
(2012) 05 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16227 of 2009

Amritpal Singh

APPELLANT

Vs

Chandigarh Administration and others

RESPONDENT

Date of Decision : 10-05-2012

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 2(k), 22, 3
Contract Act, 1872 — Section 2(d)
Evidence Act, 1872 — Section 85
Registration Act, 1908 — Section 23, 24, 25, 26, 32
Stamp Act, 1899 — Section 11, 17(1)(f), 17(1)(g), 17(1)(h)
Transfer of Property Act, 1882 — Section 53A, 7

Citation : (2012) 4 RCR(Civil) 784

Hon'ble Judges : Hemant Gupta, J;A.N. Jindal, J

Bench : Division Bench

Advocate : Arun Jain, with Mr. Amit Jain, for the Appellant; Sanjay Kaushal and Vishal Sodhi, for the Respondent

Judgement

Hemant Gupta, J.—The petitioner has sought quashing of the orders dated 02.09.2009 (Annexure P-10) and 22.09.2009 (Annexure P-11) requiring the original owner to apply for "No Objection Certificate" regarding sale of a house. Originally, a residential house bearing H.No. 2059, Sector 21-C, Chandigarh was owned by the following persons as is made out from the conveyance deed dated 20.12.2007 executed in their favour:

Out of the aforesaid co-owners, Tarlochan Singh, Devender Singh and Mrs. Ravinder Kaur executed a registered General Power of Attorney in favour of the petitioner on 15.01.2008 qua their 3/8th share in the aforesaid house. Gurdev Singh appointed the petitioner as his General Power of Attorney qua his 1/8th share in the aforesaid house vide General Power of Attorney dated 04.01.2008, whereas Gurdeep Singh and Naren-der Singh appointed the petitioner as their registered General Power of Attorney qua their 1/3rd share in the house in question on 15.01.2008. Smt. Randhir Kaur wife of Jaswant Singh also appointed

the petitioner as her Power of Attorney qua her 1/6th share on 11.08.2004.

2. The Registration and Other Related Laws (Amendment) Act, 2001 (Parliament Act No. 48 of 2001) amended The Registration Act, 1908; The Transfer of Property Act, 1882 and The Indian Stamp Act, 1899. Section 11 thereof inserted clause 23 A in Schedule I to the Indian Stamp Act. On 15.11.2007, an amendment carried by State of Punjab by enacting the Indian Stamp (Punjab Amendment) Act, 1994 (Punjab Act No. 17 of 1994) was extended to Chandigarh. The amendments carried out by Parliament Act No. 48 of 2001 and by extension of Punjab Act No. 17 of 1994 to Chandigarh would lead to the following as the applicable provisions to Chandigarh:

3. Three Power of Attorneys i.e. dated 15.01.2008, 15.01.2008 & 04.01.2008 were executed after the aforesaid provisions were extended to Chandigarh, whereas Power of Attorney of Smt. Randhir Kaur was executed on 11.08.2004, but after the enforcement of the Parliament Act No 48 of 2001.

4. It is also pleaded that the petitioner sold 30% share of the house in question in favour of Darshan Kumar Jain, Sandeep Kumar Jain and Smt. Dipali Jain vide sale deed dated 15.06.2009 in respect of which "No Objection Certificate" was issued and certificate regarding transfer of ownership stands also issued. Thereafter, the petitioner agreed to sell 20% share of the house in question to one Rajinder Singh Randhawa and Parminder Kaur Randhawa and also sought "No Objection Certificate", but such "No Objection Certificate" has been declined on 22.09.2009 for the reason that "No Objection Certificate" has to be applied by the owner of the property. It appears that the petitioner entered in to the agreements with the aforesaid purchasers on the basis of power of attorneys for consideration, which require stamp duty equivalent to 90% of the conveyance as per Parliament Act No. 48 of 2001 if such agreement is to be used as a document in the nature of part performance u/s 53A of the Transfer of Property Act, 1882.

