

CIVIL MISCELLANEOUS

Before D. K. Mahajan and A. D. Koshal, JJ.

M/s. NEW INDIA MOTORS PRIVATE LTD., NEW DELHI,—Petitioner

versus

THE STATE OF HARYANA AND OTHERS,—Respondents

Civil Writ No. 946 of 1969

November 7, 1969

Punjab Urban Estates (Development and Regulation) Act XXII of 1964)—Sections 3, 10 and 11—Allotment of plot made in Industrial-cum-Housing Estate, Faridabad on stipulated terms—Act promulgated subsequently—Such estate declared 'Urban Estate' under section 3—Stipulated terms not complied with—Cancellation of allotment and forfeiture of amount paid—Whether permissible under section 10.

Held, that section 3 of the Punjab Urban Estates (Development and Regulation) Act, 1964, relates to transfer and other transactions which come into existence as a result of action taken under the Act and, therefore, after its enforcement. The Industrial-cum-Housing Estate, Faridabad is no doubt declared to be an "urban estate" under the provision of sub-section (1) of section 3 of that Act but that circumstance does not make the provisions of sub-section (2), (3) and (4) of section 3 applicable to the allotments made prior to the enforcement of the Act. These provisions come into play only in the case of a transfer made under the Act and are not attracted to one made before and without reference to the Act. Section 10 of the Act, therefore, which provides for resumption of the plot and forfeiture of the amount paid applies only in the case of transfers made under section 3 of the Act and not to allotments made before the promulgation of the Act.

(Para 11)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ, of Certiorari, Mandamus or any other appropriate writ, order or direction be issued quashing the order of respondent No. 3, dated the 1st June, 1966, and orders of respondent No. 2, dated 8th November, 1968 and 31st January, 1969.

R. N. MITTAL, AND RAMESHWAR SHARMA, ADVOCATES, for the petitioner.

D. S. TEWATIA, ADVOCATE-GENERAL (HARYANA), for the respondents.

JUDGMENT

KOSHAL, J.—The facts giving rise to this petition under Articles 226 and 227 of the Constitution of India are not in dispute. The Government of the erstwhile State of Punjab devised a scheme in pursuance

of which a sizable area in Faridabad was set apart for development as an "Industrial-cum-Housing Estate" wherein plots were to be sold to prospective purchasers on an allotment basis. One such plot measuring 5.01 acres and bearing No. I. P. 12/FBD was allotted to the petitioner—a private limited concern—for setting up a factory therein,—vide allotment letter, dated the 19th of February, 1964, issued by the Director, Urban Estates, Department of Town and Country Planning Punjab, Chandigarh (Annexure "A") on terms and conditions, some of which may be stated. The price payable for the allotment was fixed at Rs. 2,13,390.22, 25 per cent of which was to be paid by the petitioner within thirty days of the issuance of the letter of allotment, the balance being payable in three equal annual instalments along with interest at the rate of 7 per cent per annum. On payment of the said 25 per cent of the price the petitioner was to be put into possession of the plot and was to continue to enjoy the right of possession over it so long as it fulfilled the condition regarding payment of instalments on the due dates as also the other conditions governing allotment. The Government retained a first and permanent charge over the plot for any unpaid portion of the price and the petitioner had no right to transfer the plot till the entire price was paid and the building to be constructed on the plot was completed according to approved plans. After the price had been paid in full, a deed of conveyance was to be executed, the expenses incidental to which were to be borne by the petitioner. In case the petitioner failed to comply with any conditions of allotment the Government had the right to resume and forfeit the plot.

(2) The petitioner paid 25 per cent of the stipulated price to the Government and obtained delivery of possession of the plot. Later on, a sum of Rs. 1,450 being interest for late payment of the said 25 per cent was also remitted by the petitioner to the Government. However, the petitioner considered the conditions governing allotment to be onerous and from time to time represented to different officers of the Government as also to the Minister concerned that the payment of the balance of the price should be allowed to be made in earlier instalments. All these representations were turned down.

