(1992) 02 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15369 of 1991

Sohan Lal Bhumbak, Tehsildar, Industries (Loans) APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 05-02-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Registration Act, 1908 — Section 17(1), 17(2)
Transfer of Property Act, 1882 — Section 53A

Citation : (1992) 101 PLR 683

Hon'ble Judges : R.S. Mongia, J

Bench : Single Bench

Advocate : J.C. Verma and Dinesh Kumar and Harminder Sharma, for the Appellant; Charu Tuli, AAG, for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia, J.—The petitioner had joined the Revenue Department in the State of Punjab as Tehsildar on 16th April, 1981- His name had been recommended by the Commissioner of Jullundur Division for consideration by the Financial Commissioner for being brought on the Register A-1 under Rule 9 of the Punjab Civil Services, Executive Branch, Class 1 Rules 1976 for ultimate appointment to the P. C. S Executive Branch. The Financial Commissioner, however, did not forward the rolls of the petitioner to the Punjab Public Service Commission (PPSC) on the alleged ground that there was a departmental enquiry pending against him. This led the petitioner to file the present writ petition. The prayer which has been made in the petition is that the charge-sheet Annexure P-2, of the writ petition be quashed and respondents be directed to forward the name of the petitioner to the PPSC for inclusion in the list of the nominees under Register A-1, for ultimate appointment to the P. C. S. Executive Branch from that Register. In pursuance of the order of the Motion Bench, one vacancy has been kept reserved in the category of the petitioner i.e. Register A-1.

2. The allegations in the charge-sheet on the basis of which the enquiry is being held against the petitioner are as follows:-

"When Shri Sohan Lal Bhumbak, was as Sub-Registrar, Ludhiana, he registered an agreement to sale and possession letter though it did not have the necessary stamp fees affixed on it. In this connection, the Accountant General (Audit), Punjab, vide his letter No. R. A. 1/S. R./S.D./89-90/T.D.A. 4/652-57, dated 8.6.90, sent a tentative draft regarding wrong classification of instruments for including in the year 1989-90 Audit Report. It was commented by the Accountant General (Audit), Punjab, that in accordance with the clarification given in Punjab Government instruction No. S.T. 4-61, 7122, dated 28.7.61, such a document which contained all the essential ingredients of conveyance, will be a sale, on which stamp and registeration fee have to be paid. The agreement to sale-cum-possession letter, which was registered by Shri Bhumbak without any stamp or registration fee, had all the essential ingredients of conveyance. Besides this, full payment of Rs. 19,16,712.20 of the agreement had been made. Thus by contravening the Government instructions, Shri Bhumbak caused a loss of Rs. 2,41 lacs to the Government, in the shape of stamp fees.

2. When full payment of the amount of the agreement had been made, you made the following alteration in para 3 of the agreement, in connivance with the concerned parties:

"Balance is to be paid at the time of execution of sale/ transfer."

By doing so, you have made an unsuccessful attempt to show that the concerned party had to make some payment as yet.

3. This action of his shows that he has done this for his personal interest/greed with malafide intentions and in connivance with the party and he has made himself liable for action under the Punjab Civil Services (Punishment and Appeal) Rules, 1970."

3. It has been averred in the written statement filed on behalf of the respondents that the petitioner''s name was not recommended by the Financial Commissioner Revenue for nomination to P.C.S. Executive Branch due to the pending disciplinary proceedings against him.

4. The learned counsel for the petitioner has submitted that there is no dispute on facts in this case and if this Court comes to the conclusion that the document which was presented before the petitioner really did not require any registration under the Indian Registration Act, 1908 then the question of the petitioner being guilty of any of the alleged charges would not arise. He submitted that this Court should decide this law point and if the decision is in his favour, then nothing remains in the charge-sheet and respondents should not in that eventuality be allowed to proceed further.

5. I am of the view that the learned counsel for the petitioner is right in submitting that the whole controversy revolves around as to whether the

document itself which was presented before the petitioner really required registration or not and if it did not require registration, the question causing any loss to the Government by way of Stamp Duty/Registration charges would not arise and no further allegation can be made against the petitioner.

6. The learned counsel for the petitioner drew my attention to Section 17 of the Registration Act which provides as to which documents are required to be compulsorily registered. Clause (b) of Section 17(1) of the Indian Registration Act (hereinafter called the Act) is in the following terms:-

(b) "other non-testamentary instruments which purport or operate to create, declare, assigns limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property."

Explanation to Sub-section 2 of Section 17 of the Act is in the following terms:-

"A document purporting or operating to effect a contract to the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money."

7. The document which was sought to be registered on a proper stamp paper required for agreement to sell and the heading was agreement to sell-cum possession letter. It has been further mentioned in this document that this is an article of agreement made on a particular date between the two parties. Paras 5,28 and 32 of the document are as under:-

"Para 5, Nothing contained in these presents shall be construed to confer upon the Buyer(s) any right title or interest of any kind whatsoever into or over the said land or building or any part thereof. Such conferment to take place only upon the execution of the conveyance to a limited Company; a Co-operative Housing Society or an Association of Persons to be formed by the Buyer(s) of different residential flats and/or other spaces in the said Group Housing Scheme as hereinafter stated."

