IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Reserved on:12.05.2023

Pronounced on:18.05.2023

Haryana Urban Development Authority, Sirsa .....Petitioner

Versus

Bimla Devi and others .....Respondents

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

Present: Mr. Deepak Sabherwal, Advocate, for the petitioner.

Mr. Rakesh Nagpal, Advocate, for respondent No.1.

Mr. Sarvesh Malik, Advocate (Legal Aid Counsel), for respondent Nos.3 and 4.

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VINOD S. BHARDWAJ , J.

The question which arises in the present petition is as to whether the Permanent Lok Adalat (Public Utility Services) can uphold an alienation of property made in violation of the terms & conditions of the letter of allotment and issue a direction to transfer the plot.

The instant petition has been filed under Articles 226/227 of the Constitution of India for setting aside of the impugned award dated 15.05.2014(Annexure P-4) passed by respondent No.2-Permanent Lok Adalat, Public Utility Services, Sirsa.

Briefly summarized, the facts of the present case are that one plot bearing No.999 measuring 75 sq. meters situated in Sector 20, Part-II, Sirsa was allotted to one Smt. Seeto Devi wife of Late Sh. Bahadar Singh, resident of Village Patli Dabar, Tehsil & District Sirsa vide allotment letter No.1458 dated 01.06.1998 (Annexure P-1) under the policy named as Economically Weaker Sections. It was averred in the application preferred before the Permanent Lok Adalat (Public Utility Services), Sirsa that the Conveyance-deed of the abovesaid plot was executed by the HUDA now HSVP in favour of Smt. Seeto Devi vide Sr. No.5159 dated 17.07.2006 was duly registered in the office of Sub Registrar, Sirsa. The abovesaid plot was transferrd by Smt. Seeto Devi in favour of one Smt. Bhagwan Devi wife of Satnam Chand, resident of Sirsa for a sum of Rs.2,96,500/- vide sale-deed No.5178 dated 17.07.2006 i.e. on the date of execution of Conveyance-deed itself. The physical possession of the plot in question was also delivered to Smt. Bhagwan Devi by the original allottee Smt. Seeto Devi. Thereafter, the abovesaid Smt. Bhagwan Devi executed sale-deed of the said plot in favour of Bimla Devi(respondent No.1) vide sale-deed No.9231 dated 13.02.2007 for the same sale consideration of Rs.2,96,500/-. She took possession of the aforesaid plot from Bhagwan Devi and became owner in possession of the said plot. An application was thereafter moved by Bhagwan Devi in the office of the petitioner-HSVP for transfer of the ownership entries in her name in their record. The said transfer was refused by the authorities whereupon the application under Section 22-C of the Legal Services Authorities Act, 1987 was preferred before the Permanent Lok Adalat (Public Utility Services), Sirsa.

The petitioner-HSVP entered appearance before the Permanent Lok Adalat (Public Utility Services), Sirsa and filed joint reply contesting the petition. It was admitted that the plot in question was originally allotted to Smt. Seeto Devi wife of Late Sh. Bahadar Singh, resident of Village & Post Office, Patli Dabar, Tehsil & District Sirsa vide allotment letter No.1458 dated 01.06.1998. under the policy for Economically Weaker Sections (E.W.S.). The terms & conditions of the allotment prescribed in Condition No.24 of the allotment letter that the allottee would not be entitled to sell, transfer, gift or mortgage the plot in question for a period of ten years. The original allottee Smt. Seeto Devi did not comply with the abovesaid terms & conditions and executed the sale-deed before expiry of the abovesaid prohibitory period. The transfer being in violation of the terms & conditions, has no adverse bearing on the rights of the petitioner and that the petitioner would be entitled to ignore any such transaction carried out in breach of the mandatory terms & conditions. It was further averred that as per the procedure prescribed, in the event of any allottee seeking to transfer the purported plot by petitioner-HSVP, permission is required to be obtained from the Estate Officer, HSVP after depositing the requisite fee. No NOC had however been obtained from the HSVP for transfer of the plot. Accordingly, the plot in question could not be transferred and there was no illegality in the action of the HSVP in not doing so.

