
Before V.K Bali & Jasbir Singh, JJ.

SCHEDULED CASTES COOPERATIVE SOCIETY,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 4103 of 1995

15th October, 2004

Constitution of India, 1950—Art. 226—Nazool Lands (Transfer) Rules, 1956—Rls. 5, 6, 7 & 11—Notification dated 8th May, 1957 inserting Rl. 9—A—Notification dated 28th October, 1970 substituting Rls. 7 & 11—Allotment of Nazool land to a Cooperative Society in 1958—59—Society improving the land by dint of their hard labour and spending lot of money—Society paying all the instalments due to it—No default in the payment—Formal order of transfer issued to the Society in 1981—Rl. 5 provides that as soon as a Cooperative Society is formed in a village Nazool land in that village is to be transferred to it—Rl. 11 provides that on transfer of land under Rl. 5 the certificate of transfer has to be issued by the Collector on payment of first instalment of the price—Once the land had been transferred and the first instalment paid order of transfer could not be cancelled for non-payment of the price—Rl. 7 deals with bar of alienation by a Society before the payment of last instalment of price except with the express permission in writing of the State Government—No permission required to alienate the land if the Society had paid the entire price towards instalments—After having transferred the land to the Society the Government has no power to cancel the same by virtue of the provisions of the unamended Rules—Reversion of land to Government only in the event of either for non-payment of last instalment or on dissolution of the Society—Once the Society was vested with complete title of the land and a right to alienate the same being an absolute owner then this right cannot be taken away by the amendments brought about in the rules retrospectively—Incorporation of the clause regarding non-alienation of the land in the sale deed wholly illegal and not binding on the rights of the Society—Order of the State Government cancelling the land of the Society liable to be quashed.

Held, that way back in 1958—59, all rights, title and interest of the land had since already been passed over to the petitioner Society, Concededly an order under Rule 5 of the Rules for transfer of the land which has not been produced before us despite the order passed to that effect on the plea that the same was not traceable, was not a mere order of allotment. Transfer of the land was complete when order to that effect was passed under Rule 5 of the Rules. Once the land had been transferred and the first instalment paid, order of transfer could not be cancelled for non-payment of the price. At the most, the Government could resort to recovery proceedings as arrears of land revenue. It is only in the event when before payment of last instalment, Cooperative Society as such is dissolved that the land could revert to the Government. In no other event, thus, transfer made to an individual or a Cooperative Society could be cancelled.

(Para 27)

Further held, that the petitioner Society had complete title of the property transferred to it without there being any embargo to alienate it, wholly or in part. There was no justification for the authorities to put an embargo on the right of the petitioner society to alienate the land, wholly or in part and, therefore, the condition mentioned in the sale deed would and cannot be binding upon the petitioner society. The authorities, it appears, have inserted the condition in the sale deed only on account of change in the rules. Rules 7 & 11 of the Rules had since been substituted by virtue of notification dated 28th October, 1970 i.e. before the sale deed came to be executed. Once the petitioner society was vested with complete title of the land and had a right to alienate the same being an absolute owner far before notification dated 28th October, 1970 came into being, condition of non-alienation incorporated in the sale deed on the dint of amended provisions of the Rules, could not be binding upon it.

(Para 29)

Further held, that 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 cannot be taken away by the amendments brought about in the rules retrospectively.

(Para 33)

Further held, that the land was transferred to the petitioner Society which was followed by a formal order of transfer in 1981. There was no embargo so as not to alienate the land, either in the transfer order, be it of 1958-59 or 1981, nor was there any impediment in the way of petitioner society in selling the land under the Rules that were in existence at the time when transfer order was made and further that subsequent amendments brought about in the rules could not apply retrospectively. Incorporation of the clause regarding non-alienation of the land incorporated in the sale deed was wholly illegal and not binding on the rights of the petitioner society.

(Para 42)

Further held, that setting transfer order with regard to a major chunk of land, which is still owned by the petitioner society, after it remained in possession of the same by now for about half a century and 36 years from the date when it was transferred and which has since been cultivated by them by the dint of their hard labour and spending lot of money and on which, fate of so many families depend, would be iniquitous, unjust and unfair, Order, Annexure P-11, has, thus, to be quashed.

(Para 43)

J. S. Toor, Advocate, *for the petitioner*.

Swati Gupta, AAG, Punjab.

H.N. Mehtani, Advocate, *for the respondents*.

JUDGMENT

V. K. BALI, J

(1) A parcel of 'Nazool land', which as per its very definition is the one, which has escheated to the State Government and which normally is an inferior land, was allotted way back in 1958-59 to the petitioner, a Scheduled Castes Co-operative Society, Village Jaula Khurd and,—*vide* impugned order, Annexure P-11, dated 19th December, 1994 has since been cancelled after the petitioner society had remained in possession thereof by now for about 46 years and for 36 years, when Order, Annexure P-11, came to be passed. It is this order, which has been challenged by the petitioner society through present petition filed by it under Article 226 of the Constitution of India.

(2) The present petition was admitted and ordered to be heard along with Civil Writ Petition No. 6795 of 1995. We are informed that since significant questions of law were involved in the writ petition aforesaid, same was admitted to DB. Inasmuch as, points involved in the present petition were similar to the one giving rise to Civil Writ Petition No. 6795 of 1995, the same was ordered to be listed for hearing along with the writ petition aforesaid. The said writ petition, however, it has further been informed during the course of arguments, was allowed on the short ground that no notice or a proper notice preceding the order of cancellation was given to the petitioner in the said case, thus, leaving the questions of law to be decided in the present case.

(3) In the context of the facts and circumstances of the case, as shall hereinafter be given, what has primarily been debated before us is applicability of the amended provisions of Nazool Lands (Transfer) Rules, 1956 to the allotments, that were made prior to such amendments. To be specific, the question that requires adjudication in the matter is as to whether even if there was no provision of cancellation of allotment if transferee society had sold a part of the land, subject matter of the allotment, under the rules when allotment was made the Government could yet cancel such allotment on the dint of the provisions authorising cancellation in the event as mentioned above when power to cancel the allotment was conferred by virtue of amendment of the rules. The back drop of events culminating into filing of present writ petition requiring the answer to the question, as posed above, need necessary mention.

(4) Scheduled Castes Co-operative Society, the petitioner herein, is a registered Co-operative Society, having been registered on 24th October, 1958 at No. 372 as per the certificate of registration issued under Section 8(1) of Punjab Act, XIV of 1965. It is a Joint Farming Society. Petitioners 2 to 9 are the members of the Co-operative Society and are permanent residents of village Jaula Khurd. There was available Nazool Land situated within the revenue estate of village Jaula Khurd, measuring 381 bighas and 8 biswas ownership whereof, vested in the State of Punjab. The Government of Punjab framed rules, known as Nazool Lands (Transfer) Rules, 1956 (hereinafter referred to as 'the Rules'), Annexure P-2. It requires to be mentioned that these rules were made by the Government of

Patiala and East Punjab States Union and were adopted by the Punjab State after the merger of States of Punjab and Pepsu with effect from 1st November, 1956. It is not disputed that these Rules came into being by virtue of notification dated 28th May, 1956 and became effective from 1st November 1956. It is also not in dispute that whatever changes or amendments were brought about, as shall be specified insofar as these are relevant, the same were also by virtue of the notifications.

