

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

CWP-21305-2023

Date of decision: 22.09.2023

Jasvir Singh and others

... Petitioners

Versus

Collector, Sub-Division Barnala and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Rajesh K. Sheoran, Advocate, for the petitioners.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for issuance of direction for quashing the order of warrant of possession dated 11.08.2023 (Annexure P-17) passed by the learned Collector, Sub Division Barnala.

It has been contended by learned counsel for the petitioners that the predecessor-in-interest of the petitioners purchased mortgagees right on 20.06.1921 and got possession of the said land as mortgagees from Shibu Mal. He submits that respondent No.2 deceased Meeto entered into an agreement dated 01.06.2012 with one Shamsher Singh and despite agreement to sell, she sold the same land to some other persons vide sale deed dated 01.12.2017. He submits that the application filed by respondent No.2 under Section 4 of Redemption of Mortgage (Punjab) Act, 1913 (for short, 'the Act') for redemption of mortgage of property, was allowed by the learned Collector, Sub Division Barnala vide order dated 27.12.2012, which was challenged by the petitioners by filing suit under Section 12 of the Act alongwith an application under Order 39 Rules 1 & 2 CPC for staying the order dated 27.12.2012. He submits that the Civil Court dismissed the application vide order dated 10.05.2013 and thereafter, the civil suit filed by the petitioners was also

dismissed vide order dated 15.11.2021, which was further challenged by the petitioners. He submits that the petitioner filed CWP-10107-2018, challenging the order dated 20.03.2018 passed by the Collector, which was dismissed as withdrawn with liberty to file fresh one. Thereafter, the petitioners filed CWP-10233-2023, challenging the order dated 20.03.2018 and the same was allowed to be withdrawn with liberty to avail alternative remedy vide order dated 11.05.2023. It is submitted that respondent No.2 filed application dated 20.03.2023 for restoration of execution, for issuance of warrants of possession and for grant of police assistance, which was allowed vide impugned order dated 11.08.2023 by the learned Collector in violation of principle of natural justice. It is submitted that the petitioners were not served during the Court proceedings as petitioner No.3 Sukhdev Singh had already died. He also submits that the petitioners and respondents are from the same family. He submits that though the petitioners are mortgagee but no application for redemption was filed within 30 years and thus, the application for redemption of the mortgaged property in question, was illegally accepted. He submits that the impugned warrants of possession have been issued totally in violation of principle of natural justice and the deserve to be quashed.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is an admitted fact that the petitioners before this Court are the mortgagee against whom an application under Section 4 of the Act for redemption of the disputed land was filed, which was duly accepted by the Collector, Sub Division, Barnala vide order dated 27.12.2012. Respondent No.2, thereafter, also filed an application for possession of the land on 26.09.2017. This is also an admitted fact that both the sides are from the same

family and the petitioners are mortgagee, whereas, the respondents are the mortgagors. As per settled provisions of law, once a mortgage, always a mortgage. Redemption application filed for redemption was duly accepted and the possession was directed to be handed over to the respondents. There is nothing to show that the order passed for executing the redemption petition was ever set aside by any higher Court. Thus, in the considered opinion of this Court, the impugned order, wherein, warrants of possession have been issued for the execution of the redemption proceedings, suffers from no illegality. Thus, finding no merit in the present petition, the same is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

22.09.2023
sharmila

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No