

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

CWP No. 7083 of 2021 (O&M)

Date of Decision:21.04.2022

Harkirat Singh and another

.....Petitioners

vs.

Union Territory of Chandigarh and others

....Respondents

**CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH
HON'BLE MR.JUSTICE LALIT BATRA**

Present: Mr. Gaurav Chopra, Sr. Advocate with
Mr. Himmat Singh and Mr.Vardhaan Seth, Advocate
for the petitioners.

Mr. Anil Mehta, Senior Standing Counsel with
Mr. Sumeet Jain, Addl.Standing Counsel,
for the UT, Chandigarh.

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioners seek issuance of a writ in the nature of 'mandamus' directing the respondents to “expunge the *pendente lite* condition” in the impugned order dated 14.02.2022 (copy Annexure P-29), passed by respondent no.3, on the allegation that the order is *ultra vires* the scope and provisions of the notification/order Annexure P-37.

They further seek a direction to the respondents to withdraw the impugned transfer letter dated 14.03.2020 (copy Annexure P-31) and to issue a “legitimate transfer letter” conforming strictly to the scope and provisions of the aforesaid notification.

They also seek the cancellation of the impugned order dated 14.02.2020 (Annexure P-29).

2. Learned senior counsel appearing for the petitioners, first submits that the guidelines issued by the respondent Administration (copy Annexure P-37), dated 12.11.2018, are contrary to the notified policy (Annexure A-8 with the replication), with such policy in fact having been notified after the draft policy in that regard was approved by a Division Bench of this court (of which of one us, Amol Rattan Singh, J. was a member), vide an order passed in CWP no. 1331 of 2013 on 16.05.2013. He submits that the guidelines postulate that where any property falling in the UT, Chandigarh, is to be transferred in the case of intestate succession to all Class-I legal heirs, if any litigation is pending *qua* the property, the transfer would so made would eventually be subject to the outcome of the litigation.

3. The contention is that as the aforesaid notification does not contain that rider, the guidelines are contrary to the notification in that regard; and therefore deserve to be struck down, as does the impugned order Annexure P-29, passed in the case of the present petitioners, they being the only Class-I legal heirs of their father.

The concluding and relevant part of the order reads as follows:-

“Since, the objectors have failed to bring on record any legally valid documents/stay/restrain order passed by any competent Court of Law and keeping in view the fact that the present case is covered under the above referred guidelines of Chandigarh Administration dated 12.11.2018, it seems in the interest of justice that the property should be mutated as applied for by the Class-I legal heirs of the deceased owner on record of Estate Office subject matter to the final outcome of the litigation pending in the civil court of law.”

4. The petitioners are also aggrieved of the communication Annexure P-31 dated 14.03.2020, which conveys to the petitioners that the ownership rights in respect of House no.77, built on old Plot no.46, Sector 8-A, Chandigarh, have been transferred in their favour; but with Clause (6) of the said letter stating that it would be subject to the final outcome of the litigation titled as “Bhopinder Kaur vs. Harkirat Singh and others”, as is stated to be pending in the civil court in Chandigarh.

5. Learned senior counsel therefore submits that this court, in the aforesaid order passed on 16.05.2013, having approved the draft policy which eventually resulted in the notification dated 23.04.2014, no guidelines can override such notification and hence, the 6th condition added in the letter conveyed to the petitioners is wholly illegal and deserves to be struck down, with the transfer of the property in question “to fall 100% in favour of the petitioners”, they being the sole Class-I legal heirs of the late Sh.Gurbachan Singh.

6. It is to be noticed today that CM-17817-2021 has also been filed by one Ms.Monika Singh, who is stated to be the daughter-in-law of Bhopinder Kaur (i.e. the plaintiff in the aforementioned civil suit pending at Chandigarh), seeking to be impleaded as a respondent in the petition.

Mr.Jindal, counsel for the applicant, submits that Bhopinder Kaur having passed away, the applicant steps into her shoes as her daughter-in-law, with the applicants' husband, i.e. the son of Bhopinder Kaur, also having unfortunately passed away; and consequently, she is an interested party.

Notice already having been issued in this application, very fairly learned counsel for the petitioners does not object to the impleadment of the applicant, though he otherwise wholly disputes her having any right to the property at all.

Consequently, without making any comment on the rights of the applicant in the property in question, which in any case is subject matter of the dispute before the civil court and would be adjudicated upon by that court in due course, the application is allowed and the applicant, Monia Singh, is ordered to be impleaded as respondent no.4 in the petition, with the amended memo of parties also ordered to be taken on record.

7. Coming back to the merits of what has been contended by learned senior counsel for the petitioners as regards the condition imposed in the transfer letter, it is first to be noticed that the guidelines themselves (dated 12.11.2018), are not subject matter of this petition and consequently, we refrain from making any comment on the guidelines in view of what is being held hereinafter in the context of the issue that the petitioners are actually aggrieved of.

8. At this stage Mr. Chopra submits that the petitioners may be allowed to withdraw the petition to enable them to file a fresh one on the same cause of action, also challenging the guidelines to the aforesaid extent.

We see no cause to allow even that prayer as in our opinion, even if that condition of the property being transferred to the petitioners (or any other person), being eventually subject to the outcome of the pending suit, is

not contained in the notification, it would eventually make no difference because it is an innocuous condition in our opinion, added in the transfer letter because very obviously if any litigation is pending *qua* any particular property, the decree passed in such litigation eventually, would be binding on the respondents as regards transfer of that property, subject obviously to the final outcome of all appeals etc. pursuant to the initial decree issued.

Hence, for a minute presuming that the said guidelines were challenged to that extent, we would find no ground to sustain that challenge for the reason already stated hereinabove, to the effect that the condition imposed is an absolutely reasonable one, to the extent that a property would stand transferred in favour of any person in terms of the notification, subject to outcome of any litigation between parties *qua* that property itself, which final decree, (to repeat), would obviously be binding on the respondents.

9. It is to be also noticed that on specific query to learned senior counsel he has obviously not denied that pursuant to the letter issued to the petitioners stating that the property in question stands transferred in their name in the records of the Estate Office, UT, Chandigarh, the property has been so transferred, subject to the outcome of the aforesaid litigation.

10. Consequently, this petition is dismissed, with the rights of the petitioners and the newly added respondent (Monia Singh), not commented upon in any manner by this court.

Though learned senior counsel submits that the trial in the suit be made time bound, however, in these proceedings we are not inclined to issue such a direction, the suit having been instituted in 2019, with the pandemic

thereafter having broken out.

If the petitioners are aggrieved of any delay in the progress of the suit in question, obviously they would have their remedies against any unnecessary adjournment orders being passed, in appropriate proceedings.

As regards any challenge to the guidelines on any other question, if ever made by any person, obviously that would be considered on its own merits.

(AMOL RATTAN SINGH)
JUDGE

April 21, 2022
dharamvir

(LALIT BATRA)
JUDGE

Whether reasoned/speaking : Yes
Whether reportable : Yes