(5) It has been the case of the petitioner that the Nazool Lands, wherever existing, were to be transferred to Co-operative Society of Scheduled Castes, incorporated under the Co-operative Societies Act. Whereas, Nazool Land of less than the area of 10 acres could be transferred to individual members, the Nazool Land with an area of more than 10 acres was to be transferred to the Co-operative Societies only. In wake of the Rules, the petitioner society was transferred Nazool Land measuring 381 bighas and 8 biswas and the society was put in physical possession of the land in the year 1958-59 details whereof, have been given in paragraph 6 of the writ petition. The petitioners society, after taking the possession of the land, started improving the same. They pooled their resources and joined their heads for making the land cultivable. In its meeting dated 23rd September, 1960, the petitioner society passed a resolution, Annexure P-3, that the members of the society should, whatever agricultural implements they have and which can be used for the purpose of the society, be evaluated and handed-over to the society and the price thereof be considered as trust money of the share holders with the society. As a result, number of bullocks, owned by the members, agricultural implements to be used for agricultural purposes were evaluated and handed-over to the society and it was resolved that a scheme be prepared for sowing the Rabi crop of 1961. It was on 24th September, 1960 that Harbhajan Singh, Farm Supervisor of Co-operative Society, Patiala alongwith Hardyal Singh, Sub Inspector, Co-operative Society, Lalru, visited the society, checked its records, physically inspected the fields and made a report in the proceedings book of the society to the effect that he had visited the society alongwith Hardyal Singh, Sub- Inspector, Co-operative Society, Lalru and called the general body meeting, in which the possibilities of starting joint agriculture were discussed. The members put-forward the difficulties of starting joint cultivation at that state. It was pointed out that

7 members were cultivating the land of the society as well as the land taken by them on lease in varying amounts. It was also pointed out that those, who have worked harder and taken the land on lease, cannot be compelled to share the fruits of their labour at this stage. They, however, agreed to take up joint cultivation with effect from May, 1961, i.e., beginning of new agricultural year. The visiting officer confirmed that the members have evaluated the bullocks and other implements of common use and pooled under the name of the society. They also agreed to keep account of income and expenditure regularly. On the physical verification of the fields, the visiting officer of the Co-operative Department, found the following areas under cultivation :—

Total area	=	79.4 Acres.
------------	---	-------------

Under cultivation	=	75 Acres.
-------------------	---	-----------

Rabi Crop 1961

Wheat	=	22 Acres.
-------	---	-----------

Wheat and gram	=	16 Acres.
----------------	---	-----------

Sarsoan (Mustard)	=	5 Acres.
-------------------	---	----------

Tarameera (kind of mustard)	=	5 Acres.
-----------------------------	---	----------

Cattle Fodder (Barley+gram)	=	5 Acres.
-----------------------------	---	----------

Jagi (fodder)	=	5 Acres.
---------------	---	----------

Total	=	68 Acres.
-------	---	-----------

(6) The visiting officer suggested to the members of the society that they should sow wheat C-273, a kind of seed, after taking the same from Block Development Office and minimum seed per acre should be sowed 28 Seer. It was further suggested that those members, who cannot plough the fields, should engage themselves in piggery, poultry, dairy farming and pasturing of cattle so that income of the society can be raised. A copy of inspection report dated 24th September, 1960 is annexed as Annexure P-4 with the writ petition. Although the society had decided to do joint farming by pooling their resources but it was found that it was practically not possible, as such the members of the society continued farming individually. Inspection Note dated 25th April 1962 of the Inspector, Co-op. Societies,

Dera Bassi, would show that the society was in possession of 381 bighas and 8 biswas of land out of which 27 bighas was barren and was not cultivable. It has been so mentioned in Item No. 16 of the inspection note, Annexure P-5. The society, in the manner aforesaid, continued to be in possession of the entire land. Meanwhile, the petitioner society tried to obtain copy of the order of allotment of the land but could not do so, as the same was not supplied to it. The society, however, continued in possession of the land as also continued paying the instalments.

(7) On 14th September, 1978, the society moved an application to the Deputy Commissioner, Patiala, that it be supplied copy of the order under which, the land was allotted to it, so that the society could know as to what was the total value of the land and how much more amount is to be paid. But this request of the society was not acceded to and it is the case of the petitioner society that they are not able to produce on record the copy of the allotment order. For about a period of 25 years, the petitioner society continued tilling the land by their own resources and shed their sweat and blood for improving the land. Members of the society planted trees on some area which was of uneven surface and continued sowing crops on the land, which they had levelled and brought under plough. Village Jaula Khurd being of sub mountainous area of Morni Hills had not been cultivated for centuries together because of its uneven surface and rare availability of irrigation water. Sub soil water in the area was very low and even if it was found it was at a depth of 400—500 feet below ground level. Cost of procuring irrigation water in the area was very high and the members of the society, being very poor persons, could not afford the installation of tubewells. They, however, decided to install four number of tubewells in the land so as to make it fertile. For the purpose aforesaid, they approached certain financiers, who obtained their signatures and advanced money, which the members of the society utilised for installing four number of tubewells. However, the persons, through whom the members of the society had raised money, were found cutting the trees planted by the members of the society over the land. Members of the petitioner society objected to it but were retorted with the information that they had purchased the land. Being surprised, the petitioner society filed a suit for permanent injunction in the Court of Sub-Judge Ist Class, Rajpura, seeking permanent injunction restraining the persons, who claimed to be purchasers of

the land, from cutting the trees. The suit was filed in December, 1994. In the plaint, it was clearly mentioned that they had never sold the land to any person and that the documents might have been fabricated. They had not put any person in possession of the land. They produced copies of revenue records to show that they are continuing to be the owner and in possession of the land. After perusal of the documents, learned Sub-Judge Ist Class, Rajpura, passed an order of injunction restraining those persons from cutting or removing the trees from the land in suit. Copies of the plaint and stay order have been annexed as Annexures P-9 and P-10, respectively, with the petition. The petitioners then aver that they were surprised when they received order Annexure P-11, from the Collector, Patiala, to the effect that the land allotted to the petitioner society had been cancelled. It was mentioned in the order that possession of the land shall be taken after initiating proper proceedings under the law. It was also mentioned that notice had been issued to the President of the society and that a copy of the same was delivered to certain members by the Peon of the Naib Tehsildar, Sub Tehsil, Derabassi and on the basis of this, allotment had been cancelled on the ground that the petitioners have violated Rule 7.1 of the Rules, because they had transferred some area of the land to the persons mentioned in the order. It is the positive case of the petitioner society that no show cause notice had been served upon it and, thus, order cancelling the transfer of the land is contrary to the law, arbitrary and violative of principles of natural justice. It is the case of the petitioner society that some persons highly placed had an eye on this land because of the fact that Lalru area had developed into an industrial belt and they wanted to grab this land by one or the other means. It is further the case of the petitioner society that it had not transferred any land to any person. Petitioners reiterate that so called sale deeds are only a made up affairs as, in dire need of money they approached certain financiers, who obtained their signatures on certain papers and then later claimed to have purchased the land. Besides challenging the impugned order, on the facts, as mentioned above, as also on the ground of not following the principles of natural justice, it is then, on the basis of provisions of the Rules pleaded that even if, assertions of the petitioners that they have not sold the land is not believed, the alleged transfer is subsequent to the payment of last instalment and, therefore, there was no bar on the transfer of the land after the payment of last instalment and

further that the condition mentioned in the certificate of transfer for non-alienation of the land was void and was not in accordance with law. The condition as incorporated in the last document, i.e., sale certificate is stated to be against the statute. The petitioners have quoted the provisions of the Rules, which we shall take into consideration while considering the contentions raised by learned counsel representing the petitioners, based on the same.

(8) In response to the notice that has been issued by this Court, written statement has been filed on behalf of respondents 1 and 2 wherein, basic facts of the case have since been admitted. Insofar as, averments made in the petition with regard to the petitioners having been cheated by some influential persons are concerned, same have been denied for want of knowledge. The fact that petitioner society had paid the entire money due towards it by way of instalments has also been admitted. That the petitioner society continued to be in possession of the land has also been admitted. It is then pleaded that the petitioner society had, in fact, sold the land to various purchasers,— *vide* sale deeds dated 10th February, 1983, 15th February, 1983, 3rd March, 1983, 22nd March, 1983, 31st March, 1983 and 12th April, 1983. It is denied that the petitioner society was not issued any show cause notice. Rather it is stated that show cause notice was received by the Society on 7th December, 1993 through its Vice President Bachittar Singh and again show cause notice was issued on 24th August, 1994, which was received by the President of the Society on 27th August, 1994, against the signatures on the back side. Despite the transfers said to have been made by the petitioner society, it is, however, admitted that they are continuing to be in possession. Alongwith the written statement, the respondents have annexed sale deeds said to have been made by the petitioner society and notice sent to the President of the petitioner society by the Collector (DC), Patiala, dated 7th December, 1993, Annexure R-2, as also notification dated 22nd October, 1970, showing the amendment brought about in Rules 7 and 11 of the Rules.

