

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

103+204

**CM-4304-CWP-2020 in/and
CWP-26606-2015 (O&M)
Date of Decision: 22.08.2022**

MAUSAM SHARMA

... Petitioner

Versus

STATE OF HARYANA AND ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Atul Gaur, Advocate
for the petitioner.

Mr. Vivek Chauhan, Addl. AG, Haryana.

None for respondent No.5.

Mr. Ajay Jain, Advocate
for respondents No.6 and 7.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari raising a challenge to the order dated 17.06.2015 (Annexure P-3) passed by the respondent No.4 i.e. the Sub Registrar, Bawal, vide which the sale deed of the petitioner bearing No.2822 dated 11.03.2015 was ordered to be cancelled and also the order dated 28.10.2015 (Annexure P-4) passed by the respondent No.2 – Registrar, District Rewari, vide which the appeal filed by the petitioner was dismissed on the ground of lack of jurisdiction. A further writ in the nature of mandamus has been sought directing the official respondents to restore the sale deed dated 11.03.2015.

Learned counsel appearing on behalf of the petitioner contends that the respondent No.5- Sarla Devi wife of Shri Om Parkash Mudgill, claimed to be the owner in possession of plot measuring 37.33 Sq. Yards situated within the revenue estate of Dholian Chowk, Ward No.6, Bawal, Tehsil Bawal, District Rewari having inherited it from her late husband, who had in turn acquired the same from his father vide Gift Deed No.20 and as such, the respondent No.5 was the owner of the plot in question. A further reference is made that the title in question stood affirmed in favour of respondent No.5 as per judgment and decree dated 18.02.2014 passed by the Civil Judge (Jr. Division), Rewari in case titled 'Ram Kishore Vs. Yad Ram and others'. It is further contended that the sale deed in question was registered in the office of Sub Registrar, Bawal in favour of the petitioner on 11.03.2015 for a sale consideration of Rs.3.42 lacs and the possession was duly delivered to the petitioner. He submits that the petitioner is the owner in exclusive possession of the aforesaid plot ever since the registration of the sale deed in his favour. It is contended that Vartika Chaturvedi and Gautam Chaturvedi, respondents No.6 and 7 respectively moved an application before the Joint Sub Registrar claiming themselves to be the owners of the said plot, whereupon an enquiry is claimed to have been conducted and the said allegations were found to be correct. On 17.06.2015, respondent No.4 Sub-Registrar, Bawal cancelled the sale deed bearing No.2822 dated 11.03.2015 without issuing any notice to the petitioner and without verifying the revenue record to ascertain as to whether the petitioner is the bonafide purchaser of the property for consideration or not and also without examining the issue regarding the undisputed ownership claimed by the vendor of the petitioner.

Aggrieved of the aforesaid order dated 17.06.2015 passed by the Sub-Registrar, the petitioner preferred an appeal before the respondent No.2-Registrar-cum-District Collector, Rewari. The said appeal was dismissed vide order dated 28.10.2015 on the ground that the authority did not have the jurisdiction to hear the same. Hence, the present writ petition.

Learned counsel has contended that the Sub-Registrar had no power under the Registration Act, 1908 and also as per the Rules framed by the State of Haryana to cancel a registered sale deed. He draws the attention to the reply dated 23.01.2016 filed on behalf of respondents No.1 to 3 through Jitender Kumar, HCS, Sub Divisional Officer (Civil) Bawal (respondent No.3). The relevant extract of the same reads thus:

“1-2 XXX XXX XXX

3. *That no inquiry was conducted by respondent No.3 and in the present case the respondent No.3 only seeking report of Secretary to M.C., Bawal on the application dated 11.05.2015 and forwarded the same to the respondent No.4 for taking necessary action and it is pertinent to mention here that as per Registration Act, 1908, answering respondent No.3 has no power to cancel the sale deed.”*

(Emphasis supplied)

Learned counsel thus contends that in view of the written statement filed by the State through the SDO (Civil), Bawal, it is undisputed that the respondent No.4 i.e. the Sub-Registrar, Bawal had no authority to cancel the sale deed and the remedy, if any, available to the aggrieved respondent was in the form of approaching the Civil Court for seeking cancellation/setting aside the sale deed by filing an appropriate case/petition.

Learned counsel appearing on behalf of the State of Haryana stands by the aforesaid stand taken by the State of Haryana in its written statement. In view thereof, the reply filed by respondent No.4 is not required to be examined. However, the said respondent has also failed to refer to any statutory provision under the Registration Act, 1908 or the Rules that were in force then in exercise whereof a registered sale deed could have been cancelled by the Sub-Registrar.