An attempt was made for an amicable resolution including the possibility of granting an *ex post facto* permission for transfer, however, the settlement could not be arrived at. Consequently, the matter was taken up for adjudication of the application under Section 22-C(8) of the Legal Services Authorities Act, 1987.

Upon consideration of the rival submissions, the Permanent Lok Adalat (Public Utility Services), Sirsa allowed the application preferred by respondent No.1 and directed the petitioner-HSVP to enter the name of respondent No.1 as owner in possession of the plot in question vide impugned award dated 15.05.2014 and to effect transfer of ownership in its records as per the sale-deed.

Aggrieved thereof, the present petition has been filed.

The award has been challenged on the ground that the Permanent Lok Adalat (Public Utility Services), Sirsa has failed to harmoniously reconcile the provision contained in the letter of allotment and has given precedence to condition No.12 over condition No.24 to such an extent that the said condition overrides condition No.24 rendering the said Condition No.24 nugatory and unenforceable. Such interpretation runs contrary to the object behind incorporating such prohibitory clause/condition.

Upon notice, written statement had been filed by Bimla Devi-respondent No.1 wherein, she reiterated the averments contained in the application filed before the Permanent Lok Adalat as already noticed above. It was further averred that she had purchased the plot in question on payment of sale consideration and being a bonafide purchaser, she is entitled to the transfer of the plot in question in her favour. It is also averred that the transaction of the plot in question took place on 17.02.2007 and as such a period of nearly 09 years had already elapsed from the date of allotment. The total period of restriction imposed against transfer of the plot was 10 years and that as only a period of one year remained, such a breach ought to be ignored and/or condoned in the larger interest of justice.

I have heard learned counsel for the respective parties and have gone through the documents available on record.

It has remained uncontroverted that the plot in question was allotted on a concessional basis at a tentative price of Rs.8970/-. The relevant terms & conditions of the letter of allotment bearing Memo No.1458 dated 01.06.1998 are as under:-

> *"11. In the event of breach of any other condition of transfer the Estate Officer may resume the land in accordance with the provisions of Section 17 of the Act.*
>
> *12. The land/building shall continue to belong to the Authority until the entire consideration money together with interest and other amount if any due to the Authority on account of such land building or both is paid. You shall have no right to transfer by way of sale, gift, mortgage or otherwise the plot/building or any right, title or interest therein until the full price is paid to the Authority except with the prior permission of the competent authority.*
>
> *13. On payment of 100% of the tentative price of plot, building, you shall execute the Deed of Conveyance in the prescribed form and in such manner as may be directed by the Estate Officer. The charges for registration and stamp duty will be paid by you.*
>
> *xx________xx_________xx_________xx_________xx__________xx*
>
> *24. The allotment is further subject to the following conditions:-*
>
> *That you do not own any other plot/house in your own name or in the name of your spouse or in the name of your dependent family members in any Urban Estates in Haryana, Delhi or Chandigarh, and have not been allotted at any time a plot or land in any of the reserved categories i.e. do GSHO, SC, BC, Ex-Servicemen, Defence Personal War Widow, Freedom Fighters and handicapped etc. (an affidavit to this effect duly attested by Magistrate Ist Class should be submitted by you). In case you fails to make the payment of instalment(s) by due date penal interest 18% per annum shall be charged for the delayed period. No separate notice will be sent for the*

> *payment of monthly instalment. The allottee shall have no right to transfer the plot by way of transfer, sale, gift or mortgage for a period of 10 years."*
>
> *(emphasis supplied)*

It is also noticed that the Conveyance-deed in favour of original allottee Smt. Seeto Devi was executed vide Sr. No.5159 dated 17.07.2006 and the sale-deed in favour of Bhagwan Devi wife of Satnam Singh was also executed by Smt. Seeto Devi on the same day vide sale-deed No.5178. The sale-deed in favour of respondent No.1 was executed within a period of six months thereafter.