5. The petitioner challenged the aforesaid communication dated 22.09.2009 (Annexure P-11) and the circular dated 02.09.2009 (Annexure P-10), relying upon the order passed by the Hon'ble Supreme Court order in State of Rajasthan and Others Vs. Basant Nahata, . The circular dated 02.09.2009 (Annexure P-10) issued by the Finance Secretary, Chandigarh Administration points out that cases of misuse of "No Objection Certificate" have come to the notice and that in future "No Objection Certificate" will only be applied by the owner of the property as per the record of the Estate Office and the same will be issued to him. The relevant clause in the circular reads as under:

1. It has come to the notice that there are some issues and cases of misuse of NOC and need to be addressed properly. In this regard, in future NOC will only be applied by the owner of the property as per the record of the Estate Office and the same will only be issued to him/her.

6. Learned counsel for the petitioner has argued that the Administration recognised the transfers through Power of Attorney in "The Chandigarh

Conversion of Land Use of Industrial Sites into Commercial Activity/Services in Industrial Area, Phase I and Phase II, Chandigarh Scheme, 2005". Clause 6 of the said notified Scheme contemplates that for conversion of land use of industrial site to commercial, the Les-see/owner/GPA holder or tenant with the consent of owner, is competent to make an application for conversion of land use. It is, thus, sought to be contended that after the said Scheme was notified, the GPA is authorised to seek conversion of land use. Therefore, to seek "No Objection Certificate " in respect of free hold property is without any legal sanction and without any rational with the objective to be achieved. It is contended that the Power of Attorney is an instrument executed in terms of the provisions contained in Chapter X of the Indian Contract Act, 1872, carries presumption of correctness u/s 85 of the Indian Evidence Act, 1872 and the execution thereof is recognised and regulated by the Power of Attorneys Act, 1882. Therefore, the instructions, that the NOC can be issued only when, it is applied for by the original owner is not justified.

7. In Basant Nahata's case (supra), in pursuance of the State amendment in the Registration Act, 1908, the State Government by notification could declare "any power of attorney authorizing the attorney to transfer any immovable property", for a term in excess of six months (later modified as three years), to be against public policy prohibiting the registering authority to refuse the registration of an instrument. Such provisions were struck down by the Hon"ble Supreme Court. The petitioner relies upon the following observations:

53. Execution of a power of attorney in terms of the provisions of the Indian Contract Act as also the Power of Attorney is valid. A power of attorney, we have notified hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.

Conclusion:

54. We have noticed hereinbefore that the State of Rajasthan inserted Section 17(1)(f) and (g) in the Act making the registration of agreement to sale and irrevocable power of attorney relating to transfer of immovable property in any way a compulsorily registrable document. The State went further to amend Article 23 of the Second Schedule of the Stamp Act, 1899 making an agreement to sale of immovable property and irrevocable power of attorney or any other instrument executed in the course of conveyance etc. with possession to be deemed to be a conveyance and stamp duty is chargeable thereon accordingly. According to the State, despite such enactments sales were being made by seller on the basis of a power of attorney with a right to sell the property and such powers of attorney were being executed for an unspecified period. A transaction between two persons capable of entering into a contract which does not

contravene any statute would be valid in law. The State of Rajasthan does not make such transactions illegal. The Indian Contract Act or the Power of Attorney Act have not been amended. Executing of a power of attorney per se, therefore, is not illegal. Registration of power of attorney except in cases falling u/s 17(1)(g) or 17(1)(h) is not compulsorily registrable. Sections 32 and 33 of the Indian Registration Act also do not bar any such registration.

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61. The question can be considered from another angle. A person may not have any near relative or is otherwise unable to attend the office of the Sub-Registrar or Registrar within whose jurisdictions the property is situated. He may even be out of the country. In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged u/s 300A of the Constitution of India.

8. Thus, it is sought to be contended that the instrument of power of attorney is valid document and cannot be ordered to be ignored for the purpose to seek registration of a document. It is contended that the statutory provisions has been struck down, therefore, the executive instructions to achieve the similar objective cannot be sustained.

