IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.234

CWP-26937-2017 (O&M)

Reserved on : 11.10.2022

Pronounced on: 21.10.2022

Sukhdev Singh ..... Petitioner

VERSUS

State of Punjab and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. A.S. Khinda, Advocate, for the petitioner.

Mr. Gurvinder Singh, AAG, Punjab.

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SUDHIR MITTAL, J.

The Nazool Land (Transfer) Rules, 1956 (hereinafter referred to as the Rules) were enacted for promoting cooperative agriculture in the State of Punjab. Pursuant thereto, thirty six Scheduled Caste people of village Mansurwal Dena, District Kapurthala formed a Harijan Cooperative Society (hereinafter referred to as the Society) and received by way of transfer total of 1488 kanals and 02 marlas of land on payment of sum of Rs.29,966.30 paise. Order of transfer is dated 30.7.1956. The consideration was to be paid in 20 half yearly instalments. Last instalment was paid on 7.2.1966, whereafter, Sale Certificate dated 28.6.1971 was issued in favour of the said Society. Sometime in the year 2003, the petitioner purchased a 400 sq. yard plot from the aforementioned Society and constructed his residential house thereupon.

Alleging illegal sale of nazool land in the State of Punjab, Soma Singh and others filed CWP-5085-2011 in public interest. The State of Punjab was directed to take remedial action. Finally, it was noticed that the nazool land illegally sold had been identified and show cause notices had been issued to original allottees and purchasers. Recording its satisfaction with the action taken, the writ petition was disposed of by a Division Bench of this Court with directions to place on record action taken report after six months. Accordingly, the petitioner was issued a show cause notice dated 22.1.2014. He submitted his detailed reply and vide order dated 9.5.2014, the notice was withdrawn after finding that at the time of issuance of conveyance deed, there was no stipulation in the Rules that there could be no sale after execution of conveyance deed and thus, the sale in favour of the petitioner was legal and valid. This order has not been challenged any further by the State of Punjab.

The petitioner is aggrieved because a communication dated 5.6.2014 has been issued by respondent No.3 to the revenue authorities that note in the revenue record pertaining to nazool land be maintained as earlier and that execution of sale deeds was prohibited. Representations were made to the Financial Commissioner (Revenue) Punjab as well as the Deputy Commissioner, Kapurthala to withdraw the said communication so far as it pertained to the land of the petitioner, but no action was taken.

Detailed written statement on behalf of the State of Punjab has been filed. Reliance therein has been placed upon the amendment to the Rule 7 of the Rules vide Notification dated 18.3.1991, whereby, alienation, sale, mortgage of nazool land has been prohibited. Thus, it has been averred that the communication dated 5.6.2014 is legal and valid.

Learned counsel for the petitioner has argued that amended Rule 7 of the Rules has been clarified by the State of Punjab itself vide communication dated 25.7.2007. According to the said communication, the amended Rule would not apply to cases, where, conveyance deed had been executed prior to the Notification dated 18.3.1991. In the instant case, the conveyance deed having been issued on 28.6.1971, transfer in favour of the petitioner was not prohibited and thus, no adverse entry could be made in the revenue record nor could any restriction be placed on further alienation.

Learned State counsel has argued in accordance with the case set up in the written statement.

Original Rule 7 was as under:-

> ‘7. **Bar of alienation:-** No Cooperative Society to which land has been transferred shall at any time before the last instalment of price has been paid, except with the express permission in writing of the State Government, alienate, whether permanently or temporarily, the nazool land transferred to it.
>
> Provided that in granting permission the State Government shall have regard to the general interests of the Cooperative Society.

2. Where the State Government permits a Cooperative Society to permanently alienate the nazool land transferred to the Society, the provisions of Rule 4 shall not be apply in respect of such land.'

The above Rule was substituted vide Notification dated 28.10.1970 and the substituted Rule was as follows:-

'**Bar of alienation:** (1) No Cooperative Society or the individual member of Scheduled Castes, as the case may be, shall, except with the express permission in writing to the State Government, alienate, whether permanently or temporarily, the nazool land transferred to it/him for a period of ten years from the date of the Cooperative Society or the individual member of Scheduled Castes gets all rights, title and interest in the said nazool land. Thereafter, its alienating shall be strictly restricted to the members of the Scheduled Castes only.

Provided that in granting permission, the State Government shall have regard to the general interests of the Cooperative Society or individual member, as the case may be.'

As on date, Rule 7 is as under and was substituted vide Notification dated 18.3.1991:-

'7. **Bar on alienation:-** No Cooperative Society or the individual member of Scheduled Castes, as the caste may be, shall alienate or sell or mortgage the Nazool Land shall go down any in inheritance.

