

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

107

CWP-29544-2023

Date of decision: 05.02.2024

INDU GARG AND ANOTHER

.....Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present:- Mr. Aman Bansal, Advocate
for the petitioners.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the impugned order passed by the respondent No.3-Deputy Commissioner, Panchkula on a representation submitted by the petitioners.

Learned counsel appearing on behalf of the petitioners contends that the petitioners were defrauded by the accused persons into parting with their money and getting a sale deed registered in their favour with respect to the commercial and residential property situated in Mauza Abdullahpur, Pinjore, Tehsil Kalka, District Panchkula.

Learned counsel appearing on behalf of the petitioners fairly concedes that the criminal proceedings against the accused persons had been initiated at the behest of the petitioners, on account of she being defrauded by them on the strength of forged documents, and that an enquiry on the application submitted by the petitioners was conducted by the Sub Divisional Officer. A report was submitted by the

Sub Divisional Officer wherein he concluded that the registration of the sale deeds was an act of fraud and in the absence of the true owner of the property.

Learned counsel appearing on behalf of the petitioners contends that the respondent-Registrar ought to have also directed refund of the money that had been paid by the petitioners as sale consideration for registration of the sale deed. He further places reliance on a Full Bench judgment of the Allahabad High Court titled as “*Smt. Kusum Lata versus State of U.P.* reported as **2018 AIR (Allahabad) 210** in Writ Civil No. 2973 of 2016 decided on 18.05.2018 wherein it was held that even in the event of allegations of impersonation or fraud, the Registering Authority does not have the power to cancel the sale deed after its registration.

Insofar as the reliance on the above said judgment is concerned, I find that the same would not be applicable to the facts of the present case for reason that in the said case, the document had been cancelled on a mere allegation of fraud whereas in the present case, a specific finding as regards fraud has been returned by the Enquiry Officer. Hence, it is no more a case of mere allegation. Besides, the petitioners have themselves been agitating that they have been defrauded and FIR No. 17 dated 21.02.2020 was got registered by the petitioners at Police Station, Kalka for commission of offences under Section 419, 420, 467, 468, 471 and 120-B IPC. Thus, the petitioners themselves support the substantive finding recorded by the Enquiry Officer.

Insofar as the question of recovery of the amount paid by

the petitioners as consideration, in lieu of sale deed, is concerned, the same is not within the domain of the Deputy Commissioner to issue any such directives. Any such decree for recovery of the monies can only be passed by the Civil Court. A jurisdiction, not vested by statute can not be vested by the Court.

Even otherwise since the criminal proceedings have already been initiated and the petitioners have alternative remedies to seek recovery of such money by institution of appropriate civil proceedings, institution of writ petition, as a mode of recovery of the sale consideration paid by them is not a proper procedure.

Faced with the above, Learned counsel appearing on behalf of the petitioners does not press the instant writ petition so as to pursue his appropriate remedies in accordance with law.

Disposed of as not pressed with liberty as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 05, 2024
Vishal sharma

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