9. On the other hand, in the reply filed on behalf of the respondents, it is pointed out that the instructions dated 02.09.2009 issued by the Administration is a step and measure to introduce fair and authenticate procedure for entering a genuine sale transaction between the vendor and vendee. It is a step to avoid and discourage any kind of irregular, illegal, fraudulent sale transactions. It is averred that though the sale transactions on the basis of Power of Attorneys are permissible under the law, but the same are being misused by some of the persons, property dealers and real estate owners, which led to growth of real estate mafia and criminalisation of real estate transactions. It is further averred that only registered sale deed could transfer the rights in the immovable property in favour of vendee and that the provisions of Power of Attorney Act, 1882 confer, assign, create right to do any act or thing on behalf of other person are being misused by some persons, which led to unwanted litigation and property disputes between the vendor and the vendees. Therefore, the respondents being a custodian of property can impose any condition in the interest of public and to overcome with increasing day-to-day frauds in real estate transactions. The executive instructions have been issued to the Registering Authority for fair and genuine sale transactions between vendor and vendees. Reference is also made to an interim order passed by the Hon'ble Supreme Court in Suraj Lamp and Industries (P) Ltd. thru. DIR Vs. State of Haryana and Another, (hereinafter referred to as "Suraj Lamp (I)"), wherein the execution of the General/Special Power of Attorneys as a mea to transfer of the immovable property was noticed and commented adversely. It is also pointed out that the petitioner has involved himself in irregular and multiple sale transactions

and that execution of General Power of Attorney proves that there is certainly a sale transaction of the property in issue and that too without payment of requisite stamp duty, which was to be levied normally on the total market value for transfer or sale of immovable property. There is clear loss to the State Exchequer under the Indian Stamp Act, 1899.

10. On 07.03.2012, when the case was taken up, the learned counsel for the respondents sought time to examine the issue of requirement of issuance of "No Objection Certificate" in the light of a judgment of this Court in *Surinder Kaur Vs. Union Territory and Others*, and also to refer to the source of power to issue circular dated 02.09.2009. On 18.04.2012, this Court framed following three questions:

(i) Whether the family settlement for the purpose of transfer of ownership without payment of stamp duty is permissible amongst the class-I heirs or amongst the others members of the family?

(ii) Whether the transfer of ownership can be effected on the basis of General Power of Attorney on payment of stamp duty prior to the judgment of Hon''ble Supreme Court in the case *Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another*,

(iii) That what action should be taken in respect of cases of transfer of ownership on the basis of inheritance where the disputes are pending before Civil Court or other Forums?

11. Mr. Kaushal has sought to re-examine the issue relating to Question No. 1 in CWP No. 16258 of 2009 vide a separate order today. Whereas in respect of Question No. 3, no action can be taken by the Administration since the disputes regarding title are pending before the competent Courts. Therefore, the surviving question in the present writ petition is Question No. 2 alone.

12. The Hon''ble Supreme Court in *Suraj Lamp (I)* case (supra) noticed the background of execution of Power of Attorney sales including the cumbersome procedure in obtaining permission from the Delhi Development Authority and to avoid payment of huge part of price to the authority as unearned increase leading to evolving a hybrid system of execution of General and Special Power of Attorneys with delivery of possession to avoid transfer other than by a conveyance deed. The Court noticed the adverse consequences of General and Special Power of Attorneys. It observed as under:

20. Whatever be the intention, the consequences of SA/GPA/will transactions are disturbing and far-reaching, adversely affecting the economy, civil society and law and order. Firstly, it enables large-scale evasion of income tax, wealth tax, stamp duty and registration fees thereby denying the benefit of such revenue to the Government and the public. Secondly, such transactions enable persons with undisclosed wealth/income to invest their black money and also earn profit/income, thereby encouraging circulation of black money and corruption.

13. Later, when the matter was taken up for final decision, after notice to the Solicitor General and to the States of Punjab, Haryana, Delhi, Uttar Pradesh and Maharashtra, the Hon'ble Supreme Court examined the issue of General Power of Attorney as a mean to transfer the property in a judgment reported Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, Recent Apex Judgments (R.A.J.) 397: 2012(1) SCC 656 "Suraj Lamp and Industries (P) Ltd. v. State of Haryana" (hereinafter referred to as "Suraj Lamp (II)"). The Court noticed that a Power of Attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency, whereby the grantor authorises the grantee to do the acts specified therein on behalf of grantor, which when executed will be binding on the grantor as if done by him and that an attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf the grantor. The Court observed as under:

14. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in Asha M. Jain Vs. The Canara Bank and Others, , that the "concept of power of attorney sales have been recognised as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognised or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

15. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of "GPA sales" or "SA/GPA/WILL transfers" do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

16. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable

prospectively to avoid hardship.

