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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

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CWP-10741-2017 (O&M).
Date of Decision: 03.12.2024.

KULWANT KAUR SIDHU

... Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

... Respondent(s)

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

Present: Ms. Meena Bansal, Advocate,
for the petitioner.

Mr. B.K. Mehta, Advocate,
(Through Video Conference)
for respondent No.2.

Ms. Akshita Chauhan, DAG, Punjab,
for respondents No.3 and 4.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the notice dated 28.04.2017 issued by the Cantonment Board, Ferozepur, under Section 320 of the Cantonments Act, 2006, through its Chief Executive Officer, directing the petitioner to remove the unauthorized construction failing which authorities shall remove it at the cost of petitioner.

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2 Counsel for the petitioner contends that Bungalow No.82 was purchased by the petitioner vide agreement to sell dated 15.03.2013 from Seema Narula and Sudesh Narula who were the owners to the extent of half share each in the property for a total sale consideration of Rs.12 lakhs (no sale deed, however, has been placed on record/registered).

3 It is claimed that the petitioner had been informed by her vendors Seema Narula and Sudesh Narula that they had further purchased the aforesaid property vide Vasika No.5760 dated 13.02.2009 registered in the office of Sub Registrar, Ferozepur from Manjit Singh and Satwinder Singh, sons of Jaswant Singh son of Arwail Singh, who had purchased the same through a registered Vasika No.2311 dated 03.09.2002, registered before the Sub Registrar, Ferozepur.

4 Be that as it may, counsel for the petitioner contends that certain police officials came to the aforesaid Bungalow No.82 purchased by the petitioner in 2013, to demolish the construction which was informed to her to be unauthorized. An enquiry was accordingly conducted by the petitioner when she came to know that impugned notice dated 28.04.2017 had been issued by respondent No.2 to demolish the same. She contends that the said notice had been issued in the name of Seema Narula and Sudesh Narula who had already transferred the property in favour of the petitioner and as such, the impugned notice was bad. She contends that the petitioner had already submitted a representation dated 11.05.2017 against the above said notice of demolition but the same has not been decided. A

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request has thus been made that the respondents may be directed to treat the present petition as an appeal and take a decision thereupon in accordance with law. She further contends that the Cantonments Act, 2006 provides a remedy of appeal against the order passed under Section 248 of the Cantonments Act, 2006 and that as the predecessor-in-interest of the petitioner had not filed any appeal, hence, the representation submitted by the petitioner may be treated as an appeal and a decision be taken thereupon.

5 Counsel for the contesting respondent No.2-Cantonment Board, however, contends that a mere agreement to sell in favour of the petitioner cannot be construed as a transfer in her favour and that the impugned notice was duly sent to the owner/erstwhile occupier of the said premises. He contends that the petitioner is claiming to be in possession on the basis of an unregistered document which cannot be taken into consideration as a valid document for transfer of title and its execution is denied for want of knowledge since the same was never informed to it as per law.

6 It is also argued that a notice under Section 248 of the Cantonments Act, 2006, had initially been issued to Seema Narula and Sudesh Narula, vendors of the petitioner, and no appeal was filed against the said order. The petitioner at best has stepped into the shoes of her vendor in March 2013. She cannot claim any better title than what had already been vested in her vendors. It cannot be perceived that

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notwithstanding her vendors having not preferred any appeal before the competent authority in a manner known to law, she would nonetheless be entitled to invoke the same. The principle of caveat emptor i.e. “let the buyer beware” is applicable to the facts of the present case and it was for the petitioner to have carried out proper inquiry into the matter and to satisfy herself regarding all the matters including title to the property in question. He submits that a notice under Section 320 of the Cantonments Act, 2006 was issued on 28.04.2017 with a copy thereof having been furnished to the Senior Superintendent of Police, Ferozepur, as well as to the SHO, Ferozepur, for providing police force so as to demolish the unauthorized construction that had been raised within the Cantt. Area.

7 No replication to the written statement had been filed on behalf of the petitioner, hence, the facts as raised in the reply remain uncontroverted.

8 A specific question had been posed to the counsel for the petitioner as to whether the petitioner can exercise any better right than what was available to her vendors, she fairly concedes that she would not be entitled to have any better right than her vendors. On a pointed query that once the vendor has preferred not to file any appeal against the order directing demolition of any unauthorized construction raised in the area and whether any such right can be re-vested in a subsequent vendor, merely on account of transfer of possession; she is not in a situation to refer to any law to substantiate her argument.