(3) In June, 1964, the Punjab Urban Estates (Development and Regulation) Act, 1964 (hereinafter referred to as the Act) came into force and, by virtue of the powers vested in it by section 3 of the Act the State Government declared the area known as Industrial-cum-Housing Estate, Faridabad to be an "urban estate" for the purposes of the Act

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through a notification dated the 27th of April, 1965. In the meantime the first instalment of the unpaid balance of the price of the plot allotted to the petitioner became due for payment but remained unpaid in spite of demands made in that behalf by the Estate Officer, Urban Estates, Faridabad, respondent No. 3, who ultimately took action under section 10 of the Act (see paragraph No. 16 of the affidavit filed by respondent No. 2) and not only cancelled the allotment of the plot made in favour of the petitioner but also forfeited to the Government the entire amount of Rs. 54,798 which had by then been paid to the Government by the petitioner (Annexure "J"). The petitioner preferred an appeal under section 11 of the Act which was dismissed by the Chief Administrator, Urban Estates, Haryana, respondent No. 2, (the State of Punjab having been reorganised in the meantime) on 11th of September, 1967, (Annexure "K"). However, a petition for review of the order dismissing the appeal succeeded on the 8th of November, 1968 (Annexure "L") when respondent No. 2 restored the allotment originally made in favour of the petitioner subject to the condition that it paid all the instalments due, along with interest at 7 per cent per annum, within thirty days of the date last mentioned. The petitioner failed to pay the arrears and on the 31st of January, 1969, respondent No. 3 again took action under section 10 of the Act, cancelled the allotment of the plot made in favour of the petitioner and forfeited the amount of Rs. 54,798 to the Government (Annexure "M").

(4) In the petition, as originally filed, the petitioner challenged the orders contained in Annexures "J", "L" and "M" mainly on the following two grounds:—

- (1) The petitioner had become owner of the plot in dispute as soon as it paid the first instalment of 25 per cent of the price and thereafter no power of cancellation of the allotment remained with the respondents.
- (2) Section 10 of the Act which provides for resumption of a plot in an "urban estate" as also for forfeiture of moneys paid by the allottee in respect thereof to the Government is *ultra vires* of Articles 14, 19 and 31 of the Constitution of India.

(5) By means of an application which was allowed on the 18th of August, 1969, the petitioner raised an additional ground of attack

against the impugned orders and the same is to the effect that no action by way of resumption of the plot and forfeiture of the amount of Rs. 54,798 above mentioned could be taken by the respondents under section 10 of the Act in view of the fact that the allotment of the plot made in favour of the petitioner did not come about in pursuance of any provisions of the Act, the promulgation of which in fact it had preceded by about 4 months.

(6) The case of the respondents is that the allotment never had the effect of vesting ownership of the plot in the petitioner, that the Industrial-cum-Housing Estate, Faridabad having been declared an "urban estate" under section 3 of the Act by means of the notification, dated the 27th of April, 1965, section 10 became applicable to the allotment in dispute as from that date and that the impugned orders did not suffer from invalidity for any of the reasons advanced by the petitioner.

(7) We have no hesitation in holding that the petitioner never became an owner of the plot allotted to it, in view of the provisions of section 54 of the Transfer of Property Act which lay down that a transfer of ownership of tangible immovable property of the value of Rs. 100 and upwards can be made only by a registered instrument. This section was brought into force throughout the State of erstwhile Punjab on the 1st of April, 1955, and, therefore, fully governs the case in hand. Admittedly no registered instrument was executed by any of the parties in connection with the transaction in question and learned counsel for the petitioner has not been able to bring to our notice any provision of law enacting an exception, in the case of the allotment in question, to the provisions of section 54 of the Transfer of Property Act.

(8) Neither can any transfer of ownership in favour of the petitioner be spelt out from allotment letter Annexure "A" which, on the contrary, rules out such a transfer till the entire price was paid. Reference in this connection may be made to conditions (2), (5) and (6) contained in that letter and reproduced below :—

"(2) You shall enjoy the rights of possession after it has been delivered to you and so long as you continue paying the instalments of the price on due dates (or within such time as may be extended in writing) and conform to the other terms and conditions mentioned in this memo."

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- (5) You shall have to bear and pay all expenses in respect of the execution and registration of the final deed of conveyance in accordance with the relevant law covering such estates including stamp duty and registration fees after full price has been paid.”
- (6) In the event of failure to comply with any of these conditions, the plot shall be resumed by Government and shall stand forfeited.”

What was given to the petitioner at the time of allotment was nothing more than a right to possess the plot and that right was to continue only so long as the petitioner did not make default in payment of the instalments due from it and complied with all the other conditions of the allotment. Till the full price was paid, the State Government remained the owner of the plot. This was also the view taken on similar facts by a Division Bench of this Court in *Messrs Jagdish Chand Radhey Sham v. The State of Punjab and others* (1).