The application in question has been allowed by the Permanent Lok Adalat (Public Utility Services), Sirsa by observing as under:-

> *"7. Most of the facts of the case of the petitioner are admitted by the respondents. It is an admitted fact that plot No.999 measuring 75 sq. yards situated in Sector 20, Part-II, Sirsa was allotted to Seeto Devi wife of Bahadar Singh vide allotment letter No.1458 dated 01.06.1998, copy of which is Ex.R-2. It is also an admitted fact that Seeto Devi paid the sale price of the plot in dispute to the respondents without any delay and got executed conveyance deed bearing registration No.5159 dated 17.7.2006, copy of which is Ex.P2. It is also an admitted fact that Seeto Devi, the original allottee, sold the plot in dispute to Bhagwan Devi vide registered sale-deed No.5178 dated 17.07.2006, copy of which is Ex.P-3 and delivered its possessions to Bhagwan Devi despite the fact that according to condition No.24 of the allotment letter, she was not competent to transfer the plot in question in any manner for a period of ten years from the date of allotment. It is also an admitted fact that Bhagwan Devi sold the plot in dispute to the petitioner vide sale-deed No.9231 dated 13.02.2007, copy of which is Ex.P-4 and delivered the possession of the same to the petitioner. In this way the petitioner became owner in*

possession of the plot in dispute. It is also an admitted fact that in the record of the respondents the plot in dispute is recorded in the name of original allottee namely Smt. Seeto Devi. The petitioner moved applications Ex.P-5 to Ex.P-7 stating all the details therein to the respondents praying for transfer the plot in dispute in her name in their record. But the respondents refused. The respondents have refused to transfer the plot in the name of the petitioner on the ground that original allottee Seeto Devi had no right to sell/transfer the plot in dispute for a period of ten years from the date of allotment. No doubt, the ground taken by the respondents is according to the terms and conditions of the allotment letter but the question arises whether this condition was mandatory or not? The respondents have not been able to show that this condition was a mandatory condition. Once the respondents have admitted that original allottee had paid the whole sale consideration of the plot to them and got the conveyance deed executed in her favour before the transfer of the plot by her in favour of Bhagwan Devi, in our opinion, this condition cannot be treated as a bar against the transfer of the plot by the original transferee. Condition No.12 of the allotment letter says that the land/building shall continue to belong to the authority until the consideration money together with interest and other amount, if any, due to the authority on account of such land/building or both, is paid. This condition further goes to show that the allottee shall have no right to transfer by way of sale, gift, mortgage or otherwise the plot/building or any right, title or interest therein till the full price is paid to the Authority except with the prior permission of the competent authority. Therefore, if conditions No.12 and 24 are read together then an inference can be drawn that the allottee cannot transfer the plot/building so allotted to him by the respondents till he or she pays the entire consideration amount with interest and other charges. In the present case, it is an admitted fact that the *original allottee had paid the entire amount and interest etc. to the respondents before she sold the plot to Smt. Bhagwan Devi. The collective perusal of the above referred two conditions further goes to show that an allottee can transfer the plot or building so allotted to him by the respondents even prior to the expiry of ten years but with the permission of the respondents. Admittedly, in the present case the original allottee did not obtain the permission to sell the plot to Smt. Bhagwan Devi. But it does not mean that due to this reason Bhagwan Devi had no right or interest in the plot in dispute. Bhagwan Devi purchased this plot after paying the sale consideration to the allottee. Therefore, she can be called to be a bonafide purchaser. Bhagwan Devi had no allotment letter with her, therefore, she was not aware of condition No.24 of the allotment letter. She might have verified from the office of the respondents regarding the allotment of the plot in dispute in favour of Seeto Devi and payment of its sale price by her, when she (Bhagwan Devi) wanted to purchase the plot. Because there was nothing due towards Seeto Devi on account of sale price and the allotment letter and conveyance deed were in favour of Seeto Devi, therefore, Bhagwan Devi purchased the plot in dispute and became owner in possession. The petitioner while purchasing the plot in dispute from Bhagwan Devi was also not aware of condition No.24 of the allotment letter. She purchased the plot in dispute on the basis of the sale-deed (Ex.P-3) in favour of Bhagwan Devi. It was a registered sale-deed and presumption of correctness qua the title, size and condition of the plot in dispute could be drawn from this registered sale-deed. Therefore, in this way the petitioner was also a bonafide purchaser. Therefore, in our opinion, the respondents were not right to decline the transfer of the plot in dispute in the name of the petitioner in their record.*