"Para 28. After the Building Dhaulagiri Apartments is completed and ready for occupation and after the Co-operative Housing Society or the associations of Persons is registered and incorporated and only after all the residential flats/and or godown spaces in the said building have been sold and disposed of by the SELLERS and the SELLERS have received all dues payable to them under the terms of this Agreement from all the Buyers of all residential flats and godown spaces, the present owners and sellers shall execute a Deed of Assignment in respect of the Freehold rights in the said land in favour of the said society or the Limited Company or the Association of Persons subject to the convenent or condition contained in this agreement or as conveyed by the Ludhiana Municipal Corporation or Punjab Government or the Union Government or any other authority or authorities concerned. No extra amount will be demanded from the holders of residential flat(s) and/or godown a space for conveyance of rights in land as aforesaid, but stamp duty and registration charges, if payable, and all other out of pocket expenses as also the costs of the legal advisors to the Sellers will be borne by the Buyer(s) jointly with all other buyers and will be paid in proportion to the area acquired by him/her/them and the Sellers will not be liable to bear and pay the same.

"Para 32. If the Buyer(s) neglect(s) omit(s) or fails for any reason, whatsoever to pay the sellers any of the amounts due and payable by the Buyer(s). Under the terms and conditions of this agreement (whether before or after delivery of possession on or before the respective due date thereof, time being the essence of the contract or if the Buyer(s) shall in any other way fail(s) to perform or observe any of the convenant and conditions on his/her their part contained or referred to, the Sellers shall be entitled to re-enter upon and resume possession of the said residential fiat(s) and/or the godown space(s) and everything whatsoever therein and this agreement shall cease and stand terminated and the earnest and all other amounts already paid by the Buyer(s) to the Sellers stand absolutely forfeited to the Sellers and the Buyers shall have no claim for refund of repayment of the said earnest money and/or the said other amounts already paid by the Buyer(s) or any part thereof and the Buyer(s) hereby agree to forfeit all his/her/their the godown spaces and all amounts already paid and in such even the Buyer(s) shall also be liable to immediate ejectment as tresspassers but the right given by this clause to Sellers shall be without prejudice to any other rights, remedies and claim whatsoever at law or under this agreement or Sellers against the Buyer(s)."

8. The learned counsel submitted that the perusal of the explanation to sub-section 2 of Section 17 of the Act clearly goes to show that a document which is purporting to effect a contract for the sale in which even a recital is made that .entire consideration money has been paid, does not require registration at all. According to the learned counsel, by such a recital in the document, which is contract for sale, no right title or interest passes to the proposed buyer. This intention was rather made clear in the recital in paragraph 5of the document quoted above. It was not a case of ''Contract for Sale''. In other words, it was not a sale deed but was just an agreement to sell. The learned counsel further argued that Section 53A of the Transfer of Property Act envisages even delivery of the possession of the property as a part performance of ''Contract for Sale'' and simply because at the time of execution of the agreement to sell the entire money is paid and even the possession of the property is delivered that would not convert the document into ''Contract of Sale'' or a Sale Deed and, therefore, would not require registration. The registration of an agreement to sell is optional and the parties to agreement to sell may in their own interest get such a document, i.e. agreement to sell, registered.

9. On the other hand, the learned counsel for the respondents submitted that in

accordance with the clarification given in the Punjab Government Instructions dated 28th of July, 1961, (copy annexure P-7 to the writ petition), if a document contained the essential ingredients of conveyance, it would be a sale and stamp duty and registration fee for completed sale would be leviable/chargeable. The instructions to which the reference has been made by the learned counsel for the respondents read as under:-

--- Description of Proper classification of the documents document and the stamp duty chargeable thereon. --- Certificate of Sale. A Certificate of sale can only be a conveyance amounting to sale and not any other conveyance. Stamp Duty on a document comprised of a Certificate of sale should, therefore, be charged at the rates of stamp duty payable on a con- veyance amounting to sale. ---

10. Sale has been defined in Section 54 of the Transfer of Property Act which provides that Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. In other words a transaction of a sale divests the ownership of the property in the seller and vests the same in the buyer.

11. The learned counsel for the petitioner is right in his submission that the document which was also titled as agreement to sell did not vest the ownership of the property to the buyer and rather para 5 of the deed itself envisaged that nothing in the deed shall be construed to confer upon the Buyer any right, title or interest of any kind whatsoever into or over the said land or building or any part thereof. Such conforment was only to take place upon the execution of the conveyance to the limited company or a Co-operative Housing Society or to any Association of Persons yet to be formed by the Buyer. The document which is not necessarily registrable can at the option of the executant(s) be got registered also; but merely by the act of the registration of a document the nature of the document would not change as is clear from the explanation to sub-section 2 of the Act as also Section 53A of the Transfer of Property Act that at the time of agreement to sell entire consideration money can be paid and even possession can be delivered but such a document which is just an agreement to sell would not become a sale deed merely because the document is presented for registration or it is actually registered. Even in the instructions of the Punjab Government referred to by the counsel for the respondents, to which reference has been made above, it has been provided that it is only a certificate of Sale which can only be a conveyance amounting to sale and not any other document. It is not disputed before me that a stamp duty which is payable on agreement to sell was not paid or the registration charges which are required were not paid. That being so, to say that the petitioner was guilty because he did not register the document as ''sale deed'' would not be correct.

12. For the view, I have taken in the matter that the document itself really did not require registration and the registration of document as an ''agreement to sell'', was proper, the question of proceeding against the petitioner in pursuance of charge-sheet, annexure P-2, does not arise.

13. For the foregoing reasons, this writ petition is allowed and the charge-sheet annexure P-2 is hereby quashed. The respondents are further directed to forward the nomination rolls of the petitioner to the Punjab Public Service Commission within 15 days from the receipt of this for consideration of his name for being brought on Register A-1. The Punjab Public Service Commission would within 15 days of the "receipt of the nomination rolls fix a date for the interview of the petitioner and then declare the result in accordance with law. I maker no order as to costs. Copy of this judgment attested by my Reader be given to Mrs. Charu Tuli, AAG Punjab, representing the respondents, for onward transmission to the respondents for necessary compliance.