17. We have merely drawn attention t(sic)d reiterated the well settled legal position that SA/GPA/WILL transactions are not "transferor "sales" and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said "SA/GPA/WILL transactions" may also be used to obtain specific performance or to defend possession u/s 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/ leases by Development Authorities. We make it clear that if the documents relating to "SA/GPA/WILL transactions" has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.

14. The Hon"ble Supreme Court overruled the judgments, which have taken a view that irrevocable power of attorney creates interest in the immoveable property and cannot be revoked. The Court further held that validity of sale agreements and powers of attorney executed in genuine transactions is not affected in any way. For example, a power of attorney was executed by a person to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. It was also observed that in several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty and that the observations in the judgment are not intended to apply to such bona fide genuine transactions.

15. We have heard learned counsel for the parties at some length in respect of issue of execution of General/Special Power of Attorneys as a mode of transfer of title in the immovable properties. The concern of the Administration is to allow that the transfer of title in the property on the basis of genuine transactions by the General Power of Attorney or Special Power of Attorney and that the documents executed in favour of property dealers, speculative in the real estate, are the evils in the city, therefore, State's interest in evading the payment of stamp duty under the guise of General/Special Power of Attorney needs to be protected.

16. We find that there is lack of clarity in respect of functioning of the Chandigarh Administration, as owner of the sites and building allotted or to be allotted by it as well as duties and responsibilities of the Registering Authorities discharging functions for the registration of instruments under the Registration Act, 1908.

17. Rights of Chandigarh Administration after executing conveyance deed:

(a) Free-hold property:

The Capital of Punjab (Development and Regulation) Act, 1952 (for short "the Act") extends to the city of Chandigarh comprising the area of site of Capital of

Punjab and to such area as may be notified by the Central Government from time to time. The Central Government is empowered to sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may subject to any Rules that may be made under the Act (See Section 3). In exercise of such powers, the Chandigarh (Sale of Sites and Buildings) Rules, 1960 (for short "1960 Rules") have been framed, whereas separate rules have been framed to regulate the construction of the buildings within the Chandigarh such as Punjab Capital (Development and Regulation) Building Rules, 1952 (for short "1952 Rules"). Therefore, as owner of the land vesting with the Chandigarh, the Administration is competent to sell the same on such statutory terms and conditions as it may prescribe including to determine the use of the buildings and resumption thereof. The rights and interest of the Administration in such properties are transferred in terms of the Statutory Rules and the conveyance executed by the Administration in favour of the allottee or the succeeding purchasers. In terms of sub-section (3) of Section 3, the Central Government continues to hold interest over any site or building, until the entire consideration money together with interest or any other amount, if any, due to the Central Government, Thus once the entire sale consideration has been paid, the Chandigarh Administration does not have any interest or title in the site or building.

Once the conveyance deed is executed, the right of the Chandigarh Administration is to ensure that the site or building is used for the purpose it is allotted and that it is constructed as per the Building Rules so as to have disciplined and regulated constructions so as to avoid haphazard unorganized construction of buildings and its uses. The "transferee" as defined in the Act includes the successor and assignee. Therefore, the transferees from the allottees or the auction purchasers are the transferees within the meaning of Section 2(k) of the Act and are bound by the same terms and conditions, as are the original allottees or purchasers and are bound to comply with the statutory Rules framed under Sections 3 and 22 of the Act. But the Administration does not have any continued control in respect of transfer of rights by the transferee of the Administration. Such transfer is governed by the provisions of the Indian Contract Act, 1872 and the Transfer of Property Act, 1882 to be registered under the Registration Act, 1908 on payment of requisite stamp duty as contemplated under the Indian Stamp Act, 1899. Therefore, the requirement of seeking "No Objection Certificate " from the administration, in the absence of any Rule framed in exercise of powers, is illegal, unwarranted and beyond the scope of legislative authority given to the Central Government/Chandigarh Administration.