(9) Having examined the pleadings of the parties, time is now ripe to deal with the question requiring an answer by this Court as framed in the earlier part of the judgement. Before, we might, however, take that exercise into hand, it would be necessary to find out the relevant provisions of the Rules and in particular, such provisions that deal with transfer of land and cancellation thereof.

(10) Nazool Land, as per Rule 2 (d) of the Rules, means the land situated beyond two miles of the Municipal limits, which has escheated to the State Government and has not already been appropriated by the State Government for any purpose and such other land as the State Government may make available for being transferred under the rules. By virtue of provisions contained in Rule 3, Nazool land may be allotted to members of Scheduled Castes individually up to the limit of a unit of Nazool land, which is of 10 acres but where the land, subject matter of allotment is more than 10 acres, it can be allotted to Scheduled Castes Land Owing Co-operative Societies, which may be formed by the heads of Scheduled Castes families in accordance with the rules. As per the provisions contained in Rule 5 of the Rules, as soon as a Co-operative Society had been formed in a village, the Nazool Land in that village shall be transferred to it. Rule 6 of the Rules that deals with reversion of the land, reads thus :—

“6. Reversion in the event of dissolution.—If at any time, before the payment of the last instalment of price a co-operative society to which Nazool land has been transferred is dissolved, the Nazool land shall revert to the State Government on payment by the Government of the amount already realized by it towards the price.”

(11) Rule 7 of the Rules dealing with bar of alienation, as it stood prior to the amendment of the rules, reads thus :—

“Bar of alienating.—(1) No Co-operative Society to which land has been transferred shall at any time before the last instalment 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 interests of the Co-operative Society.

(2) Where the State Government permits a co-operative society to permanently alienate the Nazool land transferred to the society, the provisions of rules 4 shall not apply in respect of such land.”

(12) Rule 9 deals with payment of instalments towards price of the allotted land. The price of Nazool land transferred under the Rules is payable in 20 equal six monthly instalments. The procedure for transfer of Nazool land has been prescribed under Rule 10 of the Rules. A Co-operative Society/ individual member eligible under these rules for obtaining Nazool land has to apply in form "A" appended to the Rules to the Collector of the District in which, the Nazool land to be transferred is situate. On receipt of application, the Collector may make or cause to be made such enquiries as he may deem fit for the purpose of verifying the claim of the Co-operative Society/individual member and if the Collector is satisfied as to the genuineness of the claim of the Co-operative Society/individual member, he shall record an order to that effect and thereafter take further steps for transferring the land in favour of the society in accordance with the rules. An order of transfer shall then be issued by the Collector in favour of the Co-operative Society/individual member, Rule 11, which deals with certificate of transfer, states that as soon as the first instalment of price has been paid by the Co-operative Society/individual member, in whose favour the transfer has been made under these rules, the Collector shall grant to the society under his signature and seal a certificate of transfer in form 'B' appended to the rules.

(13) By virtue of notification dated 8th May, 1957 after Rule 9 of the Rules, following Rule 9(A) was inserted : -

- "(A) (i) The arrears of instalments due under these rules shall be recoverable as arrears of land revenue.
- (ii) In case a Co-operative Society/individual member consistently makes default in making payment of two instalments of price of Nazool land, the Collector may review the case and cancel the allotment of land to the Co-operative Society/individual member whereupon the land shall revert to Government.
- (iii) The Co-operative Society/individual member concerned may file an appeal to the Commissioner against the Collector's order within sixty days of the date of that order, and the Commissioner's order passed in appeal shall be final."

(14) By virtue of notification dated 28th October, 1970 for original Rules 7(i) and 11 (i) of the Rules, the following rules were substituted :—

“7. Bar of alienation.—

- (i) No co-operative society or the individual member of Scheduled Castes, as the case may be, shall, except with the express permission in writing to the State Government, alienate, whether permanently or temporarily, the Nazool land transferred to it/him for a period of ten years from the date the said Co-operative Society or the individual member of Scheduled Castes gets all rights, title and interest in the said Nazool land. Thereafter its alienating shall be strictly restricted to the members of the Scheduled Castes only :

Provided that in granting permission the State Government shall have regard to the general interests of the Co-operative Society or individual member, as the case may be.

- “11. Certificate of transfer.—**(i) As soon as the last instalment of price has been paid by the Co-operative Societies or the individual member of the Scheduled Castes, as the case may be, in whose favour the transfer has been made under the Rules, the Collector shall grant to it or him under his signatures and seal a certificate of transfer of ownership in the revised form ‘B’ appended to these Rules.

(15) The relevant provisions of the Rules, reproduced above, would clearly manifest that Nazool land is the one, which has escheated to the State Government and the same can be allotted exclusively to the persons belonging to the Scheduled Castes category, if the extent of the land may be less than 10 acres and to the Co-operative Societies consisting the members of the Scheduled Castes if the extent whereof may be more than 10 acres. It is allotted to the individual member of the Scheduled Castes normally when such individual member does not own any land as a proprietor. By virtue of the provisions contained

in Rule 5 of the Rules, as mentioned above, as soon as a Co-operative Society had been formed in a village the Nazool Land in that village shall be transferred to it. As per the provisions contained in Rule 6 of the Rules, the land would revert to the State Government if at any time, before the payment of the last instalment of price a Co-operative Society, to which Nazool land had been transferred was dissolved. In other words, if the first instalment towards payment of price had been made-over to the Government, the land could not be reverted to the Government. Provisions contained in Rule 7 of the Rules, as originally stood, would show that no Co-operative Society could alienate the land before the last instalment of price had been paid, except with the express permission in writing of the State Government. Proviso to Rule 7 required general interests of the Co-operative Society to be taken into consideration if the Government was to permit alienation of the land to a Co-operative Society. After the transfer, price of Nazool land had to be paid in 20 equal six monthly instalments. There was no provision for recovery of instalments if the same remained unpaid nor there was a provision to cancel the allotment on account of non-payment of the instalments. Once, the land had been transferred after following the procedure as prescribed under Rule 10 of the Rules, certificate of transfer could be issued as soon as the first instalment of price had been paid by the Co-operative Society, as would be made out from the provisions of Rule 11 of the Rules, as mentioned above. The first significant departure from the original Rules came about when the Government issued notification dated 8th May, 1957,—*vide* which, Rule 9 (A) was inserted by virtue of which, the arrears of instalments due under the rules could be recovered as arrears of land revenue and further, in case a Co-operative Society was to make consistent default in making payment of two instalments of price of Nazool land, the Collector could review the case and cancel the allotment of the land to the Co-operative Society. There was no provision under the Rules to recover the unpaid price towards the instalments nor there was a provision for cancellation on account of non-payment of the price. The land could revert to the Government only in the event when before the last instalment had been paid, the Co-operative Society, to which the land had been transferred, was dissolved. The second significant change came about by virtue of notification dated 28th October, 1970, substituting the original Rules 7 and 11, as reproduced above. Whereas, by virtue of unamended provisions of

Rule 7 of the Rules, Co-operative Society, to which the land had been transferred, could not, at any time before the last instalment of price has been paid, alienate the land, except with the express permission in writing of the State Government, by virtue of substituted Rule 7, no Co-operative Society or the individual member of Scheduled Castes, as the case may be, could alienate the land, except with the express permission in writing of the State Government for a period of ten years from the date the said Co-operative Society or the individual member of Scheduled Castes had got all rights, title and interest in the said Nazool land. Thereafter, i.e., even after ten years, its alienation was restricted to the members of Scheduled Castes only. What, thus, transpires from the comparison of unamended and amended Rule 7 of the Rules is that whereas, there was no requirement of a permission of the State Government to alienate the land after the last instalment of price had been paid, by virtue of amended provisions contained in Rule 7 of the Rules, permission in writing of the State Government became a *sine qua non* for transfer before ten years from the date Co-operative Society or the individual member of Scheduled Castes had got rights, title and interest in the property. Further, whereas, under unamended Rule 7 of the Rules, there was no embargo for sale of land before a Co-operative Society or an individual member of Scheduled Castes had got all rights, title and interest in the Nazool land, under the amended provisions of Rule 7, the sale could not be made till such time a Co-operative Society or an individual member of Scheduled Castes was to get all rights, title and interest in the Nazool land. Yet another significant change came about in Rule 11 of the Rules. Whereas, as per unamended provisions contained in Rule 11, a certificate of transfer was to be issued as soon as the first instalment of price had been paid by the Co-operative Society or individual member, as the case may be, by virtue of amended provisions contained in substituted Rule 11, certificate of transfer could be issued after payment of last instalment.