8. The petitioner is ready to pay the prescribed fee for insertion of her name qua the plot in dispute in the record *of the respondents. There is nothing due on account of sale price, interest thereon or any tax payable by the allottee to the respondents. Bhagwan Devi and the petitioner had incurred expenses of stamp etc. for the transfer of the plot in dispute in their favour. The original allottee and Bhagwan Devi have no objection against the transfer of the plot in dispute in the name of the petitioner in the record of the respondents. As we have mentioned above, the respondents have not been able to show that condition No.24 is mandatory. Moreover, period of ten years from the date of allotment in favour of Smt.Seeto Devi, original allottee, has now been elapsed. Therefore, in these peculiar facts and circumstances of the case, in our opinion, no prejudice would be caused to the respondents in any manner if they transfer the plot in dispute in their record in the name of the petitioner. Therefore, this Adalat following the principle of nature justice, equity and good conscience and to avoid further complication in respect of the ownership of the plot in dispute deems fit to allow the petition of the petitioner.*

9. The net result of the aforesaid discussion is that the petition of the petitioner succeeds and the same is hereby allowed. The respondents are directed to enter the name of the petitioner as owner in possession of the plot in dispute, in their record subject to the payment of requisite fee prescribed for this purpose by the petitioner. A copy of this award be given to the parties free of cost. File be consigned to the record room after due compliance."

A perusal of the aforesaid impugned award shows that the Permanent Lok Adalat (Public Utility Services), Sirsa has placed reliance on Condition No.12 of the letter of allotment wherein it was incorporated that the land/building shall continue to vest in the HSVP until the entire consideration money together with interest and other amount, if any, due to the Authority on account of such land/building or both, is paid. It has been conspired that the restriction imposed on the right of the allottee to alienate/transfer the property under Condition No.24 has to be read subject to Condition No.12 and that once the entire consideration amount stands paid, title in the land/building shall pass on to the allottee and that he cannot be restrained from any further alienation of the property in the manner as, he/she may seek. Further, it was also observed that the said condition stipulates that the transfer could be done after obtaining prior permission of the competent authority and that once the letter of allotment permits transfer on payment of full consideration, failure to obtain prior permission should not stand in the way to allow the transfer. It has also been recorded that the petitioner can be held to be a bonafide purchaser as she was not aware of Condition No.24 of the allotment letter and that had she been apprised of the same, she could have verified the same. She had purchased the plot on the basis of sale-deed (Ex.P-3) executed in favour of Bhagwan Devi. She presumed the terms & conditions recorded therein to be correct. It has also been observed that there is nothing on record to suggest that Condition No.24 was mandatory and further that as a period of ten years had elapsed as on the date when the award was passed, hence, the same would not cause any prejudice to HSVP, in case, transfer of the plot was permitted to be done in favour of respondent No.1.

The findings recorded by the Permanent Lok Adalat (Public Utility Services), Sirsa in its award and the arguments raised during the course of hearing are dealt as under:-

Firstly, it is undisputed that the allotment in question had been made subject to the integral terms & conditions incorporated therein and also subject to provisions of The Haryana Urban Development Authority