The learned Single Bench in a judgment reported as *Surinder Kaur* (supra) has recorded a finding that there is no provision in the Capital of Punjab (Development and Regulation) Act, 1952 or the Rules made thereunder prohibiting the sale of property allotted without obtaining prior permission of the Administration. It was held to the following effect:

17. The next contention of the learned counsel for the 4th respondent is that the permission was not granted to Ram Piari for sale of the land and the sale is, therefore, invalid. I do not agree with this contention of the learned counsel for the 4th respondent. Simply because the permission was not granted to Ram Piari for sale of the property, it can be said that the sale is invalid. In fact, the property was originally allotted to Vidhya Dhar, who in his turn, sold the property to Ram Piari. The original order of allotment has not been placed on record to show that there is any condition that the property cannot be sold without obtaining prior permission of the authority. Further Vidhya Dhar became the full owner of the property after becoming the owner under the Conveyance Deed. He sold it to Ram Piari. Simply because Ram Piari mortgaged the property in favour of the Chandigarh Administration, it does not mean that she has to obtain permission from the Administration before selling the property. The property was allotted u/s 3 of the Capital of Punjab (Development and Regulation) Act, 1952. There is no provision in the Act or in the rules made thereunder prohibiting the sale of the property allotted without obtaining the prior permission of the Administration.

(Emphasis supplied)

Mr. Kaushal could not point out that the condition of issue of "No Objection Certificate" has been imposed as a condition of sale in terms of the Act or the Rules framed thereunder. There is no Rule/Clause which empowers the Administration to seek "No Objection Certificate" from its transferees, when the title and interest in the land or the building stands transferred without any encumbrance on receipt of the entire sale consideration. Even the model deed of conveyance contained in Form "B" in the 1960 Rules, has no clause, which require "No Objection Certificate" from the Chandigarh Administration.

In view of the above, we are of the opinion that the requirement to seek "No Objection Certificate", unless it is so incorporated in the Rules, is illegal in respect of the property sold or allotted on free hold basis. But at the same time, the Registering Officer is duty bound to verify that the executant is genuine and has interest in the property sought to be transferred.

(b) Regarding lease-hold rights

The Administration has also framed Chandigarh lease Hold of Sites and Building Rules, 1973 (for short "1973 Rules") for demise of sites and buildings on lease for 99 years by way of allotment or by way of auction. The "premium" is defined to mean the price paid or promised for the transfer of a right to enjoy immovable property under such Rules. The allottee or the auction purchase has to pay annual rent as per rates specified in Rule 13. Rule 14 contemplates that on payment of 25% premium, a lease deed shall be executed in form "B" or "C" as the case may be Rule 17(10) of the said Rules, as amended on 05.06.2002, contemplates that the lessee will not be entitled to transfer the site or the building without the prior permission of the Estate Officer. Such permission

cannot be granted until the lessee has paid full premium and the rent due under the lease. The proviso as it contemplates if the property was leased out by allotment, or at a reserve price or at any other concessional rate, or by hire purchase, the transfer shall be allowed on payment of 1/3rd of the unearned increase in value. The relevant Rule 17(10) reads as under:

17. General Conditions of lease-

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(10) The lessee will not be entitled to transfer the site or the building without the prior permission of the Estate Officer. Such permission shall not be given until the lessee has paid full premium and the rent due under the lease for the site, unless in the opinion of the Estate Officer exceptional circumstances exist for the grant of such permission. The lessee shall be liable to pay such transfer charges as are notified by the Chandigarh Administration from time to time.

Provided that where the property was leased out by allotment, or at a reserve price or at any other concessional rate, or by hire-purchase, then transfer shall be allowed on payment of 1/3rd of the unearned increase in value. The unearned increase will be assessed by the Estate Officer by determining the difference between the current market value of the property and the present value of the premium paid for the property. The current market value of the property shall be assessed in view of the average of auction price over the last three financial years for property of the same category or such other evidence as the Estate Officer deems to be appropriate. The present value of the original premium shall be calculated by enhancing the same from the premium by 9% per annum, compounded annually, from the date(s) of payment. The difference between these two values shall be the unearned increase. During assessment, notice shall be issued to the lessee and he shall be afforded an opportunity of being heard.

As against the properties allotted or sold on freehold basis, where there is no condition in the Rules to seek "No Objection Certificate" from the Administration, 1973 Rules provide for permission before the transfer is effected and on payment of unearned increase of value in certain cases. The mechanism of unearned increase led to malice of sales under the guise of power of attorneys. It was the said malice, which was noticed by the Hon'ble Supreme Court in *Suraj Lamp (I)* case (supra).

Another reason for executing power of attorneys as a mean to transfer ownership is the restriction in the letter of allotment for transfer of the property before the expiry of specified number of years. We find that restriction on the transfer of the property now in the developed City of Chandigarh is counter-productive to the interest of the State and its revenue and also provides field-day to the persons to evade payment of proper stamp duty and also deal in property with ill-gotten wealth that is black money.