(16) Mr. Toor, learned counsel, who appears in support of this petition, vehemently contends that in 1958-59 when the petitioner society was transferred the land, unamended provisions of the Rules held the field by virtue of which, there was no embargo on the society so as not to alienate the land before last instalment towards the price had been paid and concededly, in the present case, a part of the land was sold, assuming it that the plea raised by the petitioner society

that sale deed were fraudulently converted on some signatures obtained by the financiers, to whom they approached for obtaining loan, after, payment of the last instalment of the price is not believed. Provisions as contained in amended Rule 7 of the Rules could not possibly be applied in the case of the petitioners. To buttress this contention, learned counsel contends that even the respondents were conscious of the provisions of law and, therefore, while ordering transfer of the land to the petitioner society on 22nd July, 1981 when, concededly, all instalments towards price had been paid, no condition was imposed that the petitioners could not alienate the land for a period of ten years. In this connection, learned counsel refers to order dated 22nd July, 1981 passed by the Collector, District Patiala, available at page 47 of the paper book. The order aforesaid recites that it had been made to appear to the Collector by the Tehsildar, Rajpura that a piece of Nazool land, measuring 381 bighas and 8 biswas, which was in possession of the petitioner society, should be transferred under the Rules as amended by Revenue Department Notification No. 1046-J (12) 60/2836, dated 10th February, 1960. It has further been recited that price of the land worked out and assessed by the Naib Tehsildar, Rajpura, which came to Rs. 9240 has since already been got deposited in the Government treasury. The society is, thus, in possession of the land since long and comes under the category of lessee under the Rules and the members of the society are actual tillers of the land, as has been reported by the Tehsildar, Rajpura. Operative part of the order reads as follows :—

“Therefor, in pursuance of the Nazool Land (Transfer) Rules, 1956, as amended by the aforesaid notification, it is formally ordered that the above noted land, measuring 381 bighas 6 biswas be transferred to the Harijan Co-operative Society of village Jaula Khurd, against the payment already made by the Society, i.e., Rs. 9240.”

(17) The mention or words aforesaid notification in the part of the order, reproduced above, does clearly refer to notification No. 1046-J(12)60/2836, dated 10th February, 1960, as that is the only notification reference of which has been given in the order dated 22nd July, 1981.

(18) In the circumstances, as fully detailed above, learned counsel further contends that condition in the certificate of transfer, which was ultimately issued to the petitioner society pertaining to bar of alienation of ten years from the date of issuance of sale certificate is invalid, ineffective and inoperative in the eyes of law.

(19) The other contention, that has seriously been raised on behalf of the petitioner, is that the transfer letter was issued in favour of the petitioner society way back in 1958-59, all the instalments towards price had already been paid due to the petitioner society, the petitioner society had not made any default in the matter of payment towards instalments. Issuance of sale certificate was a mere formality as the land stood transferred to the petitioner society. The Society yet complied with all the terms and conditions of the allotment and, therefore, the sale certificate would date back to the date when the petitioner society had paid its very first instalment. Learned counsel further contends that the right that was vested with the petitioner society by paying the very first instalment, even though in the present case the entire price towards instalments has since already been paid, could not be taken away on the basis of amended provisions of the Rules retrospectively. He also contends that there was no power under the Rules, be it unamended or amended, to cancel the allotment of land and instrument of sale in the event of violation of the provisions contained in Rule 7 and, therefore, the consequences of sale of part of land in contravention of Rule 7 could not result to such disastrous result so as to cancel the entire allotment. Learned counsel further contends that the petitioner society was not heard in the matter as no proper notice was issued to it preceeding the impugned cancellation order, Annexure P-11.

(20) Before we may give our finding on the contentions raised by learned counsel, as noted above, it would be appropriate to mention that it has been the consistent case of the petitioner society that despite best efforts made by it to secure copy of the allotment letter that came into being in the year 1958-59, for which purpose oral and written requests were made, the same was not made available to it. Considering that the allotment order might have some bearing upon the case, when the matter came up for hearing before us on 14th May, 2004, we observed that after hearing the arguments, we are of the view that initial allotment letter/order that came into being way back in

1958-59, whereby land measuring 381 Bighas was allotted to the petitioner society may also have some bearing upon the controversy involved in this case. It was the positive case of the petitioners that even though requests were made in writing,—*vide* application, Annexure P-7, to obtain copy of the allotment letter/order. Same has not been made available to them. After so observing, we directed the respondent to keep the entire records of the case ready by the next date of hearing, which would certainly in any case include the allotment letter/order qua land measuring 381 Bighas, so allotted to the petitioner society for a sum of Rs. 9240. Despite the specific order made to the effect aforesaid, learned Assistant Advocate General, Ms. Swati Gupta, was unable to produce on record the initial allotment letter/order as she stated that part of the record that includes the initial allotment letter/order is not traceable. Considering the fact that entreaties made by the petitioner society to obtain a copy of the allotment letter/order since long and in writing even far before the impugned order, Annexure P-11, came into being and the attitude of the respondent-State which has not supplied the same and further not making the order or even a copy thereof available to the Court would certainly lead to form an opinion that the said allotment order would not contain any condition with regard to non-alienation of the land of the petitioner society. We conclude so on yet another ground that the rules prevalent at the relevant time were such that there was no embargo on the sale of the land so allotted after payment of the instalments, so much so, if the land was to be sold after the payment of instalments, no permission was required. The other significant fact that needs to be noticed is that even while passing formal order of transferring the land by order dated 22nd July, 1981, authenticity of which has not been disputed at any stage, no embargo was put on the petitioner society so as not to alienate the land.

(21) Having noted the facts of the case as also provisions of the Rules, time is now ripe to comment and adjudicate upon the points raised by learned counsel representing the petitioner, as noted above. The first significant question that arises for determination is as to whether the petitioner society was transferred the land when initial order with regard to the land came into being in 1958-59 of the order passed to that effect was only an allotment order, there being a difference between a mere allotment letter and the order of transfer. In case, the petitioner society was transferred the land way back in 1958-59

and that too without any embargo different parameters would follow than that of when it was a case of mere allotment. From the facts, as detailed above, as also the provisions of the Rules, in our considered view, a definite finding can be returned that the petitioner society was transferred the land and it was not a case of mere allotment, insofar as the actual order as such is concerned, the same has not been produced. We have already mentioned above that entreaties made by the petitioner society to give them the order far before even the impugned order came to be passed went abegging. Order passed by us directing the respondent State to produce the said order also met with no success. A presumption has, thus, to be drawn that if the said document was produced, the same would have supported the cause of the petitioner that it was not a mere allotment and was, in fact, an order of transfer. On the basis of available material on records as also on the basis of the Rules governing the field, a finding that it was not a mere allotment order and, in fact, was a transfer order, has also to be returned. In that connection, it may be recalled that when the Society had paid all the instalments towards the price of the land, an order came to be passed on 22nd July, 1981. The same is available to page 47 of the paper book. The order clearly mentions that it had been made to appear to the Collector by the Tehsildar that a piece of Nazool Land measuring 381 bighas and 8 biswas, which was in possession of the petitioner society, should be transferred under the Rules as amended by the Revenue Department Notification dated 10th February, 1960. It has further been recited that price of the land worked out and assessed by the Naib Tehsildar, Rajpura, which come to Rs. 9240, has since already been got deposited in the Government treasury. The Society is, thus, in possession of the land since long and comes under the category of lessee under the Rules and the members of the Society are actual tillers of the land. The order then recites that in pursuance of Nazool Land (Transfer) Rules, 1956, as amended by the aforesaid notification, i.e., 10th February, 1960, as that is the only notification mentioned in the order, it was **formally** (emphasis supplied) ordered that the above noted land, measuring 381 bighas 8 biswas, be transferred to the Harijan Co-operative Society of village Jaula Khurd. Despite the fact that by the time aforesaid order came to be passed, amendments in the relevant rules had also come into being yet, mention in the order is with regard to the Rules that came into being by virtue of notification dated 10th February, 1960 and further