Act,1977 and Rules & Regulations framed thereunder. Condition No.11 thereof specifically prescribed that in the breach of any other condition of transfer, the Estate Officer may resume the land in accordance with the provisions of Section 17 of the Act. The terms & conditions of allotment were mandatory as per its plain reading and the suggestive consequances for a reported breach leading to amendment of relationship. Condition No.12 vested the proprietary right on the land with the Authority till payment of the entire sale consideration and the allottee was prohibited from transfer of the property until full price is paid to the Authority except with their prior permission. Condition No.24, on the other hand, added further conditions including that the allottee has no right to transfer the plot by way of transfer, sale, gift or mortgage for a period of ten years. It is also not in dispute that the allotment in question was a concessional allotment to the persons belonging to the EWS category. The terms & conditions of the letter of allotment including the restriction imposed on the further sale of the plot for a period of ten years has never been subjected to challenge in any litigation. Hence, the conditions were final and binding amongst the parties. The allotment being concessional and intended to rehabilitate the under privileged sections of the society, the restriction against transfer before 10 years was imposed in furtherance of the object of reducing slum and providing a rehabilitatory planned residential accommodation to EWS as part of social welfare obligation of State under Article 21 of the Constitution of India and it was not meant for profiteering by the persons belonging to the economically weaker sections. They were required to retain ownership and possession of the plot for that minimum period.

It is also well-settled position in law that the terms & conditions of a document and/or provision of statute had to be interpreted in a manner as would give effect to all such conditions and to ensure that those may harmoniously co-exist. Any such interpretation as is likely to negate any other condition ought to be avoided. The endeavour on the part of the Court must be to reconcile all the provisions to co-exist with harmony rather than adopting an interpretation which would override any other condition or which such interpretation is not naturally drawn from the plain reading of the document itself by the Hon'ble Supreme Court in the matter of **"*Jagdish Singh Versus Lt. Governor, Delhi*"**, reported as **AIR 1997 SC 2239.** It was further held that a statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well-known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court has held in several cases that a construction that reduces one of the provisions to a "dead letter" is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction.

It is also well settled that the entire statute must be first read as a whole then section by section, clause by clause, phrase by phrase and word by word by the Hon'ble Supreme Court in ***Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd*., (1987) 1 SCC 424**. The relevant provisions of the statute must, thus, be read harmoniously as has also been held in the case of ***Bombay Dyeing and Secy., Deptt. of***

Excise & Commercial Taxes v. Sun Bright Marketing (P) Ltd., (2004) 3 SCC 185.

In **'*British Airways PLC v. Union of India*'**, reported as (2002) 2 SCC 95, it was also reiterated that while interpreting a statute the court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting, the courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation.

The aforesaid position being well-settled in law, the submission advanced by respondent No.1 is thus being tested on the above parameters. If the interpretation to mean that the right of the HSVP to impose a prohibition on further sale/transfer is only till such time that the entire consideration money is paid, it must then also be accepted that the time limitation imposed is inconsequential. Hence, there may be very well a possibility that the allottee enters into a sale transaction with the willing buyer and deposits the entire sale consideration immediately, on lump-sum basis, after the issuance of letter of allotment and sells out the plot after booking his profit and put up a hut in another slum area. Such an interpretation is likely to have an impact of overriding the special condition which was prescribed under Condition No. 24 of the letter of allotment. The use of the terminology in Condition No.24 is that the allotment is "further subject to the following conditions". Hence, the terms & conditions incorporated elsewhere in the letter of allotment have to be read in consonance with the Condition No.24 as the letter of allotment is further subject to fulfilment of the said Conditions and not the other way around. These conditions being special, specific and mandatory cannot be overridden by other provisions/conditions incorporated elsewhere in the letter of allotment. Accordingly, the only possible harmonious interpretation that flows from a conjoint reading of the Conditions of allotment is that the allottee of the plot could transfer the plot/building only upon satisfying both the Conditions i.e. Condition No.12 as well as Condition No.24, whichever is later. Thus, if the period of ten years has already come to an end, however, the payment has not been made, still, the allottee would not have right to alienate the property and similarly, even if the entire payment has been made, however, the capping period of ten years does not come to an end, transfer/alienation of the said plot could not have been permitted.