(9) The first ground of attack taken in the petition as originally filed, therefore, is without substance.

(10) We shall next take up the point raised by the petitioner through amendment of the petition which was allowed on the 18th of August, 1969, as the reasons advanced in support thereof appear to us to be unexceptionable. The allotment in favour of the petitioner was admittedly made on the 18th of February, 1964, on the terms and conditions contained in Annexure “A”. The Act was promulgated about four months later and it is nobody’s case that the allotment was under any of the provisions contained therein. It has, therefore, to be seen whether any of those provisions lay down that the said allotment would by a fiction of law be considered to be one made under the Act or whether section 10 is made applicable to allotments of the type under consideration even though they were made before the Act came into force. The learned Advocate-General appearing on behalf of the respondents has frankly conceded that there is no “deeming provision” in the Act such as creates a fiction of the kind mentioned above. He urges, however, that section 10 is

(1) L.P.A. 218 of 1965 decided on 21st Feb. 1966.

applicable to the allotment made in favour of the petitioner by reason of the provisions of section 3 of the Act which is in the following terms :—

- “3. (1) The State Government may by notification declare any area comprising land belonging to or acquired by the State Government to be an urban estate for the purposes of this Act.
- (2) The State Government may sell, lease or otherwise transfer whether by auction, allotment or otherwise, any land or building belonging to the State Government in an urban estate on such terms and conditions as it may, subject to any rules made under this Act, think fit to impose.
- (3) The consideration money for any transfer under sub-section (2) shall be paid to the State Government in such manner, in such instalments and at such rate of interest as may be prescribed.
- (4) The unpaid portion of the consideration money together with interest or any other amount, if any, due to the State Government on account of the transfer of any site or building under sub-section (2) shall be a first charge on the site or building, as the case may be, and notwithstanding anything contained in any other law for the time being in force, no transferee shall, except with the previous permission in writing of the Estate Officer, be entitled to sell, mortgage or otherwise transfer (except by way of lease from month to month) any right, title or interest in the site or building transferred to him under sub-section (2) until the amount which is a first charge under this sub-section has been paid in full to the State Government.”

(11) This section, in our opinion, does not at all help the case of the respondents as it obviously relates to transfers and other transactions which come into existence as a result of action taken under the Act and, therefore, after its enforcement. The Industrial-cum-Housing Estate, Faridabad was no doubt declared to be an “urban estate” under the provisions of sub-section (1) of section 3 of the Act but that circumstance would not make the provisions of sub-section (2), (3) and (4) of section 3 of the Act applicable to the allotment made in favour of the petitioner, as those provisions come into play only in the case

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of a transfer made under the Act and are not attracted to one made before and without reference to the Act. Section 10 of the Act, therefore, which provides for resumption and forfeiture only in the case of transfers made under section 3 of the Act must be held to be inapplicable to the present case. In this view of the matter, the action taken by respondents Nos. 2 and 3 in their orders contained in Annexures "J," "L" and "M" cannot be justified in law.

(12) In view of the conclusion just arrived at, we do not consider it necessary to go into the question of the *vires* of section 10 of the Act.

(13) In the result, the petition is allowed and the impugned orders contained in Annexures "J", "L" and "M" are quashed as being unwarranted and unenforceable in law. We may make it clear, however, that it will be open to the respondents to take such action in the matter as they legally can in view of the conditions covering the allotment and contained in allotment letter Annexure "A".

(14) The parties shall bear their own costs.

D. K. MAHAJAN, J.—I agree.

N. K. S.

APPELLATE CIVIL

Before Prem Chand Pandit and C. G. Suri, JJ.

JANGIR SINGH AND OTHERS,—Appellants.

Versus

SUCHA SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 1264 of 1963

November 7, 1969

Custom (Nabha)—Succession to non-ancestral lands—Sisters or sisters' sons of the last male owner—Whether have preference over 7th degree collaterals—General Custom in small princely States in Punjab—Whether derived from the adjoining territories—Hindu Law of Inheritance (Amendment) Act (II of 1929)—Section 1(2)—Non-applicability of the Act to Nabha—Whether had any effect on the right of succession of females there.

Held, that according to the general custom prevalent in the erstwhile princely State of Nabha in Pepsu, the sisters or sister's son of the last male owner had preference over collaterals of 7th degree in the matter of succession to non-ancestral land.