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9 Even though the prayer made by the petitioner seems to be innocuous at a first glance but the same has huge cascading effect on legal rights and statutory application.

10 Undisputedly, an order under Section 248 of the Cantonments Act, 2006, was sent to the erstwhile owners Seema Narula and Sudesh Narula on 23.04.2009, against the illegal construction that was required to be demolished. No objections to the said order or appeal against the same was filed by them. Hence, the order passed and the reasons behind passing thereof remain unchallenged.

11 The petitioner claims to be in possession of the property w.e.f. 15.03.2013, which is an unregistered agreement to sell. The same is notarized but is not registered before any competent authority even though it is valued at ₹12 lakhs and would have required a compulsory registration since possession is claimed to have been delivered as well. The said document is not recognized as a document conveying any valid title. The same is also not claimed to have been intimated to the respondent authorities, hence, the agreement never saw the light of the day even till the notice under Section 320 of the Cantonments Act, 2006 was served. The recital shows that the buyer has satisfied herself about the property. Hence, the inference which flows is that she was aware of the order passed under Section 248 of the Cantonments Act, 2006 and yet chose to purchase the same. She cannot thus plead that she was ignorant of the earlier developments or orders. Having chosen to purchase the said property, the

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liabilities transfer along the same and she cannot claim nearly 08 years after the passing of the order under Section 248 of the Cantonments Act, 2006 to be permitted to prefer an appeal when such a right had already been extinguished to her vendor.

12 She has claimed this right from receipt of the notice under Section 320 of the Cantonments Act, 2006, which is more in the nature of an execution order and cannot revive limitation to challenge the original order.

13 Be that as it may, the petitioner has failed to point out as to how the order under Section 248 of the Cantonments Act, 2006, was wrong or in violation of law. If no illegality or perversity is prima facie pointed out, such a plea to treat the writ as an appeal, after nearly 15 years of the passing of the order under Section 248 of the Cantonments Act, 2006 and 07 years after notice under Section 320 of the Cantonments Act, 2006, is nothing more than delaying law taking its own course and enjoying an illegality. A sympathy cannot be mistaken for equity as a tool to blunt the rule of law. Rather, sufficient period already having been availed, the petitioner ought to have complied with law.

14 Having considered the above, this Court has also taken into consideration as to whether there was any error (legal or factual) in the notice that had been sent by respondent No.2 about the unauthorized construction, there is no document available on the record on the strength whereof, it can be said that the initial order dated 23.04.2009 which had

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been passed under Section 248 of the Cantonments Act, 2006, for demolition of the unauthorized construction was invalid or not in accordance with the record. There is also no document appended along with the present petition on the basis whereof, it can be said that the construction mentioned in the said notice was raised in accordance with the procedure prescribed and after taking necessary approvals under the Cantonments Act, 2006.

15 Under the given circumstances, this Court does not find that the petitioner has acquired any better right to reopen an issue that has already attained finality. Once the vendors of the petitioner had not preferred any statutory appeal against the order passed under Section 248 of the Cantonments Act, 2006, it does not lie with the petitioner to come up before this Court after a lapse of more than 08 years (at the time of filing writ) and having acquired possession more than 04 years after the passing of the order, to contend that she has an independent right to raise a challenge to the said notice. She having stepped into the shoes of her vendors and it being incumbent upon the vendee to have conducted proper investigation/inquiry before purchasing the property, would be deemed to know her position in law. Having opted not to do so, petitioner cannot place herself on a higher pedestal. A right lost cannot be given a fresh lease by a mere transfer of possession to another person more-so when there is nothing on record on the basis whereof, this Court may find any prima facie case to even opine that the construction had actually been raised by following the

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procedure prescribed and after obtaining the necessary approvals from the competent authority under the Cantonments Act, 2006.

16 In view of above, considering the case from all the above perspectives, I do not find that the petitioner has been able to make out any case on merits. The present petition is accordingly dismissed.

December 03, 2024.	(VINOD S. BHARDWAJ)
raj arora	JUDGE
<i>Whether speaking/reasoned</i>	<i>: Yes/No</i>
<i>Whether reportable</i>	<i>: Yes/No</i>