Mr. Ajay Jain, Advocate has appeared on behalf of contesting respondents No.6 and 7 and has vehemently argued that the respondents No.6 and 7 were the real owners of the property in question and that the judgment and decree dated 18.02.2014 is not binding on their rights since they were not a party to the aforesaid lis. It is contended that the predecessor in interest of the respondents No.6 and 7 had been reflected owner in possession of the suit property pursuant to the sale deed No.143 dated 19.07.1982 and that Smt. Sarla Devi- respondent No.5- vendor of the petitioner had attempted to sell the property in question even on an earlier occasion to one Krishna wife of Rakesh. Objection to the same was raised by Hemant Kumar Chaturvedi and the Sub Registrar, Bawal, after conducting an investigation, had come to a conclusion that respondent No.5 Sarla Devi had no concern with the property in dispute and the sale deed submitted before him was cancelled vide order dated 23.01.2015. An appeal against the said order was filed and dismissed by the Registrar vide order dated 11.03.2015. On the same day i.e. 11.03.2015, respondent No.5- Sarla Devi, in collusion with Sub-Registrar, Bawal got scribed another sale deed No.2822 in favour of the present petitioners regarding the property in dispute. He contends that the said aspect was also investigated by the respondent No.3 i.e. S.D.O. (Civil), Bawal, District Rewari and the

allegations levelled by the respondents No.6 and 7 against respondent No.5 were found to be correct and it was on the strength of the same that the sale deed was cancelled by the Sub Registrar vide impugned order. The appeal in question also stood dismissed. He contends that the fraudulent acts of the respondent No.5 in collusion with the Sub Registrar, Bawal cannot be permitted to perpetuate an illegality and the petitioners cannot be allowed to capitalize on the proceeds of a fraud. He, however, does not dispute the fact that there was no statutory provision in exercise whereof the Sub-Registrar could have cancelled the sale deed. It is also not disputed that the respondents would have a remedy available in criminal as well as civil law against the grievance espoused by them.

I have heard the learned counsel appearing on behalf of the respective parties.

The determination of fraud is a mixed question of fact and a disputed question of fact cannot be gone into at this stage by a writ Court. Any authority, which is the author of an order, has to claim such power from the Statute. In the event an order is passed by an authority without any authority, such an order is void *ab initio*.

The Hon'ble Supreme Court had held in the matter of **Satya Pal Anand Vs. State of M.P.**, reported as **(2016) 10 SCC 767** that once a document is registered under the Registration Act, 1908, it is not open to the Registering Authority to cancel the registration except by way of a bilateral cancellation deed which may be separately executed amongst the parties.

The Hon'ble Supreme Court held in the matter of **Hasham Abbas Sayyad Vs. Usman Abbas Sayyad** reported as **AIR 2007 SC 1077** as under:

“22. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The Principles of estoppel, waiver & acquiescence or even resjudicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by any Court without jurisdiction would be coram-non-judice, being a nullity, the same ordinarily should not be given effect to.”

It was further held by the Hon’ble Supreme Court in the matter of **Krishnadevi Malchand Kamathia and others Vs. Bombay Environmental Action Group and others** reported as **AIR 2011 SC 1140** as under:

“It is settled legal proposition that even if an order is void, it required to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void.”

The aforesaid view was reiterated in the judgment of **M/s Anita International Vs. Tungabadra Sugar Works Mazdoor Sangh and others** reported as **(2016) 9 SCC 44** by the Hon’ble Supreme Court.

Taking into consideration the response filed by the respondents admitting that the Sub-Registrar had no authority and without commenting upon the *inter se* rights of the contesting parties, the present petition is allowed. Accordingly, the order dated 17.06.2015 (Annexure P-3) passed by the respondent No.4 i.e. the Sub Registrar, Bawal, vide which the sale deed of the petitioner bearing No.2822 dated 11.03.2015 was ordered to be cancelled is

hereby set aside as being without authority. No order is thus required to be passed on the order dated 28.10.2015 passed by Registrar.

The parties/respondents No.6 to 7 are, however, at liberty to take recourse to the remedies available to them under the Civil/Criminal law in order to redress their grievances, if any.

All other misc. application(s), if any, also stand(s) disposed accordingly.

22.08.2022
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : **Yes/No**

Whether reportable : **Yes/No**