that it was only a formality which was being done. Coming now to the rules and the scheme of the rules governing the field, it would be found out that the Legislature was conscious of the difference between allotment and transfer as, wherever only an allotment was to be made, word 'allotment' has been used and wherever a transfer was to be made, it is clear that word 'transfer' has been mentioned. Whereas, Rule 3 of the Rules deals with the allotment, the succeeding Rules deal with the transfer. As per the provisions contained in Rule 3 of the Rules, in a village where Nazool Land available is less than 10 acres and is being leased to members of Scheduled Castes, it may be allotted to the present lessees individually upto the limit of a unit of Nazool Land provided they do not own any land of their own. Those, who own some land, they may be allowed such area as would make up the unit of Nazool Land as defined in the rules, when added to their own land, and the rest may be allowed to others. The rule further recites that where Nazool Land available is 10 acres or more, the Scheduled Castes Land Owning Co-operative Societies may be formed by the heads of the Scheduled Castes families in accordance with these rules and the Nazool Land may be allotted to them. If a Co-operative Society cannot be formed, then the Nazool Land may be allotted to the present lessees, i.e., members of Scheduled Castes individually upto the limit of Nazool Land as defined in the rules provided they do not own any land of their own. Those, who own some land, they may be allowed such area as would make up the unit of Nazool Land when added to their own area and the rest may be allotted to other members of Scheduled Castes. The Rule further recites that in the matter of allotment of Nazool Land, Ex-servicemen Harijans shall be given preference over other members cultivating the Nazool Land. The other sub-clauses of the Rule also talk of allotment and not of transfer. Rule 3-A deals with mortgaged Nazool Land, whereas, Rule 3-B deals with the auction of the trees standing on the land. Rule 3-B was inserted by notification dated 17th February, 1972, whereas, Rule 3-A was substituted by notification dated 10th February, 1960. Once the land is allotted, in the manner as detailed in Rule 3, the heads of families then have to form themselves into Co-operative Societies, as would be made out from Rule 4 of the Rules. It recites that heads of Scheduled Caste landless families in a village may form themselves into a Co-operative Society, provided that the land owning head of a Scheduled Caste family may also become a member on

surrendering his land to the Co-operative Society on such terms and conditions as may be mutually agreed upon between him and the Co-operative Society. Once, heads of Scheduled Caste landless families may form themselves into a Co-operative Society, the land is to be transferred to such Co-operative Society, as would be clearly made out from Rule 5 of the Rules, which is reproduced below :—

“5. Transfer of Nazool land to Co-operative Societies.—

(1) As soon as a Co-operative Society has been formed in a village, the Nazool land in that village shall be transferred to it :

Provided further that when the excess is not more than two units of Nazool land, the entire Nazool land in the village shall be transferred to the co-operative society of the village.

(2) The Nazool land which remains in excess under sub-rule (1) shall be transferred to the co-operative society or societies, of the nearest village or village in which units of Nazool land are less than the number of members.”

(22) After Rule 5 of the Rules, all other rules talk of transfer and not of an allotment. The rule pertaining to reversion in the event of dissolution, i.e., Rule 6, states that if at anytime, before the payment of last instalment of price, a Co-operative Society, to which the land has been transferred is dissolved, the Nazool Land shall revert to the State Government. Even though, instalments had not been paid, the word used in Rule 6 is ‘transfer’ and not allotment. Rule 7, which deals with bar of alienation, also contains in it word ‘transfer’ and not ‘allotment’. By virtue of Rule 7 of the Rules, no Co-operative Society, to which land has been transferred, shall at any time before the last instalment of price has been paid, alienate the land transferred to it. Once again, it is the word transfer which has been used in Rule 7 and not the word allotment. Again in Rule 8 of the Rules, which deals with determination of the price, the word that has been used is transfer and not allotment. It clearly recites that the price to be paid by a Co-operative Society for the Nazool Land to be transferred to it shall be mentioned in sub-clauses (a) and (b) of the Rule aforesaid. The next Rule deals with the instalments and once again, it is the word transfer which has been used and not the word allotment. There is, also a mention that price of Nazool Land transferred under these

rules shall be payable in twenty equal six monthly instalments. Rule 10 of the Rules deals with application for transfer, i.e., the procedure how an application shall be made for transfer of the land. It is stated that a Co-operative Society/individual member eligible under these rules for obtaining Nazool land shall apply in form 'A' appended to these rules, to the Collector of the District in which the Nazool land to be transferred is situate and that on receipt of application, the Collector would make or cause to be made such enquiries as he may deem fit for the purpose of verifying the claim of the Co-operative Society/individual member and if he is satisfied as to the genuineness of the claim of the Co-operative Society/individual member, he shall record an order to that effect and thereafter he shall take further steps for transferring the land in favour of the society in accordance with these rules and that an order to transfer shall be issued by the Collector in favour of the Co-operative Society/individual member. Rule 10 followed by all earlier Rules from Rule 5 onwards, would clinch the issue that on an application made by a Co-operative Society, an order of transfer has to be issued by the Collector in favour of the Co-operative Society and not an order of allotment. Form 'A' appended to Rule 10, is titled as 'Application for transfer of Nazool land'. Once again, application is not for allotment of land but it is for transfer of the land. A study of the Rules would demonstrate that the petitioner society was transferred the land and it was not a case of mere allotment.

(23) The Legislation, it appears, was conscious in making Rules of 1956 in the matter of allotment and transfer. Wherever, Legislature wanted initial transfer of land to be tentative, the Rules in beneficial legislation, like Rules of 1956, so prescribed.

(24) The scheme of the Nazool Rules bears a mark contrast to the Punjab Utilisation of Surplus Area Scheme, 1973, framed under the Punjab Land Reforms Act, 1972. The said Rules deal with the allotment of land declared surplus of big landowners to the eligible tenants and landless persons. The aforesaid scheme deals with the allotment of surplus land and as a first step to do the same, is to issue notice to sitting tenants. After the procedure for allotment is gone into, it is an allotment, which is made to the eligible persons. A certificate is issued to an allottee and thereafter, the possession is delivered. It is clearly recorded in Rule 10(c), (d) and (e) of the Scheme aforesaid that the allottee shall become the owner of the land allotted to him

when full payment of the amount due from him has been made and that the allottee shall not be competent to transfer his rights in the land allotted to him to any person till he becomes the owner or before the expiry of a period of 15 years of the date of possession, whichever is later. The ownership rights are, thus, conferred upon the allottee only when he makes full payment of the amount due from him and further that he is not competent to transfer his rights in the land allotted to him to any person till he becomes the owner. Learned counsel representing the petitioner society relies upon another set of rules dealing with allotment of evacuee property that has been allotted to the respective States by the Central Government for disposal. This property is now allotted by virtue of the Act, known as Punjab Package Deal Properties (Disposal) Act, 1976. There is no need to make an elaborate mention of these rules as suffice it to say that whenever there is intention of the Legislature to vest as an indefeasible right, which may become absolute only on some conditions, like payment of price or non-alienation of the land, the rules do deal with such situation. Insofar as present set of rules under discussion are concerned, as mentioned already, the transfer is complete moment an order of transfer is passed under Rules 5 and 11 of the Rules and insofar as price of the land is concerned same can be recovered as arrears of land revenue and it is only in case of consistent default that the transfer could be cancelled. Further, there is no impediment in the way of a transferee so as not to alienate the land, in part or as a whole.