It is further reflected from a perusal of Condition No.11 that the terms & conditions of the letter of allotment were mandatory and that in the breach of any other condition of transfer, the land in question was liable to be resumed in accordance with Section 17 of the Act. The expression "other condition" in Condition No.11 indexes the condition as reflected in Condition No.24. Since these conditions are not prescribed in the standard document but have been added further, they would naturally fall in the expression “any other Condition used in Condition No.11. The significance of Condition No.24 and its mandatory nature is established by Condition No.11 which mandates compliance of these conditions and prescribes consequence that in the event of breach either of these, the plot in question was liable to be resumed in accordance with Section 17 of the then Haryana Urban Development Authorities Act, 1977. To this above aspect, the Permanent Lok Adalat (Public Utility Services), Sirsa committed an error in appreciating the law as well as the essential terms & conditions of the letter of allotment. The conclusion recorded by the Permanent Lok Adalat (Public Utility Services), Sirsa suffers from misinterpretation of law and import of the condition. The findings are thus liable to be reversed.

The Permanent Lok Adalat (Public Utility Services), Sirsa has also held that respondent No.1 is a bonafide purchaser for consideration and that a period of nearly nine years had already elapsed when the transaction in question took place. As a matter of fact, capping period of ten years had come to an end as on the date when the award was passed and as such, the transaction in question ought to be protected. I find myself unable to agree to the reasoning adopted by the PLA (PUS) Sirsa.

The governing principle qua any property transaction in the jurisprudence enforceable in the country is “buyer beware”. Respondent No.1 cannot plead ignorance of the terms & conditions as it was required basic prudence for respondent No.1 to have carried out due diligence and check the status of the property from HSVP. The mere execution of the sale-deed by the previous allottee is not sufficient to conclude that the necessary due diligence had been undertaken by respondent No.1. It would be rash and unprudent on the part of any buyer not to verify the status of the property and/or charge/liability, if any, against the same from the HSVP when the property in question is situated within the area of HSVP. Any reasonable prudent buyer would seek to examine the original letter of allotment at the time of sale-deed so as to know about the further liabilities and/or the terms & conditions which would curb on the allotment/sale since all the terms & conditions of the letter of allotment get attracted despite execution of a sale-deed. The respondent no.1 not even having taken care to exercise ordinary prudence and to examine the letter of allotment, no benefit of a bonafide purchaser can be given to the respondent No.1 of an alleged ignorance. Plea of ignorance of law cannot be considered as an excuse for not complying the mandate of law and stems from the necessity of enforcing supremacy of law and upholding rule of law. Invariably, respondent No.1 cannot claim perfection of a title merely on a pleading that she was not aware of the terms & conditions which only establish her imprudence.

In the matter of ***'Amar Nath Versus State of Punjab'*** bearing CWP No.7131 of 1991, this Court has held that it is also pertinent to point out that this Court has held in ***Joga Singh's case and Jagir Singh's case (supra)*** that the subsequent transferee is not absolved of the responsibility from going through the sale certificate which expressly prohibits the sale certificate within a period of ten years. It has also been held in the former case that the condition prohibiting the sale for a period of ten years is a valid and enforceable one and cannot be the subject-matter of a successful challenge. In ***Jagir Singh's case (supra)***, the subsequent transfer was held to be not *bona fide* as the purchaser had not, in fact, looked at the sale certificate and the Court found that this was not one of the matters which was required to be seen in order to determine the *bona fide* of the subsequent transfer.

Also in the case of '***Jit Singh etc. Versus Piara***', bearing Regular Second Appeal No.447 of 2003 decided on 11.03.2003, this Court has laid down that the defendant-appellant can also not claim that he is a *bona fide* purchaser of the suit land because with reasonable caution and care, he could have ascertained from the red ink note in the jamabandi for the year 1988-89 that the land could not be sold for a period of 20 years. He had proceeded to purchase the suit land at his peril and risk and therefore, cannot take any benefit of the said deed. It is well-settled that there cannot be any estoppel against a statute. This proposition of law has also been laid in the following judgments of the Supreme Court viz. ***State of Punjab v. Hardyal, (1985) 2 SCC 629, Inder Sain Mittal v. Housing Board Haryana, (2002) 3 SCC 175.*** In the matter of '***S.S. Harbhagwan High School, Samana, District Patiala Versus Financial Commissioner, Revenue, Punjab and others***, bearing CWP No.11823 of 2006 decided on 31.03.2009, it is stated that while dealing with the cases of purchases made during proceedings, it has been viewed by this court in some of the judgments that even *bona fide* purchaser would not be protected under Section 41 of the Transfer of Property Act if sale in his favour is in violation of the conditions of the act. Hence, transaction/alienation made in violation of mandatory terms and conditions of allotment which reflect imprudence of the purchaser, have not found favour with the court and such practice has been despised.

