

On the other hand, learned counsel for respondent Nos.3 and 4 and learned Additional Advocate General, Haryana, on behalf of respondent No.1 contended that Government instructions dated 06.03.2009/27.03.2009 clearly bars the registration of independent floors for residential plots of area lesser than 180 Sq. Yards. The property of the petitioners, measuring 166 Sq. Yards situated in Gurugram, is not covered under the aforesaid policy. So, the sale deed regarding property in question cannot be registered in the name of the petitioners. It is contended that the writ petition deserves to be dismissed.

We have considered the submissions made by the learned counsel for the parties.

The earlier writ petition filed by the petitioners was disposed of by the Co-ordinate Bench of this Court on 04.05.2016 by directing the respondents to consider the petitioners' application for registration made vide letter dated 10.09.2014.

It is the case of the petitioners that they had purchased floor measuring 166 Sq. Yards from respondent No.2, regarding which, they intend to get registered the sale deed in their names. The registration of the said sale deed is being declined by the respondents on the ground that as per the guidelines dated 27.03.2009 (Annexure R-1), the registration of such like independent floor is permissible only in case of residential plots of size 180 Sq. Yards or above.

Section 17(1) of the Registration Act provides that the sale of immovable property of the value of Rs.100 and upwards is only by registered deed. Even the Hon'ble Apex Court in **Suraj Lamps's case** (supra) reiterated that immovable property can be legally and lawfully transferred only by a

registered sale deed.

Section 38A of the Haryana Urban Development Authority Act, 1977, which provides for registration of independent residential floors, reads as follows:-

“38A. Registration of independent residential floor.- (1)

The registration of independent residential floors for the purpose of transfer, sale, gift, exchange or lease in perpetuity of plots allotted by the Authority, shall be permitted as independent dwelling unit :

Provided that no sub-division of land under the residential dwelling unit shall be permitted and the registration shall be limited to only one dwelling unit on each floor.

(2) The purchaser of floor desiring registration under sub-section (1), shall be liable to pay a duty, as notified by the State Government, from time to time, which shall not be less than one per centum and more than three per centum, in addition to the stamp duty payable under the Indian Stamp Act, 1899, as applicable in the State of Haryana.

(3) The said duty shall be collected by the Registrar or Sub- Registrar in the shape of non-judicial stamp paper at the time of registration of the document and intimation thereof shall be sent to the concerned Estate Officer immediately.

(4) The amount of the duty so collected shall be paid to the concerned Estate Officer and this amount shall be utilized towards defraying the cost of additional external development that may be incurred on providing extra basic amenities.”

In the present writ petition, the petitioners have not challenged circular dated 13.03.2009. However, it is trite to note that such like circulars and executive guidelines/instructions can neither supplement nor override the

statutory provisions.

Accordingly, this writ petition is disposed of with direction to the respondents to consider the case of the petitioners, in the light of the above discussed statutory provisions and the settled proposition of law. They shall be at liberty to pass a speaking order.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

18.03.2020

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Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No