Provided that a Cooperative Society or a member of a Scheduled Castes to whom such land has been transferred under these Rules may improbably alienate such land in favour of the Punjab Scheduled Caste Land Development and Finance Corporation and Scheduled Banks for securing a loan with a view to improving this land provided the extent of area so alienated shall not exceed the proportion of the land for which price has been paid to the Government.'

Rule 7 aforestated as substituted from time to time is in respect of 'bar of alienation'. When the Rules were enacted in the year 1956, the bar of alienation was restricted to the date of payment of last instalment. Thereafter, a transferee had full right to deal with his land. Post the substitution vide Notification 28.10.1970, the transferee could not alienate his land for a period of 10 years from date of acquisition of full ownership rights which obviously was the date of payment of final instalment. Even thereafter, alienation was restricted in favour of members of Scheduled Castes only. The Rule as substituted vide Notification dated 18.3.1991 and as it presently exists, completely bars a transferee from alienating his land in any manner, whatsoever. Transfer through inheritance is also forbidden. Obviously, over a period of time, the appropriate legislature has felt that nazool lands transferred in favour of the Scheduled Castes were being mis-utilized and the original purpose had been diluted. Thus, the efforts appear to be to retain the land within

Scheduled Castes families and thereafter be escheated in favour of the State.

The above, however, does not affect interpretation of the Rule 7 as it exists today i.e. post substitution by the Notification dated 18.3.1991. As the facts narrated hereinbefore clearly reveal the last instalment was paid on 7.2.1966 and conveyance deed was executed on 28.6.1971. Full ownership rights stood vested in the transferee i.e. the Society on payment of the price. Conveyance deed only evidenced the vesting of full proprietary rights and was a ministerial act. According to the Rule 7 in force at that point in time, the transferee possessed unfettered right of alienation and the same was a vested right. The petitioner purchased his small plot of land in the year 2003, when Rule 7 as substituted vide Notification dated 18.3.1991 was in force. The same completely barred alienation in any manner, whatsoever. If this Rule was to apply to this case, it would amount to abrogation of rights vested in the Society in the year 1966 which in turn would entail retrospective application of the Rule in force today.

Is such retrospective application permissible in law?

Substituted Rule 7 as existing on the statute book as on date has been reproduced hereinabove. The same has not been made applicable retrospectively, either, explicitly or implicitly. On the contrary, the proviso thereto makes it clear that the said Rule is applicable only to cases, where, complete ownership rights have not been acquired. By virtue thereof, alienation is permissible for raising money for improvement of the land, but only to the extent of the land in respect of which full price has been paid. Such can be the situation only, where, a transferee has not yet paid the last instalment. Thus, the said Rule is not retrospective in nature. It governs only those cases, where, full price has still not been paid. This view is re-inforced by a Division Bench judgment of this Court in Scheduled Castes Cooperative Society Vs. State of Punjab and another, AIR 2005 (P&H) 100. In this case, Rule 7 as substituted by Notification dated 28.10.1970 came up for interpretation and it was held that the said Rule would not apply to a case, where, the transferee had acquired title to the property earlier. Para 26 thereof is reproduced:-

> '26. The facts, as fully detailed above, do reveal that the petitioner Society had complete title of the property transferred to it without there being any embargo to alienate it or in part. In the facts and circumstances, as mentioned above, there was no justification for the authorities, to put an embargo on the right of the petitioner Society to alienate the land, wholly or in part and, therefore, the condition mentioned in the sale deed would and cannot be binding upon the petitioner Society. The authorities, it appears, have inserted the condition in the sale deed only on account of change in the Rules 7 and 11 of the Rules had since been substituted by virtue of Notification dated 28.10.1970 i.e. before the sale deed came to be executed. Once, the petitioner Society was vested with complete title of the land and had a right to alienate the same being an absolute owner

far before Notification dated 28.10.1970 came into being, conditions of non-alienation incorporated in the sale deed on the dint of amended provisions of the Rules, could not be binding upon it.'

Resultantly, the sale in favour of the petitioner is not illegal. By virtue thereof, he has acquired full rights in respect of his plot of land and the same cannot be curtailed in any manner by an executive decision.

The writ petition is, accordingly, allowed. It is clarified that communication dated 5.6.2014 (Annexure P-4) does not apply to the land purchased by the petitioner.

(SUDHIR MITTAL)
JUDGE

21.10.2022
Ramandeep Singh

Whether speaking / reasoned Yes

Whether Reportable Yes