Another circumstance which is required to be taken into consideration is that the Conveyance-deed in question was executed on 17.07.2006 and the sale-deed in favour of Bhagwan Devi was executed by original allottee Smt. Seeto Devi on the same day itself. It seems that the allottee had already alienated the possession of property in favour of Smt. Bhagwan Devi and that the sale-deed was only delayed for want of execution of the Conveyance-deed. The speed with which the alienation has been made leads this Court to infer that the allottee had purchased this plot for profiteering and not for furtherance of the object of the scheme. Surprisingly, the subsequent purchaser i.e. Smt. Bhagwan Devi also further sells it to respondent No.1 within a period of six months and it seems that the subsequent purchaser was only an investor and not an end user. The nature of the transactions and manner in which the same had been undertaken, do not inspire confidence so as to hold that the transactions in question are bonafide. Upholding any such transactions would amount to permitting and promoting an illegality. The Permanent Lok Adalat (Public Utility Services), Sirsa was thus in an error in failing to consider the aforesaid aspects and in holding that the transaction in question is seemingly a bonafide transaction. The pre-requisites of a bonafide transaction including the contemporaneous evidence and the circumstances reflect against the transaction being a bonafide transaction.

The finding given by the Permanent Lok Adalat (Public Utility Services), Sirsa that as on the date when the matter was being decided, the period of ten years has already come to an end and as such, the prayer ought to be allowed is merely an outcome of a misplaced sympathy and is founded in an approach which is not supported by law. The issue has to be seen in the context on the date when cause of action arose and as to whether the action of the petitioner-HSVP was as per the statute and its mandate or not. It would thus always relate back to the date when the sale-deed in question was executed. The effect of the transaction and its illegality cannot be washed away merely by delaying institution of a case or its adjudication. Passage of time may only be a relevant factor for compounding of an irregularity and the same cannot be the basis for compounding or ignoring an illegality which would go to the root of the transaction and vitiate it entirely.

An argument was also raised by the legal aid counsel appearing on behalf of the respondent Nos.3 and 4 that the condition restricting the allottee from transfer of the plot before ten years is not borne from the provisions of The Haryana Shehri Vikas Pradhikaran Act, 1977 and as such, the condition in the letter of allotment being in conflict with the provisions of the Act is *void ab initio.*

Reference in this regard is made to Section 15 of the Haryana Shehri Vikas Pradhikaran Act, 1977 which reads thus:-

> "*15**. Disposal of the land:**-*
>
> *(1) Subject to any directions given by the State Government under this Act and the provisions of sub-section (5), the [Pradhikaran] may dispose of-*
>
> *(a) any land acquired by it or transferred to it by the State Government without undertaking or carrying out any development thereon; or*
>
> *(b) any such land after undertaking or carrying out such development as it thinks fit, to such persons, in such manner and subject to such terms and conditions, as it considers expedient for securing development.*
>
> *[(1A) Subject to any directions given by the State Government the [Pradhikaran] may dispose of any specified area/land by transferring the management and control of such area/land to an agency as per the memorandum of understanding between the [Pradhikaran] and such agency:*

Provided that such agency may apply the terms and conditions of the allotment, rules, regulations and policies framed by the [Pradhikaran] as in force at the time of such transfer, for exercising management and control over the allottees of the plots in the specified area/land or for that purpose, may apply the rules, regulations and policies framed by such agency from time to time after the transfer of management and control of specified area/land, after obtaining option of such allottees of the plots.

Explanation.- For the purposes of this sub-section "agency" means a Haryana Government Agency or any local authority other than Haryana [Shehri Vikas Pradhikaran.]