18. The scope of provisions of the Registration Act, 1908.

On the other hand, a document which is required to be registered compulsory or the registration of which is optional is required to be presented at the proper registration office before the Officers authorized in terms of Section 32 of the Registration Act, 1908. The document containing contracts, transfer for consideration of any immovable property for the purpose of Section 53A of Transfer of Property Act, 1882 are required to be registered in terms of Parliament Act No. 48 Of 2001.

Section 33 of the Registration Act, 1908 recognizes to present a document for the purposes of registration. Section 34 of the said Act empowers the Registering Officer to conduct enquiry in terms of subsection (2) of Section 34, which reads as under:

34. Enquiry before registration by registering officer: (1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under Sections 23, 24, 25 & 26.

(2) Appearances under sub-section (1) may be simultaneous or at different times."

On such enquiry, as the registering officer deems appropriate, the document is required to be registered u/s 75 of the Act, whereas the order of refusal of registering a document is required to be passed u/s 76 of the Act. The remedy to file civil suit is provided u/s 77 of the Act against the order of refusal to register a document.

Para 135 of the Punjab Registration Manual initially contemplated that it would be wrong for the registering officer to refuse to register a document on the ground that the executants was dealing with property not belonging to him, or that the instrument infringed the rights of third persons not parties to the transaction, or that the transaction was fraudulent or opposed to public policy. Such para reads as under:

135. Registering officers should bear in mind that they are in no way concerned with the validity of documents brought to them for registration, and that it would be wrong for them to refuse to register on any such grounds as the following, e.g. that the executant was dealing with property not belonging to him, or that the instrument infringed the rights of third persons not parties to the transaction, or that the transaction was fraudulent or opposed to public policy. These and similar matters are for decision, if necessary, by competent courts of law and registering officers, as such, have nothing to do with them. If the document is presented in a proper manner by a competent person at the proper office within the time allowed by law and is the registering officer is satisfied that the alleged executant is the person he represents himself to be, and if such person admits execution, the registering officer is bound to register the document without

regard to its possible effects.

However, the Government of Punjab has issued a notification No. R-1/17-48/4/27691A dated 30.11.2000 substituting para 135, which reads as under:

135. Registering Officers not concerned with validity of documents: "The Registering officers should bear in mind that fraudulent transactions lead to litigation and unnecessary harassment to innocent citizens. Therefore, as public servants they are required to see that fraudulent transactions are not got registered by persons who are not authorised to do so under the law though these matters shall still remain subject to the final decisions of the Civil Court. The Registering Officer shall satisfy himself that in case of sale or other form of alienation a piece of evidence has been attached to the deed to be registered to show that the alienator has title to the property in question.

After the said amendment, a Memo No. 2/3/98-ST-1/3729 was issued on 19.09.2001 conveying that modification in para 135 was designed to check registration of fraudulent transactions by unscrupulous elements having no title or interest in the property forming the subject matter of alienation. The relevant extract reads as under:

I am directed to refer to the subject noted above and to say that Para 135 of the Punjab Registration Manual, 1929 was substituted vide Notification No. R-1/17-48/4/27691A dated 30.11.2000. It inter alia lays down that the Registering Officers as public servants are required to see that fraudulent transactions are not got registered by persons who are not authorized to do so under the law though these matters shall still remain subject to final decision by the Civil Courts. Further, that the Registering Officer shall satisfy himself that in case of sale or other form of alienation, a piece of evidence is got attached to the deed to be registered to show that the alienator has title to the property in question.

2. The above said modification was designed to check registration of fraudulent transactions by unscrupulous elements having no title or interest in the property forming the subject matter of alienation thereby paving the way for a chain of unending civil litigation leading to social unrest and untold misery amongst the unsuspecting citizens whose interests are adversely affected in the above process. It has, however, been observed that the amendment issued by the Government on 30.11.2000 is being misconstrued and misinterpreted in certain quarters as if it is bringing upon the Registration Officers a burden not intended to be imposed on them by law. This perception appears to emanate from ignorance of the statutory provisions of Section 7 of the Transfer of Property Act.

