IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

220 (03 cases) **LPA-2270-2017 (O&M)**
Date of Decision :07.05.2026

State of Punjab and others **...Appellants**

Versus

Sanjeev Kumar and another **...Respondents**

LPA-559-2018 (O&M)

State of Punjab and others **...Appellants**

Versus

Avtar Singh and another **...Respondents**

LPA-523-2018 (O&M)

State of Punjab and others **...Appellants**

Versus

Manjit Kaur and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Rahul Rampal, Addl. A.G. Punjab;
Ms. Gagandeep Kaur, DAG, Punjab and
Mr. Yatin Bunger, AAG, Punjab for the appellant-State.

Mr. Baljinder Singh, Advocate for the respondents
in LPA-2270-2017 & LPA-559-2018.

Mr. Prabhajot Singh Chahal, Advocate for
Mr. G.S. Nagra, Advocate for respondents in LPA-523-2018.

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* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present bunch of appeals, the challenge is to the order dated 21.03.2017 passed by the learned Single Judge of this Court in the respective writ petition(s) by which, the cancellation of further sale of Nazool land measuring 158 Kanal, 18 marlas, which was transferred vide Rapat No.127 dated 1.12.1968, by the Government of Punjab in favour of the society consisting of reserved category people namely, The Scheduled Castes Cooperative Land Owning Society Limited, Harbanspura (District Fatehgarh Sahib) (hereinafter referred to as 'Society') as per the Nazool land (Transfer) Rules, 1956 (hereinafter referred to as '1956 Rules') to the respondents herein, has been held to be invalid.

2. Certain facts need to be appreciated for the purpose of the present order.

3. It may be noticed that a decision was taken by the Government of Punjab to allot the Nazool Land in question in favour of the Societies for further allotment of same to the members belonging to reserved category for their upliftment in society. The said land was transferred to the society in the year 1968 as per the 1956 Rules. At the time of the transfer of the said land, there existed no restriction on selling the said land further by the society concerned, apart from only one restriction that the sale could not be done prior to making payment to the Government by the society concerned of such transfer of land, even though, there existed a relaxation clause that the Government can still give the permission for such further sale keeping in view the general interest of the society. For ready reference, Rule-7 of the 1956 Rules is reproduced as under:-

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> 7. "*No cooperative society to which land has been transferred shall at any time before the last installment of price has been paid, except with the express permission in writing of the State Government, alienate, whether permanently or temporarily, the Nazool land transferred to it."*
>
> *Provided that in granting permission the State Government shall have regard to the general interest of the Cooperative Society."*

4. In the year 1970, the rules with regard to further transfer of the Nazool land allotted to such Society, were amended to mean that any such land allotted by the Government to the Society could not be sold further within a period of 10 years of allotment. The said rule was framed to ensure that the land remained in the hands of the Society or with the members of such society belonging to the reserved category constituting the society keeping in view the purpose for which same was allotted. For ready reference, the amended Rule-7 (as amended in the year 1970) of the 1956 Rules is reproduced as under:-

> "*7.* ***Bar of alienation.***
>
> *- [No Co-operative Society or the individual member of the Scheduled Castes, as the case may be, small, except with the express permission in writing of the State Government, alienate, whether permanently or temporarily, the nazool land transferred to it/ him for a period of ten years from the date they had Cooperative Society or the individual member of Scheduled Castes gets all rights title and interest in the said Nazul land. Thereafter its alienation shall be strictly restricted to the members of the Scheduled Castes only.] [Substituted vide No. 226-R-III-70/8405, dated the 28th October, 1970.] [Provided that in granting permission the State Government shall have regard to the general interest of the Co-operative Society or individual member to the case may be."*

5. Thereafter, in the year 1991, the said rules of 1970 were further amended to mean that the land will be transferred only by way of inheritance to the members of the scheduled caste of such Society, who have been

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allotted the said land i.e. to mean that such land cannot be sold outside the family of the members who have been allotted such land. For ready reference, the amended Rule-7 (as amended in the year 1991) of the 1956 Rules is reproduced as under:-

> ***7.*** *Bar of alienation: No co-operative society or the individual member of scheduled castes, as the case may be, shall alienate or sell or mortgage the Nazool land and such land shall go down only in inheritance."*

6. Despite the said rule with its amendment being in operation barring further sale, certain Societies/members of such societies belonging to reserved category, which societies/members of societies had been allotted the Nazool land which was allotted by the Government, were violating such rule in order to further sell such land to the general category people hence, a Public Interest Litigation came to be filed before this Court being **CWP(PIL)-5085-2011** requesting for constituting a special investigating team to look into the sale of allotted Nazool land being contrary to aforesaid the rule as well as being violative of the purpose for which same was allotted.