(2) Nothing in this Act shall be construed as enabling the [Pradhikaran] to dispose of land by way of gift, but subject to this condition, reference in this Act to the disposal of land shall be construed as reference to the disposal thereto in any manner, whether by way of sale, exchange or lease or by the creation of any easement right or privilege or otherwise.

(3) <u>Subject to the provisions hereinbefore contained, the Authority may sell, lease, or otherwise transfer whether by auction, allotment or otherwise, any land or building belonging to it on such terms and conditions as it may, by regulations, provide.</u>

(4) The considerations money for any transfer under sub-section (1) shall be paid to the [Pradhikaran] in such manner as may be provided by regulations.

(5) Notwithstanding anything contained in any other law, for the time being in force, any land or building or both, as the case may be, shall continue to belong to the [Pradhikaran] until the entire consideration money together with interest and other amount, if any, due to the [Pradhikaran], on account of the sale of such land or building or both is paid.

(6) <u>Until the conditions provided in the regulations are fulfilled, the transferee shall not transfer his rights in the land</u>

or building except with the previous permission of the [Pradhikaran], which may be granted on such terms and conditions, as the [Pradhikaran] may deem fit."

(emphasis supplied)

A perusal of the above clauses of Haryana Shehri Vikas Pradhikaran Act, 1977 reveals that the Authority may impose conditions on the right of the allottee to further transfer the land or building. The conditions as incorporated in Condition No.24 of the letter of allotment thus has to be seen in the light of the above provisions of the Haryana Shehri Vikas Pradhikaran Act, 1977.

Further, the Haryana Urban Development Authority (Disposal of Land and Buildings), Regulations 1978 also empowers the HSVP to impose such conditions as may be decided by the Chief Administrator. The said regulations read thus:-

"15. Transfer of rights in the land/building by the transferee or lessee.-

The transferee or lessee shall not transfer his right in the land/building except with the previous permission of the Estate Officer. The Estate Officer while granting such permission may impose such conditions, as may be decided by the Chief Administrator, from time to time."

Further, it is also seen that the Condition No.24 was never in challenge by either respondent No.1 or the original allottee. In the absence of raising a challenge to the said conditions, it cannot be held at this juncture that the same are not binding or enforceable against the respective parties. Since the parties in question had accepted the terms & conditions, the same cannot be interpreted to have no bearing on the right of the HSVP especially after the HSVP has invoked its such right.

The supremacy of law has to stand above the individual interest and concessions in derogation of supremacy of law erode its enforceability. People cannot be permitted to perceive that law would never catch up or that even if it catches up, they can get free by seeking sympathy. Showcasing sympathy although may not be undesired, however, where such sympathy breaches the statutory obligations and mandate, the Court is required to balance the circumstances and take effective steps to uphold the supremacy of law without being seen siding with the persons who have violated the mandate of law for their own benefit. The plea of being under privileged as a shield against enforcement of law often promotes violates and discourages compliance. The concessional allotments are funded through public funds and cross-subsidies by citizens to uplift the living standard of people pleading need. The same cannot be permitted to be deployed as a means of an additional income. When a person claims equity, his actions should reflect innocence and not a willful disobedience of law.

Even otherwise, in so far as the right of the respondent No.1 to be compensated for being mislead to purchase the said property by Smt. Bhagwan Devi and/or Smt. Seeto Devi, she would be at liberty to prosecute her vendors and to seek compensation for the loss that may have occasioned to her and that the liability of such lapses committed by her vendor cannot lead to creation of a binding obligation against the instrumentalities and agencies of the State. The award of the PLA (PUS), Sirsa thus suffers from not only mis-interpreration of terms and conditions of allotment of allotment but also from not considering the laws relating to interpretation of documents. The same would thus suffer from an illegality, impropriety and mis-appreciation of the facts of the case.

The present writ petition is accordingly allowed. The impugned award dated 15.05.2014 (Annexure P-4) passed by the Permanent Lok Adalat (Public Utility Services), Sirsa, is set aside.

May 18, 2023 **(VINOD S. BHARDWAJ)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No