(25) Examined from another angle, i.e., as to whether by virtue of the provisions contained in the unamended Rules, the Government had power to cancel an order of transfer, the same result would follow as, in our view, after having transferred the land to Harijan Co-operative Society, the Government had no power to cancel the same. The only provision with regard to the reversion of the land to the Government was in the event when last instalment of price had not been paid and the Society, to which the land had been allotted, was dissolved. Rule 5 of the Rules, pertaining to transfer, states that as soon as a Co-operative Society had been formed in a village, the Nazool Land in the village is to be transferred to it. Insofar as price of the land in the original rules is concerned, same was payable as per Rule 9 of the Rules in twenty equal six monthly instalments. There was no provision so as to cancel the order of transfer passed under Rule 5 or 11 of the Rules for non-payment of instalment towards the

price of the land. It is only,—*vide* notification dated 8th May, 1957 that Rule 9(A) was inserted vesting power with the Government so as to recover the instalments due as arrears of land revenue and to cancel the allotment, if there was consistent default in making payment of two instalments. In the event, thus, when even the price had not been paid, there Government had first to resort to recovery as arrears of land revenue and it is only if there was consistent default in making payment of two instalments that the transfer could be cancelled. Rule 7 of the Rules deals with bar of alienation by a Co-operative Society before the last instalment of price had been paid, except with the express permission in writing of the State Government. In other words, if the concerned society had to alienate the land, having paid the entire price towards the instalments, there was no embargo for the same and no permission was either required for the said purpose. Further, once transfer had been made under Rule 5 of the Rules, the certificate of transfer had to be issued on payment of first instalment of the price as is clearly made out by reading of Rule 11 of the Rules. The Collector was enjoined with a duty to issue a certificate of transfer moment the first instalment of price was paid by the Co-operative Society. Rule 11 of the Rules is mandatory and it casts a duty upon the Collector to transfer the land.

(26) From a conjoint reading of Rules 5, 6, 7 and 11 of the unamended Rules, what, thus, transpires is that for transfer of land, issuance of certificate of transfer is only a formality. The rights of parties crystallise the moment, an order of transfer is passed, which on deposit of initial price for the first instalment was to be followed by a formal order of transfer. This transfer could be cancelled only in the event when Co-operative Society as such had since been dissolved and that also before the payment of last instalment. If, therefore, last instalment also had been paid, even in the event of Co-operative Society being dissolved, the transfer could not be cancelled. It is absolutely apparent that the concerned society would have all rights, title and interest in the land after an order of transfer has since been made under Rule 5 of the Rules irrespective of the fact that the entire price towards instalments had been paid or not. Certificate of transfer to be issued under Rule 11 of the Rules was mere a formality. It may be recalled at this stage that learned Collector while ordering that a certificate of sale be issued on 22nd July, 1981, did clearly mention that since, the price of the land, worked out and assessed by the

Naib Tehsildar, has already been deposited in the Government treasury and the society is in possession of the land since long, a formal order of transfer was to be passed.

(27) Upshot of the discussion made above would, thus, lead us to conclude that way back in 1958-59, all rights, title and interest of the land had since already been passed over to the petitioner society. Concededly, an order under Rule 5 of the Rules for transfer of the land, which, as mentioned above, has not been produced before us despite the order passed to that effect on the plea that the same was not traceable, was not a mere order of allotment. Transfer of the land was complete when order to that effect was passed under Rule 5 of the Rules. We may reiterate that once the land had been transferred and the first instalment paid, order of transfer could not be cancelled for non-payment of the price. At the most, the Government could resort to recovery proceedings as arrears of land revenue. It is only in the event when before payment of last instalment, Co-operative Society as such is dissolved that the land could revert to the Government. In no other event, thus, transfer made to an individual or a Co-operative Society could be cancelled. It is for the first time when notification dated 8th May, 1957 inserting Rule 9(A)(i) came into being, that the arrears towards the instalments could be recovered as land revenue and prior to that, even the arrears towards instalments could not be recovered as land revenue. It is also for the first time that by sub-clause (ii) of Rule 9(A) of the Rules, power came to be vested with the Government so as to cancel the allotment if there was consistent default in making payment of two instalments towards price of the land. Rule 9(A) of course, came to be inserted before the land was transferred to the petitioner society in 1958-59 but in the present case, it is conceded position that all instalments towards price of the land having since already been paid before the impugned order, Annexure P-11, came into being.

(28) Sale has been defined in Section 54 of the Transfer of Property Act, 1882. It is a transfer of ownership in exchange for a price paid or promised or part paid and part promised. A contract for sale of the immovable property is a contract that a sale of such property shall take place on terms settled between the parties. The parties to the contract of sale are bound by an instrument drawn for the said purpose. Their rights and liabilities flow from the terms of

the contract incorporated in the deed. If, therefore, there was no embargo in the terms of the contract arrived at between the parties while transferring or selling the land to the petitioner society that it shall not alienate the same for a specified period, the petitioner society was at liberty and had every right to transfer it as per its choice.

(29) The facts, as fully detailed above, do reveal that the petitioner society had complete title of the property transferred to it without there being any embargo to alienate it, wholly or in part. In the facts and circumstances, as mentioned above, there was no justification for the authorities to put an embargo on the right of the petitioner society to alienate the land, wholly or in part and, therefore, the condition mentioned in the sale deed would and cannot be binding upon the petitioner society. The authorities, it appears, have inserted the condition in the sale deed only on account of change in the rules. Rules 7 and 11 of the Rules had since been substituted by virtue of notification dated 28th October, 1970, i.e., before the sale deed came to be executed. Once, the petitioner society was vested with complete title of the land and had a right to alienate the same being an absolute owner far before notification dated 28th October, 1970 came into being, condition of non-alienation incorporated in the sale deed on the dint of amended provisions of the Rules, could not be binding upon it.

(30) The petitioner society, having become absolute owner having right, title and interest in the property, subject matter of transfer, and, thus, not being fettered in its right of alienation, which automatically vests with every owner apart, we are further of the view that the amendments brought about in the Rules could not apply with regard to the transfer made before such amendments, were brought about. The observation made above has support of a Division Bench Judgment of this Court in **State of Punjab and another versus Chinder Pal and another (1)**. This judgment, it is significant to mention, came under the very rules, which are subject matter of discussion in the present case. Facts of the case aforesaid reveal that one Attu Ram, a Harijan, was allotted 71 kanals, and 2 marlas of land in the year 1962 by the Collector, Ferozepur against price of Rs. 1,777.50 paise, which was to be paid in 20 equated half yearly instalments. he continued to pay regularly the instalments when they

fell due. He had deposited instalments up to Rabi 1968 and six instalments were still due when the allotment was cancelled. For cancellation of the allotment, notice was issued to Attu Ram by the Collector, Ferozepur, on 24th December, 1968, stating that allotment of Nazool Land made to him was not in accordance with law and the rules and he was required to show cause why the allotment of Nazool Land made in his favour on 4th May, 1962 should not be cancelled. His replay was not found to be satisfactory and the allotment was cancelled,—*vide* order dated 1st July, 1969. Attu Ram died and the order of cancellation was challenged by his son Chinder Pal by way of Civil Writ Petition. That writ petition was allowed and the impugned order was quashed. Against the order of learned Single Judge, the State filed Letters Patent Appeal. Learned counsel, who appeared in support of this appeal urged that the land, subject matter of allotment to Attu Ram was not Nazool Land and that the same was against Rule 3 of the Rules. We are not concerned with the first contention of learned counsel as noted above, but the second contention has a pertinent bearing upon the controversy in hand.