7. While hearing the said petition, the discrepancies of selling of the Nazool land allotted to such Society, further to the private individuals belonging to general category, were considered and a direction was given by this Court that once, there was a bar imposed under the Nazool Lands (Transfer) Rules 1970, which was later on amended in the year 1991 (hereinafter referred to as '1970/1991 Rules') to the extent that the said land allotted to society/members of society cannot be sold under any circumstances and the same will only be transferred by way of inheritance, then why the Government is becoming a part of such sale which is contrary

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to the 1970/1991 Rules. A direction was given by this Court to correct the illegality and to take action against such illegal transfers of land by the society/members of society, which transfers were *void-ab-initio* as being contrary to the 1970/1991 Rules.

8. Keeping in view the direction given by the Division Bench of this Court in CWP(PIL)-5085 of 2011, an action was initiated by the Government qua the further sale of such Nazool land by society/individual to private persons being contrary to the 1970/1991 Rules, by giving of show cause notices to the beneficiaries of such illegal transfer of the land. Thereafter, taking into consideration the replies so filed, such transfers of Nazool land made by the Society/members of society to the private individual were held to be bad and the sale deeds so entered into, were cancelled, keeping in view the direction given by the Division Bench of this Court in CWP(PIL)-5085 of 2011.

9. Thereafter, aggrieved by the said order of cancellation of sale of Nazool land in favour of general category private individuals i.e. the respondents herein, who were the beneficiaries of transfer of such Nazool land, filed a writ petition(s) challenging the cancellation of the transfer of land in their favour, which writ petition(s) have been allowed by the learned Single Judge vide order dated 21.03.2017, to hold that the amendment in the rules done in the years 1970/1991, pertained to bar on the transfer of only that land which was transferred by the Government to society/individual after promulgation of such rules whereas the Nazool land transferred by the Government prior to the year 1970 in favour of society qua further transfer of such Nazool land, same will be governed by the rules which were applicable initially at the time of transfer of land to the society by the

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Government even if at the time of further sale, there was a restriction on such further sale of Nazool land allotted to the society.

10. Learned counsel for the appellant(s) submits that the further transfer of Nazool land allotted initially in favour of society with a particular purpose, has to be seen keeping in view the rule which governs further sale of land on the date on which the further transfer of such land took place and not the date on which the land was initially allotted to a particular Society/individual by the Government. Further, the jurisdiction of the society/individual to further transfer such Nazool land has to be looked into, keeping in view the rule prevalent on the date when the Nazool land was sought to be further transferred to the private individuals and the same has no connection as to what rules existed for further sale when the land was initially allotted and therefore, the learned Single Judge vide order dated 21.03.2017, misdirected to grant the relief to the private respondents by recording a finding that the Rules which governed the further sale of Nazool land at the time of allotment of land i.e. in the year 1968 are to be taken into account and not the rules, which are in operation on the date of further transfer of Nazool land by society.

11. Learned counsel for the appellant-State further submits that the said view taken by the learned Single Judge is contrary to the jurisdiction given to the Society, which is required to be seen qua further sale of Nazool land allotted in accordance with the rules which were prevalent on the date of such further sale conducted by the society hence, all the land under the jurisdiction of the Society, the rules which are applicable on the date when the transfer subsequent to allotment has been made, ought to have been seen and therefore, the order passed by the learned Single Judge is liable to the set

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aside.

12. Learned counsel for the respondent(s) on the other hand supports the view taken by the learned Single Judge to hold that any land which was allotted to the Society prior to 1970, i.e. when there was no such restriction upon further transfer of the Nazool land by society concerned, such land could be sold even after the amendment to the rules in the years 1970/1991 for the reasons that even though there existed a bar on further transfer of such allotted Nazool land to a private general category individual, but such bar can only be applied upon the land which was allotted to the society after the amendment. Hence, putting restriction upon the further sale of such Nazool land with retrospective effect amounts to taking away the vested interest of the Society/individual to sell the land, which is impermissible, therefore, the view taken by the learned Single Judge is perfectly valid and legal and the impugned judgment is liable to the upheld. Reliance is being placed upon the judgment of the Division Bench of this Court in ***CWP-4103-1995 titled as Scheduled Castes Co-Op Society vs. State of Punjab and another, decided on 15.10.2004*** to contend that crystallized rights cannot be taken away by way of applying the amendment retrospectively.