Though the said circular is not applicable to Chandigarh unless it is adopted, but keeping in view that such instructions are for protection of the citizens, the same should be taken into consideration by the Registering Officers in the Chandigarh.

19. Mechanism to be adopted in respect of execution of the instruments to seek transfer of rights in the immovable properties:

The Chandigarh Administration has put the property details of all the allottees, auction purchasers and lessees on its website. Such information discloses the encumbrances, if any; the payments made and the transactions effected. But invariably, the said information is not updated. Therefore, we consider it appropriate to direct the Administration to update the information regularly on its website to enable the prospective purchasers to find out any encumbrance on the property. It shall be open to the prospective purchasers to obtain information in respect of any encumbrance under Right to Information Act, 2006 as well. But the non-disclosure of information either under the Right to Information Act, 2006 or on the website of the Administration will not create any equitable right in favour of the prospective vendee as the enquiry in respect of the saleable interest is required to be made by the prospective vendee alone. The Administration will continue to have right to claim its dues against the property conveyed and to enforce the provisions of the Act and the Rules framed thereunder in the same manner as against the purchaser, as it was competent to do so against the owner.

20. We also noticed that there are no Rules or instructions in respect of updating the record of the Estate Office, as a custodian of the records of the title, on the basis of the sale deeds executed. It is open to the Administration to frame appropriate Rules, which may regulate the procedure for updating its record, so that the prospective vendees and all interested persons are able to find out the status of the properties to the best possible manner.

21. With this background, the process of the execution of the power of attorneys as a mean to transfer the right, title or interest in the immovable property needs to be examined and also as to in which cases, a general or special power of attorney can be recognized for the purposes of executing a document of sale and or the cases where the power of attorneys itself will require stamp duty.

22. The execution of Power of Attorney is recognized by Power of Attorneys Act, 1882. The Attorney is an agent. The powers of such agent are delineated in Chapter X of the Indian Contract Act, 1872. As per Section 85 of the Evidence Act, a Power of Attorney carries presumption of correctness. The Hon'ble Supreme Court in Suraj Lamp (I) case (supra) has observed that the concept of sales on the basis of Power of Attorney came up in vogue in view of the clause in the Delhi Development properties of deposit of unearned increase. Similar is the clause in the 1973 Rules.

23. Punjab Act No. 17 of 1994 as extended to Chandigarh contemplates that power of attorney when given for consideration and authorizes the attorney to sell any immovable property, it shall carry the same duty as conveyance. The power of attorney may be authorized generally to sell the immovable property described in the instrument or to sell, lease & mortgage the specific property. A

reading of the power of attorney by itself may not disclose that such power of attorney is for consideration.

24. The expression "consideration" in Entry 48 of Schedule 1 of the Indian Stamp Act is not the consideration, as mentioned in Section 2(d) of the Contract Act. The appointment of an agent in terms of the Contract Act need not be for any consideration. The expression "consideration" in the Contract Act is used as condition of execution of a valid agreement and not for creating an agency. Therefore, meaning assigned to the expression consideration in the Contract Act, cannot be applied to such expression in the Stamp Act. Such expression in the Stamp Act has to be interpreted keeping in view the object of such amendment and the purpose sought to be achieved by such amendment. The consideration in the provision has to be given contextual meaning, which advances the purpose of the enactment. An agreement for the monetary consideration precedes the execution of the power of attorney. The power of attorney, when devised as a mean to transfer interest in the property, would require stamp duty as a conveyance. Such power of attorneys are required to be registered only on payment of duty, which is the same as leviable on an instrument of conveyance.

25. The Hon"ble Supreme Court in Suraj Lamp (I) case (supra) has culled down the following categories of attorneys executed to circumvent the provisions of law:

(a) Vendors with imperfect title who cannot or do not want to execute registered deeds of conveyance.

(b) Purchasers who want to invest undisclosed wealth/income in immovable properties without any public record of the transactions. The process enables them to hold any number of properties without disclosing them as assets held.

(c) Purchasers who want to avoid the payment of stamp duty and registration charges either deliberately or on wrong advice. Persons who deal in real estate resort to these methods to avoid multiple stamp duties/registration fees so as to increase their profit margin.

26. Such instances holds good in respect of the execution of power of attorney in Chandigarh as well. Therefore, an attempt is required to be made by the Registering Authority to find out as to whether such attorney is being executed for consideration in terms of Punjab Act No. 17 of 1994 extended to Chandigarh vide notification dated 15.11.2007.