(31) Learned counsel for the appellant had urged that transfer of the land in favour of Attu Ram was against Rule 3 of the Rules. According to this rule, the Nazool Land could be transferred in favour of Co-operative Societies formed by the heads of Scheduled Castes families in accordance with the Rules. That Rule was amended by the Governor of Punjab by notification dated 10th February, 1960, by substituting Rules 3 whereby, in a village where Nazool Land available was less than 10 acres and was being leased to members of Scheduled Castes, it may be allotted to the present lessess individually up to the limit of a unit of Nazool Land, provided they do not own any land of their own. There is no need to make a mention of entire rule, suffice it, however, to say that this very rule was once again amended,—*vide* notification dated 16th June, 1967. Previous Rule 3 (b) was substituted by the following :—

“In the villages where Nazool land available is 10 acres or more, the Scheduled Castes Land-owing Co-operative Societies may be formed by the heads of Scheduled Castes families in accordance with these rules; and the Nazool land may be allotted to them. In a village where no Co-operative Societies of the members of the Scheduled

Castes had been formed by the 16th May, 1994, the land should be allotted to individual Harijans instead of Harijan Co-operative Societies, according to these Rules. For this purpose, members of Scheduled Castes who are already cultivating such lands are to be preferred. In case these are more than one claimant for the same place of land, the allotment will be made by drawing lots."

(32) Contention of learned counsel for the appellant in short was that by virtue of the rules, that were in existence by virtue of amendments. Attu Ram could not be transferred the Nazool Land. This contention of learned counsel was repelled by observing that in view of the amendments in Rule 3 from time to time, the transfers already made in favour of members of the Scheduled Castes could not be cancelled.

(33) 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 settled 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 rule 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 litigation at the time when the Act was passed.

(34) The respondent-state of Punjab has, however, endeavoured to oppose the claim of the petitioner society, during the course of arguments, only on two grounds. It is first urged by Ms. Swati Gupta, learned Assistant Advocate General, Punjab, who

appears for the State of Punjab, that under the Rule itself, there is a provision for filing an appeal and the petitioner society, having an alternative remedy, should be relegated to file an appeal against the impugned order. It is conceded position that objection with regard to availability of an alternative remedy has not been raised in the written statement. Further, availability of alternative remedy cannot be pleaded as an absolute bar for entertainment of a writ under Article 226 of the Constitution of India. We need not elaborate on this issue as the matter already stands settled by string of judicial precedents. Reference in this connection be made to a Division Bench judgment of this Court in **M/s Jindal Strpis Limited and another versus State of Haryana and others (3)** decided by the then Hon'ble Chief Justice and one of us (V.K. Bali, J.) wherein, entire case law has been discussed. Non-raising of objection with regard to alternative remedy at the motion stage and admission thereof and when the matter may come up for hearing after long years is one of the grounds on which the Court may not insist upon a party to approach alternative forum for redressal of his grievance. Said principle applies to the facts of this case inasmuch as mentioned above, no objection has been raised with regard to availability of alternative remedy in the written statement nor such an argument, it is apparent, was pressed at the time of admission of the writ petition and the matter is pending in this Court since 1995. It would be too iniquitous at this stage to dismiss this petition on account of availability of alternative remedy. That apart, Ms. Swati Gupta while urging that alternative remedy is available, refers to Rules 4(3) and 9A (iii) of the Rules. Relevant parts of the rules aforesaid read thus :—

“4(3) Any person aggrieved by the decision of the Collector under sub-rule (2) may, within fifteen days of the decision, appeal to the Commissioner, whose decision shall be final.”

“9A(iii) The Cooperative Society concerned may file an appeal to the Commissioner against the Collector's order within sixty days of the date of that order; and the Commissioner's order passed in appeal shall be final.”

(35) Sub-rule 2 of Rule 4 of the Rules in turn deals with disputes arising as to who is the head of the Scheduled Caste family, which issue has to be decided by the Collector. The appeal, thus, would

not be competent in all the matters arising from the provisions of the Rules. The rules, as mentioned above, deal with various things, like allotment, transfer, instalments of price but as the appeal is not competent with regard to all the matters arising from the Rules, the same being confined to a particular provisions only, the contention of learned State counsel with regard to availability of alternative remedy and the petitioner society being relegated to the same has, thus, to be repelled. Same observations need to be made with regard to Rule 9A(iii) of the Rules as well. Rule 9A deals with arrears of instalments and consistent default in payment thereof, entailing an order of cancellation. The cancellation of allotment for non-payment of instalments can be subject matter of sub-rule (iii) of Rule 9A of the Rules. The appeal, is not competent with regard to other matters dealt with the Rules.

(36) It is then urged by Ms. Swati Gupta that the Nazool Lands (Transfer) Rules, 1956, deal with vesting ownership rights upon weaker sections of the society. It is with a view to augment the economic status of Scheduled Castes that the State with a view to render economic justice envisaged in the Preamble and Articles 36 and 46 of the Constitution of India, confers a right of ownership of agricultural land upon them and if the land is irrigated, the very purpose, for which the rules have since been made, shall be frustrated. In support of her contention, as noted above, learned counsel relies upon a Supreme Court judgement in **R. Chandevaramappa and others versus State of Karnataka and others** (4).

(37) We have given our thoughtful consideration to the contentions raised by learned counsel. We are, however, of the view that judicial precedent in **R. Chandevaramappa's case** (supra) relied upon by the counsel has no parity with the facts of the present case. Brief facts in **R. Chandevaramappa's case** (Supra) reveal that Dasana Rangalah Bin Dasaiah was granted land to the extent of 2 acres on 16th November, 1951. It was a Government vacant land. The appellants before Hon'ble Supreme Court had purchased the property from the sons and widow of the assignee on 16th October, 1968. On a representation made by one of the sons on 27th February, 1987 to the Assistant Commissioner contending that alienation was in violation

of Scheduled Castes and Scheduled Tribes Prohibition of Transfer of Certain Lands Act, 1978, the sale was set aside as violative of the Revenue Code Rule 43(5). The appellant carried an appeal before the Appellate Authority, thereafter, a Writ Petition and then Letters Patent Appeal and when he met with no success, present appeal came to be filed before the Supreme Court. It was urged on behalf of the appellants that the prohibition for alienation was only for ten years and, therefore, by necessary implication the guarantee thereafter was free to alienate the land. This contention was countered by the State counsel, who urged that cultivation chit given to the original assignee was only for personal cultivation subject to the condition that he will be eligible to encumber the land only to improve the assigned land. But the prohibition for alienation of assigned land always remained. The title always remained with the Government. It was also urged that limitation would not run against the Government since it was in contravention of Rule 43(5) of the Revenue Code.

(38) On the rival contentions, as noted above, Hon'ble Supreme court observed thus :—

“It is seen that the cultivation chit under which the assignee had come into possession prescribed that the assignee should be in personal cultivation of the land and that it should not be alienated. It is also stated that he is empowered to encumber the land to secure loan to improve the assigned lands either from the Government or from the Cooperative Society for *bona fide* purpose of improving the land or for buying cattle or agricultural implements for better cultivation of the land. That would clearly indicate the object of assignment, namely, the assignee should remain in possession and cultivate the land personally from generation to generation to augment economic status so as to secure economic justice envisaged under the Preamble of the Constitution and the Directive Principles.”

(39) The Hon'ble Supreme Court then also referred to a Division Bench judgment of High Court in *Ammanamma versus Venkataiah* wherein, the High Court had considered the effect of Rule 43(5) of the Revenue Code and held that once relevant rules prohibit alienation of the property granted to depressed class for all times to come, it

cannot be got over by a grant made contrary to the statutory rules and, therefore, prohibitory clause is absolute in its terms and that alone will govern the rights of the parties. Hon'ble Supreme Court agreed with the view taken by the High Court.

