

43

2509
17-6-20

Status: - **DISMISSED**

29/06/20

L.R.

No. _____ D.W./Writs

Dated _____

IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

Diary No. 90633.
Date: 29/06/2020
HUDA, nu. Panchkula

To

1. The State of Haryana through its Secretary to Govt. of Haryana, Urban Estates Department Haryana, Haryana Civil Secretariat, Chandigarh.
2. Haryana Urban Development Authority, Panchkula, Sector 6, Panchkula through its Administrator.
3. Haryana Urban Development Authority, Panchkula, Sector 6, Panchkula through its Estate Officer.

Subject: LPA NO. 220 of 2011 in
CWP No. 20313 of 2010

30/6/20
30/6/20
30/6/20

Shakuntla Devi

..Petitioner

Versus:

The State of Haryana and others

..Respondents

Sir,

In continuation of this Court's order dated -----, I am directed to forward herewith copy of order dated 27.8.19 passed by this Court in the above noted case for information and necessary action.

Given under my hand and seal of this Court on this 13th day of September, 2019.



3/10
Superintendent (Writs)
for Assistant Registrar (Writs)

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

LPA NO 220 OF 2011

IN

CWP No.20313 OF 2010

Smt. Shakuntla Devi D/o late Sh. Hans Raj Sharma and wd/o late Sh.
Gurbax Dutt Kaushal, r/o H. No. 219, Sector 7, Panchkula, Haryana.

...Appellant

VERSUS

- § 1. The State of Haryana through its Secretary to Government of Haryana, Urban Estates Department Haryana, Haryana Civil Secretariat, Chandigarh.
- § 2. Haryana Urban Development Authority, Panchkula, Sector 6, Panchkula through its Administrator.
- § 3. Haryana Urban Development Authority, Panchkula, Sector 6, Panchkula through its Estate Officer.
- § 4. Sh. Rajinder Kumar Kaushal son of late Sh. Gurbax Dutt Kaushal, R/o H. No. 219, Sector 7, Panchkula, Haryana.
- § 5. Sh. Vinay Kumar Kaushal son of late Sh. Gurbax Dutt Kaushal, R/o H. No. 125, Sector 2, Panchkula, Haryana.
- § 6. Sh. Vijay Kumar Kaushal s/o late Sh. Gurbax Dutt Kaushal, R/o H. No. 219, Sector 7, Panchkula, Haryana.
- § 7. Sh. Satish Kumar Kaushal s/o late Sh. Gurbax Dutt Kaushal, R/o H. No. 1321, Sector 34, Chandigarh.
 8. i) Mrs. Neelima Kaushal, wd/o late Sh. Anil Kumar Kaushal deceased, R/o H. NO. 211, Hills Borough Rd., Auckland, Newzealand. (being Legal Heir of Late Sh. Anil Kumar Kaushal)
 - (ii) Miss Bhavna Kaushal d/o late Sh. Anil Kumar Kaushal (deceased) R/o H. NO. 211, Hills Borough Rd., Auckland, Newzealand. (being Legal Heir of Late Sh. Anil Kumar Kaushal)

(iii) Miss Tanvi Kaushal (Minor) d/o late Sh. Anil Kumar Kaushal (deceased) through her mother and natural guardian Mrs. Neelima Kaushal, wd/o late Sh. Anil Kumar Kaushal deceased R/o H. NO. 211, Hills Borough Rd., Auckland, Newzealand. (Legal Heir of Late Sh. Anil Kumar Kaushal)

...Respondents

LETTERS PATENT APPEAL under clause X of the letters patent against the judgement of Hon'ble single judge Hon'ble Mr. Justice Permod Kohli dated 15.11.2010

GROUND OF APPEAL:

1. That the Hon'ble Single Judge while passing the order under challenge ignored the terms of allotment letter (**ANNEXURE P-1**) as well as rules framed under Punjab Urban Estates(Sales of Sites) Rules,1965 and Haryana Urban Dev. (Disposal of Land and Buildings) Regulations 1978 relating to plot no. 219, sector 7, Panchkula, Haryana while adjudicating the issue of transfer of above house. *Clause 14* of the terms of the allotment letter which would have a bearing while deciding the present appeal is extracted herein below

