

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

2024:PHHC:172295-DB



(119)

LPA-3325-2024 (O&M)

Decided on: 20.12.2024

Kulwant Kaur

...Appellant

Versus

Union of India and others

...Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS. MEENAKSHI I. MEHTA**

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

Mr. Akash Vashishth, Advocate,
for respondents no.1 & 2.

G.S. Sandhawalia, J.

The consideration in the present Letters Patent Appeal is to the judgment of the learned Single Judge passed in CWP No.10741 of 2017 filed by the appellant, which led to the dismissal of the same on 03.12.2024.

2. The challenge raised in the writ petition as such was to a letter dated 28.04.2017(Annexure P-2) whereby a notice had been issued to Seema Narula (hereinafter called as 'the noticees') and Sudesh Narula for demolition of unauthorized construction made by them in Bungalow No.82, Ferozepur Cantt., details of which were given in notice ibid. The learned Single Judge came to the conclusion that the claim as such of the writ petitioner-appellant was on the basis of merely an agreement to sell dated 15.03.2013(Annexure P-1) with Seema Narula and Sudesh Narula of the said property for the alleged sale consideration of Rs.12,00,000/-. The noticees' as such had earlier purchased the said property on 13.02.2009 from Manjit

Singh and Satwinder Singh sons of Jaswant Singh son of Arwail

Singh, which led the learned Single Judge to observe that having merely an agreement to sell in her favour would not give the writ petitioner-appellant any valid document for transfer of title in her favour. Thus, she could not claim any remedy of appeal against the order passed under Section 248 of the Cantonments Act, 2006 (for short “the Act”) and since the alleged vendors of the writ petitioner-appellant had not preferred any appeal, therefore, the demolition had been ordered regarding the unauthorized construction. The reference was made to the order dated 23.04.2009 and the fact that, thereafter, no appeal had been preferred and merely an alleged agreement to sell, which document was not registered by any competent authority, could not give the writ petitioner-appellant any legal right. The writ petition was filed after a long period of 15 years from passing the order under Section 248 of the Act and 7 years after the notice under Section 320 of the Act and in such circumstances, it is held that the writ petitioner-appellant was not entitled to challenge the order dated 23.04.2009.

3. Counsel for the appellant has submitted that there is an agreement to sell and consideration had been passed and, therefore, the learned Single Judge was not justified in dismissing the writ petition.

4. Perusal of the paper book would go on to show that even a civil suit had been filed by one Mohinder Partap Singh Dhillon against the appellant wherein the plaintiff had claimed possession of the said property on the basis of a registered sale deed dated 07.03.1962 in favour of his father and had claimed that father of the plaintiff had put the present appellant in occupation of the said property who had cordial relations with her and after the death of the father of the plaintiff, the appellant did not vacate the said property and prolonged her stay on one pretext or the other.

The said suit had been resisted by the appellant by filing written statement

and claiming the right as such on the basis of agreement to sell dated 15.03.2013.

5. In its reply filed in the writ petition, the Union of India had placed reliance upon the judgment of the Apex Court rendered in **Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana**, 2011(4) R.C.R.(Civil) 669 (SC), denying the *locus standi* as such of the present appellant to file the writ petition since the claim as such was solely on the basis of an agreement to sell as such. It was mentioned that the suit as such was also a collusive suit and the appellant was the resident of Delhi and not a resident of Ferozepur. The notice dated 23.04.2009 had already been issued under Section 248 of the Act upon the notices as such and the present appellant's name did not figure anywhere in the records of the Cantonment Board, Ferozepur Cantt. and, therefore, there was no occasion as such to give her any information.

6. It is, thus, apparent that prior to the agreement to sell, the authorities had already proceeded against the then noticees and, therefore, merely on the basis of an agreement to sell, the appellant could not seek seeking intervention of this Court while filing the writ petition. The Apex Court, in **Suraj Lamp & Industries Pvt. Ltd.'s case (supra)**, has held that any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property to give such persons cause of action. The relevant paras of the said judgment read as under:-

“11. [Section 54](#) of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This

Court in [NarandasKarsondas v. S.A. Kamtam and Anr.](#) (1977) 3 SCC 247, observed:

A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in [Section 54](#) of the Transfer of Property Act. See *Rambaran Prosad v. Ram Mohit Hazra* [1967]1 SCR 293. The fiduciary character of the personal obligation created by a contract for sale is recognised in [Section 3](#) of the Specific Relief Act, 1963, and in [Section 91](#) of the Trusts Act. The personal obligation created by a contract of sale is described in [Section 40](#) of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein."

In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in [section 5](#) of Transfer of Property Act is used in the wider sense of conveying ownership... ..that only on execution of conveyance ownership passes from one party to another...."

In [RambhauNamdeoGajre v. Narayan Bapuji Dhotra](#) [2004 (8) SCC 614] this Court held:

"Protection provided under [Section 53A](#) of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party."

It is thus clear that a transfer of immoveable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immoveable property can be transferred.

12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.”

7. In view of the aforesaid discussion, we find that the reasoning given by the learned Single Judge does not suffer from any infirmity which would warrant any interference in the present appeal and since the *locus standi* as such of the appellant herself to prefer these proceedings is high questionable, therefore, the present appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

December 20, 2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No