(40) The proposition laid down by the Supreme Court, in our considered view, would not apply to the facts of the present case. Not only that in the allotment chit itself there was an embargo placed upon the allottee so as not to alienate the land. Rule 43(5) of the Revenue Code clearly prohibited alienation of the assigned land, for all times to come. If, in the present case, it was a conditional transfer with stipulation incorporated therein, i.e., the transfer order that the petitioner society in case of alienation would forfeit its right to continue with the possession of the land and the order of transfer shall be cancelled or if there was otherwise a provision in the Rules at the time of transfer, different parameters shall follow. The facts of the present case rather go to show that the petitioner society was transferred the land without any such stipulation. The contention of learned counsel that sale of part of the land by the petitioner society was to run counter to the purpose, for which the Rules were framed. i.e., to render economic justice envisaged in the Preamble and Articles 38 and 46 of the Constitution of India has to be viewed in the light of the provisions of the Statute. That apart, as to whether the purpose of transfer of land to weaker sections of the society shall be frustrated or not shall depend on the facts and circumstances of each case. The facts of **R. Chandevaram's case** (*supra*) relied upon by Ms. Swati Gupta would reveal that even though the transferee had no right of alienation, he could encumber the land to improve the same. There was a provision available under the Rules that the land, even though could not be alienated as such, could well be encumbered to improve the same. There is no such provision in the Rules of 1956. The land, subject matter of transfer, it is conceded position, was inferior. It was a surmountaneous area, unfit for cultivation and had no resources for irrigation. Looked from the angle of purpose of framing the rules, i.e., to augment the income for the reconstruction of the society, it cannot be said, in the facts and circumstances of the present case, that the said purpose had been frustrated. If, perhaps, the petitioner society had not secured some income by sale of part of the land, even though, as noted above, the case of the society is that only a loan was secured

and that the land was not sold, the petitioner society would have never been able to bring the land under plough. It is conceded position that the petitioner society did instal four tubewells in the land and it is thereafter only that the land started yielding some income. Major part of the land is still owned by the petitioner society. It is, thus, not a case where, purpose of the Rules might have been frustrated or defeated. Before we may part with the contention of Ms. Swati Gupta, learned State counsel, we would certainly like to mention that one of the contentions raised by learned counsel for the appellants in **R. Chandeverappa's case** (*supra*) was also that the Act had no retrospective operation and the alienation made prior to coming into being of the Act, could not be set aside. However, the aforesaid contention was not discussed by Hon'ble Supreme Court. It appears to us, primarily for the reason that there was an embargo so as not to alienate the land in their allotment chit and further that rule 43(5) of the Revenue Code was in existence even at the time when assignment was made in favour of Dasana Rangaiah Bin Dasaiah.

(41) It shall further be made out from the reading of **R. Chandeverappa's case** (*supra*) that it was a case of assignment. Whether an assignment was on a price or on concessional price or without price is not know. In the present case, however, the petitioner society had purchased the land. The Rules do not envisage transfer of the land on concessional rates. At the most, under the Rules a right vests with the society comprising the weaker sections of the society to get the land transferred in its name. In other words, this right could not be exercised by the people of other castes. It was not a case of distribution of the land to weaker sections of the society for their economic development free of costs.

(42) In view of the discussion made above, we are of the view that the land was transferred to the petitioner society, which was followed by a formal order of transfer in 1981. There was no embargo so as not to alienate the land, either in the transfer order, be it of 1958-59 or 1981, nor was there any impediment in the way of petitioner society in selling the land under the Rules that were in existence at the time when transfer order was made and further that subsequent amendments brought about in the rules could not apply retrospectively. We are further of the view that incorporation of the clause regarding non-alienation of the land incorporated in the sale deed was wholly illegal and not binding on the rights of the petitioner society.

(43) We are also of the view that setting aside transfer order with regard to a major chunk of land, which is still owned by the petitioner society, after it remained in possession of the same by now for about half a century and 36 years from the date when it was transferred and which has since been cultivated by them by the dint of their hard labour and spending lot of money and on which, fate of so many families depend, would be iniquitous, unjust and unfair. Order, Annexure P-11, has, thus, to be quashed. So ordered.

(44) Before we may, however, part with this order, we would like to mention that even though, one of the contentions raised in support of this petition was with regard to non-issuance of notice regarding passing of the impugned order. Annexure P-11, learned counsel, insisted upon having a decision on merits of the case. The point has nonetheless been taken by it and thus needs to be commented upon. The petitioner society having denied receipt of the notice. It could not prove a fact in negative. The respondent alone could prove the issuance and receipt of notice by the petitioner society. A perusal of notice dated 7th December, 1993. Annexure R-2, would show that it bears endorsement,—*vide* which, two copies of the notice are said to have been forwarded to the Tehsildar, Rajpura, with the remarks that compliance report be sent to the office of Collector (D.C.) Patiala, after delivering the same to the President of Co-operative Society, Jauhla Khurd. Gurmukh Singh, Peon,—*vide* his note dated 7th December, 1993, while attempting to serve this notice upon the society, has mentioned that "It is requested that President, Harijan Co-operative, was not available and a copy of the notice has been delivered by hand to the Vice President Bachittar Singh and Bachan Singh, s/o Shri Prabhu Singh, Treasurer, Harijan Society, and they have been informed about the order." Under the noting aforesaid of Gurmukh Singh, Peon, there appears to be signatures of Nirnajna Singh, President, LTI of Bachan Singh, Treasurer and LTI of Bachittar Singh, Vice President of the society of the even date. Tehsildar, Rajpura, at the end, has mentioned as follows :—

"Forwarded in original to the Collector (D.C.), Patiala, with the remarks that copy of the show cause notice has been served through Naib Tehsildar, Dara Bassi. After compliance the report is sent to you."

(45) When the original notice with the endorsement, as mentioned above, reached the Deputy Commissioner, Patiala, he addressed a letter to Naib Tehsildar, mentioning therein that an order was passed by him that one copy of the notice be delivered to the President, Harijan Co-operative Society and if the President was not available, the same be delivered to other office bearers. It is then mentioned that the notice was sent to him to deliver the same to the President, Harijan Co-operative Society, Village Jauhla Khurd, through Tehsildar, Rajpura, but the Tehsildar, Rajpura, had reported that the letter/notice has been delivered to Niranjana Singh, President, whereas, as per the office record, Niranjana Singh is not even an office bearer of the society and in case he was the President, then the Tehsildar should have clarified while sending the report because, on the registered letter, that was sent to the President, it has been reported that the President had died. The Tehsildar was asked to explain his position for this negligence. On the aforesaid letter of the Deputy Commissioner, Patiala, Peon in Sub-Tehsil, Dera Bassi, mentioned as follows :—

“It is requested that the President, Harijan Co-op. Society, Jolan Khurd Shri Som Pal has been informed. Previous President has died. The society made Sh. Niranjana Singh as acting President but society as per its rules has elected Sh. Som Pal as its new President, who is still working. Rest of the members Treasurer and Vice President have been informed and notice in duplicate has been served upon them and concerned has been informed about the date of hearing, hence report.”

(46) Below the stamp, as mentioned above, signed by Peon, Sub Tehsil Dera Bassi, there appears to be the signatures of Niranjana Singh, Member, LTI of Bachan Singh, Treasurer, LTI of Som Pal, President, LTI of Bachittar Singh, Vice President and LTI of Gurbux Singh, son of Mehar Singh.

(47) On the facts, as fully detailed above, it was urged before us by learned counsel for the petitioner society that notice was to be issued or, in fact, had to be issued to the petitioner society through

its President and inasmuch as, as per the records, mention whereof has been made above, the President of the Society had since died, service upon the Treasurer or the Members was not a proper service. He further contends that in any case, while endeavouring to serve the petitioner society on the second attempt, as directed by the Deputy Commissioner, Patiala, the notice contained no date for appearance nor it was mentioned that if no reply is given within the stipulated time, it would be presumed that the Society had no objection in cancellation of the allotment and *ex parte* proceedings for cancellation of allotment shall be initiated, as was mentioned in the first notice.

(48) Once, office bearers of the petitioner society were served, it shall be presumed that the society had the notice even though it was not served through the President but at the same time, if the notice contained no date for appearance before the concerned authority nor it is mentioned that if no reply is given within the stipulated time, it would be presumed that the society had no objection in cancellation of the allotment and *ex parte* proceedings for cancellation of allotment shall be initiated, as was mentioned in the first notice, it cannot be called a proper service. We comment no more on this issue.

(49) We have been informed that some vendees from the petitioner society have also filed applications for their being impleaded as a party. We do not wish to comment upon their rights. We also do not wish to comment upon their plea that they are *bona fide* purchaser against consideration and without notice of the defective title of their vendor. Such a plea needs to be agitated independently by giving proper facts.

(50) For the reasons, as mentioned above, this petition is allowed, in the manner as indicated above. There shall, however, be no order as to costs.