13. We have heard learned counsel for the parties and have gone through the record with their able assistance.

14. The question which needs to be adjudicated and decided in the present bench of appeals is whether, for the further transfer of Nazool land allotted in favour of the Society, the rules which were applicable qua further transfer of land on the date of further transfer are to be seen or the rules qua further transfer which were applicable on the date when the land was

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initially allotted to the Society are to be taken into account by ignoring amendments to the rules qua further transfer of Nazool land.

15. It may be noticed that for the purpose of adjudication of the said issue, the rules which were applicable on the date of further transfer are to be seen irrespective of the rules which were in operation qua further transfer of allotted Nazool land at the time of allotment of the land to the Society by the Government. In case, the Government decided that any Nazool land which is allotted to the Society is for a particular purpose of upliftment of people belonging to reserved category and to ensure that such land is not taken away by the buyers belonging to the general category, the amendment so made in the year 1970 and again in 1991 to the rules governing qua the further transfer of Nazool land which was allotted to such Society, has to be given precedence over the rules which were prevalent for further transfer at the time of initial allotment of the land to such Society. Therefore, any amendment made in the rules governing further transfer of such Nazool land allotted in favour of a society, cannot be said to take away the crystallised rights of such society for further sale of land.

16. The question which arises is whether there existed any crystallised rights in favour of the Society which are being pleaded by the respondents herein as accepted by the learned Single Judge.

17. It may be noticed that the Society is to be governed by the Rules and the rules decide the jurisdiction of such society for further transfer land allotted to it by the Government. Hence, the further transfer of land by such society is to be seen keeping in view the date of such further transfer of land by the society concerned in favour of the private individuals. Further, the rules which were applicable qua the further transfer of allotted Nazool

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land on the date when the land was allotted by the Government to such Society, in case amended before such further transfer of land by the Society in favour of general category people, such amended rules as per year 1970/1991 cannot be ignored and have to be adhered to while exercising the right of further transfer of such Nazool land allotted to the society which means that the amendment does not take away any crystallised rights retrospectively as amendments are being implemented qua further transfers which are actually done after promulgation of 1970/1991 Rules, such amendment is valid prospectively and is being implemented prospectively only.

18. The next question which arises is whether, in the present case, the crystallised rights are being taken away or not and whether 1970/1991 amendments to the rules are being implemented with retrospective effect.

19. It is a conceded position that the rules incorporating the amendment of the year 1970/1991 debarring the Society for the further sale of the land to the general category people, came into being after the Nazool land had already been allotted to the society by the Government 1968. As per 1970/1991 amendments to the Nazool land Rules, any Nazool land allotted to the Society for the benefit of its members, cannot be further transferred except by way of inheritance. Hence, the said amended rules will be made applicable prospectively and in the present case, the land was further transferred by the Society in favour of the private respondents herein in the year 2006 i.e. 36 years after the bar for further transfer of Nazool land had been imposed by the Government. Hence, it may noted that it is not a case of retrospective operation of the amendment done in 1970/1991 to the Rules rather, the said amended rules were already in

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operation in the year 2006 when the land was further transferred to the private individual belonging to general category by the Society in the year 2006. Hence, the claim that there existed crystallised rights in favour of the Society to further sell the said land, is incorrect and cannot be accepted.

20. The view taken by the learned Single Judge in the facts and circumstance of the present case that the rules qua further transfer of Nazool land allotted, which were applicable at the time of the allotment of the land to the society by Government is to be seen irrespective of the subsequent amendments so made qua further transfer of such allotted Nazool land so as to hold that there existed the crystallised rights of the societies for further transfer of such land which cannot be taken away, is incorrect as the amendment of the rules done in the year 1970/1991 qua further transfer is not applied retrospectively to any such further transfer of Nazool land which has already been done prior to the promulgation of the amendment in 1970/1991 to such rules. It is not the case in hand that further transfer of land by society had already taken place prior to the amendment in 1970/1991 but still the same if applied retrospectively, the view taken by the learned Single Judge would have been correct in case any further transfer of land by the society is prior to promulgation of amendments done in 1970/1991 to the Rules, therefore, it cannot be said that the same would take away any vested rights in the facts and circumstances of present case.

