

(2011) 10 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1062 of 1986 (O and M)

Major Singh (deceased) through his LRs, and others	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Government Grants Act, 1895 — Section 2
Transfer of Property Act, 1882 — Section 10

Citation : (2012) 3 RCR(Civil) 372

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : O.P. Hoshiarpuri, for the Appellant; Praveen Chander Goyal, Additional Advocate General for the Respondent No. J and None Punjab for the Respondent No. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—The writ petition is at the instance of a purchaser, who has purchased a property which had been declared as surplus under the Punjab Land Reforms Act and allotted to one Mehnga Ram under the Punjab Utilization of Surplus Area Scheme of 1973 (for short, the scheme of 1973). A suo motu action had been taken against Mehnga Ram for cancellation of an allotment on the ground that the sale effected by him was in contravention of the terms of allotment and particularly Rule 10 of the Scheme of 1973 which interdicted sale of the property within a period of 15 years from the date of sale or from the date of possession whichever was later. The only excepted transaction of transfer was a transfer by mortgage in favour of Land Mortgage Bank, the State or Central Cooperative Bank or any other Bank for the purpose of raising loan. In the cancellation proceedings admittedly Mehnga Ram alone had been made a party and neither the purchaser from Mehnga Ram nor the petitioner who was himself a purchaser from the subsequent alienee was made a party. However the petitioner took notice of the action for cancellation and preferred an appeal against the decision of the Collector (Land Reforms) by challenging the

cancellation, inter alia, on the ground that he had not been served with notice. This objection was not found tenable and the cancellation was upheld by the Commissioner and still later by the Financial Commissioner. The successive orders are the subject of challenge before this Court.

2. The learned counsel for the petitioners relies on a judgment of a Full Bench decision of this Court in *Harnek Singh and another v. The State of Punjab and others*, 1971 PU 727 that held that notice of surplus area proceedings under Pepsu Tenancy and Agricultural Lands Act, 1955 was preemptory and a transferee was entitled to be given an opportunity to be heard. This decision was rendered in the context of a purchaser being deliberately left out without a remedy when he could have protected himself by seeking for the allotment of the property purchased by him within the permissible area. In a situation where a purchaser could have protected himself by the act of the owner and could have made the allotment to fall within the permissible area to stave off action of the State by compulsory acquisition, the issue of notice to a purchaser would assume significance. In this case, the purchaser is a person who has purchased the property after the surplus is declared from out of the surplus pool from a person whose predecessor himself suffered a legal bar against transfer under the terms of allotment. If the cancellation itself was not known to the petitioners, it could have been a different issue. In a case where they had taken notice of the cancellation and challenged the said cancellation, the legal prejudice must be specifically shown. If the purchaser could have any tenable objection to take regarding the validity of such a transfer in the face of express bar against transfer by the allottee, the want of notice at the first stage of the proceedings cannot be seen to be material. The petitioners having joined the proceedings midway at their own instance could succeed only if they could prove prejudice. The petitioners who have acted against the Rules are not persons who can impeach the order of cancellation.

3. The learned counsel says that the bar against sale is violative of Section 10 of the Transfer of Property Act and, therefore, Rule 10 that prohibits sale is invalid. I would find this objection to be not tenable for Government grants are excepted categories from the applicability of Section 10. Section 2 of the Government Grants Act, 1895 provides thus:-

Nothing in the Transfer of Property Act, 1882 (4 of 1882), contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

There is no defect in the impugned orders passed and the writ petition ought to fail. The writ petition is, accordingly, dismissed.