27. For successful curbing of the malice of so-called power of attorney sales, it is high time that the Administration re-examines the Rules relating to claim of unearned increase. It is matter of common knowledge that the parties have to sell the properties may be in need of money or to simply earn profit. Therefore, any encumbrance on the transfer of rights in an immovable property leads to unscrupulous means to avoid the provisions of law. Therefore, the Administration may re-examine the entire process of unearned increase and adopt other means

of increasing its revenue may be in case of transfer of lease hold rights to charge higher ground rent every year. Similarly, the Administration may also re-examine; whether there is any continued justification for not permitting the transfers for the specific years. Unless the bottle-necks in transfer of the property are removed, the ways & means will be found by the persons to circumvent law. Therefore, law should be such, which balances the rights of all the citizens and also the revenue for the State.

28. In terms of Suraj Lamp (II) case (supra) (II), the Power of Attorneys in favour of near relations i.e. spouse, son, daughter, brother or sister etc. would continue to be valid. The Hon"ble Supreme Court in Basant Nahata's case (supra) has observed that apart from relatives, there can be other instances, where a power of attorney is required to be executed. The action of executing the power of attorney as a devise to transfer the property is against the public policy giving rise to multifarious litigation, fraud on the innocent people, circulation of black money and evasion of stamp duty. Therefore, such process cannot be resorted to after 15.11.2007. If the power of attorney is executed for consideration, such attorney is liable to stamp duty as conveyance.

29. However, to curb the malpractice of sale through Power of Attorney, it is the onerous duty of the Sub Registrar to enquire and be satisfied, whether the execution of power of attorney is for consideration. We are conscious of the fact that the satisfaction to be recorded by Sub Registrar is capable of being mis-used. Therefore, if the registration of any power of attorney is to be refused, the Sub Registrar shall record reasons to return a finding that such an instrument or the power of attorney is for consideration. If such reasons are recorded, the aggrieved persons would have liberty to avail the remedies as available in law.

30. There may be cases where in spite of bona fide enquiries, the Sub Registrar is not able to make out; whether the power of attorney is for consideration. But if on the basis of such power of attorney, an instrument for sale is presented for registration, the Sub Registrar will be competent to hold an enquiry at any subsequent stage into the nature of transaction and to return a finding that such power of attorney was for consideration and, therefore, cannot be made basis for registration of an instrument unless the deficiency in such case made good in accordance with law.

31. In view of the discussion above and findings recorded, we conclude:

(i) That the requirement of "No Objection Certificate" from the Chandigarh Administration before effecting sale of the free hold properties is not supported by the Act or the Rules framed thereunder.

(ii) The Registering Authority is duty bound to examine; whether the Power of Attorneys are being executed for consideration. If the Authorities are satisfied that it is for consideration, the Power of Attorney shall not be registered unless the proper stamp duty is affixed thereon.

(iii) If the proper stamp duty is not paid on a Power of Attorney executed on and after 15.11.2007, the Registering Authority shall refuse to register the document on the basis of such attorney at any subsequent stage unless proper stamp duty is affixed thereon in accordance with law.

(iv) The Chandigarh Administration may re-examine Rule 17 (10) of the 1973 Rules contemplating unearned increase, as well the restriction to sell the properties before the expiry of specific years, as the root-cause of malice of Power of Attorneys sales.

(v) The Chandigarh Administration to frame Rules to maintain and update the property records in the manner mutations are sanctioned in respect of non urban properties under the Punjab Land Revenue Act, 1887 or such other procedure, which is fair, reasonable and transparent.

Now coming to the present case, the petitioner has obtained Power of Attorneys for consideration, as it is evident that the petitioner has entered into an agreement to sell in respect of 30% and 20% shares. Such power of attorneys executed after 15.11.2007 is for consideration and have to bear, the stamp duty as a conveyance. If such instruments have been so stamped, the Sub Registrar is bound to register the sale deeds else such power of attorneys cannot be acted upon unless the deficiency in the stamp duty is made good in accordance with law. The petitioner or any other attorney holder or the prospective purchaser cannot be permitted to evade the payment of stamp duty under the guise of execution of power of attorney. The present writ petition is disposed of in the manner recorded above.