21. Even the judgment of the Division Bench of this Court which is being relied upon by the learned counsel for the respondents i.e. ***CWP-4103-1995 titled as Scheduled Castes Co-Op Society vs. State of Punjab and another*** only means that any further transfer already made, will not declare such transfer bad in view of the subsequent amendments made in the rules

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governing the transfer of such land hence, same is not applicable the case in the present facts and circumstances as further transfer of Nazool land in favour of private respondents was done much later than the year of amendment of 1970/1991 Rules i.e. in the year 2006.

22. In the present case, as the further transfer of the land was made by the society after the amendment to the rules in 1970/1991 hence, the said judgment will not come to the rescue of the respondents to claim that any of their vested rights has been taken away.

23. Learned counsel for the respondents have placed reliance upon paragraph-30 of the said judgment, which is reproduced as under:-

> "*30 A right came to be vested with the petitioner society on transfer of the land to it way back in 1958-59, which was followed by a formal order of transfer that came to be issued by virtue of the provisions contained in Rule 11 of the Rules. This vested right, it is well setttled proposition of law, cannot be taken away by the amendments brought about in the rules retrospectively. We need not support the aforesaid observations by judicial precedents, the same being, as mentioned above, settled by now. However, we will only make a mention of one judgment on the issue in Garikapati Veeraya versus N, Subhas Choudhry and others (2), wherein after holding that right of appeal was not a mere matter of procedure but was a substantive right, it was further held that a vested right of appeal could be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise. It was also held that a cardinal ride of construction while interpreting the statute is that, if possible, vested rights have to be respected and the golden rule of constructions is that in the absence of anything in the enactment to show that it is to have retrospective effect, it cannot be construed to have the effect of altering the law applicable to a claim in*

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litigation at the time when the Act was passed."

24. A bare perusal of the above reproduction would show that any further transfer of the land made prior to the year 1970 is held to be valid. In the present case, the land was transferred by the Society in the year 2006 i.e. 36 years after the amendment to the Rules in 1970/1991. Hence, the said judgment will not come to the rescue of the respondents to contend that any of their vested rights had been taken.

25. Learned counsel for the respondents further argues that once the sale deed was already executed on 12.05.2006, the State could not have set aside the same.

26. It may be noticed that in ordinary course, the said position put forth by the respondents is a valid argument but once, a direction was given by this Court in Public Interest litigation to undo the illegality done and a further direction to file the status report of the action so taken was also given, the State was obligated to comply with the order passed by the competent Court of law. Hence, in the facts and circumstances of the present case, the cancellation of the sale deed of further transfer of land by the society in favour of private respondents being contrary to the 1970/1991 Rules, was perfectly valid and legal and was in compliance with the direction given by the Coordinate Bench of this Court in CWP(PIL)-5085 of 2011, which judgment of Division Bench has already attained finality.

27. Learned counsel for the respondents further submits that the respondents were the bonafide buyers and therefore, they should be saved.

28. It may be noticed that the said argument cannot survive at the cost of the competence/jurisdiction of the Society to further sell the land in favour of the general category persons.

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29. Further, the land was allotted to the reserved category members of Society with the purpose of giving them certain rights for their upliftment in life and further selling of the said land contrary to the purpose for which it was allotted, cannot be treated as genuine purchase at the hands of the general category people. Hence, in the facts and circumstances of the present case, the card of "genuine buyers" cannot be allowed to be played so as to allot the land which was allotted to the Society for the upliftment of a particular section of such society involving people of reserved category.

30. No other argument has been raised.

31. The order is dictated in the open Court in the presence of the learned counsel for the parties.

32. Keeping in view the facts and circumstances noticed hereinbefore, the impugned order passed by the learned Single Judge in the respective writ petitions is perverse not only to the facts but also to law. Hence, the same cannot be sustained in the eyes of law and is accordingly set aside.

33. Further, it is made clear that qua any payment of amount given by the respondents to the Society qua the transfer so made, they will be free to avail appropriate remedy in case they want refund of such payment which was made to the society by them.

34. Civil miscellaneous application pending if any, is also disposed of.

35. A photocopy of this order be placed on the file of connected cases.

(HARSIMRAN SINGH SETHI)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

May 07, 2026
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Whether speaking/reasoned : Yes
Whether reportable : Yes

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