"You shall not transfer by way of sale, mortgage, gift or otherwise the site or any right, title or interest therein (except by way of lease on monthly basis) save with the sanction of the Chief Administrator till a building has been constructed on a minimum of at least 10 per cent of the total permissible covered area of the plot"

LPA No.220 of 2011

[1]

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

L.P.A. No.220 of 2011 in
Civil Writ Petition No.20313 of 2010
Reserved on : July 02, 2019
Date of decision: August 27, 2019

Shakuntla Devi ...Appellant

Versus

The State of Haryana and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Arun Jain, Senior Advocate with
Mr.Chetan Salathia, Advocate for the appellant.
Mr.Gagandeep Singh Wasu, Addl.AG, Haryana.
Mr.Atul Gaur, Advocate for respondent No.4.
Mr.Kanwaljit Singh, Senior Advocate with
Mr.G.S.Virk, Advocate for respondent No.5.
Ms.Sunita, Advocate for respondent Nos.6 and 7.

HARINDER SINGH SIDHU, J.

This Letters Patent Appeal has been filed against the judgment dated 15.11.2010 in CWP No.20313 of 2010 titled 'Shakuntla Devi vs. State of Haryana and others' whereby the writ petition filed by the appellant was dismissed.

Pursuant to her application on 17.03.1972 for allotment of a residential plot measuring 500 sq. yards in Urban Estate Panchkula

47

LPA No.220 of 2011

[2]

Haryana, the appellant was allotted a plot bearing No.219 measuring 500 sq. yards in Sector-7, Urban Estate Panchkula vide memo dated 26.02.1973. She had paid an amount of Rs.16,500/- as its sale consideration. She submitted an application dated 13.02.1975 to the Estate Officer, Urban Estate, Panchkula requesting that in the allotment form the names of her five sons be included along with her name. This request was accepted vide memo dated 22.04.1975. The names of her sons were included in the allotment letter.

It appears that thereafter the allottees jointly applied for approval of the Building Plans which were approved in the joint names of the appellant and her sons vide memo dated 26.03.1976.

On 18.10.2010 i.e., about 35 years after the the inclusion of the names of her sons in the allotment letter, the appellant submitted a representation to the Estate Officer to maintain the records as per the original allotment letter. As no action was taken thereon she filed the writ petition seeking directions to the respondents to maintain the record in respect of ownership of H.No.219, Sector-7, Panchkula in the name of the appellant as per the original allotment letter.

It was her case that the letter dated 13.02.1975 for inclusion of the names of her five sons in the order of allotment was got signed by them under duress and coercion. It was further contended that the inclusion of the names of her sons in the allotment letter was in contravention to the terms and conditions of allotment. Clause 14 of the letter of allotment prohibited transfer by any mode without the sanction/ approval of the Chief

Administrator. It was also her case that as per Clause 13 of the allotment letter fragmentation of the plot was impermissible. Allotment in the joint names of her sons *ipso facto* amounted to fragmentation.

The learned Single Judge held that there was no violation of clauses 13 and 14 of the conditions of allotment. The plot had been allotted initially in the name of the appellant. She requested that the allotment be made jointly in her name and that of her sons. This did not tantamount to a transfer. Negating the ground of fragmentation the learned Single Judge held that there was nothing on record to indicate that there was any fragmentation. In fact at no stage was fragmentation asked for. In any case, the petition having been filed 35 years after the joint allotment, did not warrant interference by the Court in the exercise of its discretionary jurisdiction under Article 226. The writ petition was accordingly dismissed.

The learned counsel for the appellant has argued that the learned Single Judge has erred in holding that the act of issuance of allotment letter in the joint names of the appellant and her sons did not constitute transfer and that there was no fragmentation. He argued that allotment of one plot in the name of five co-sharers clearly amounts to its fragmentation.

We are not persuaded to agree with the contentions of the learned counsel. Further, even if there was some infraction of the terms and conditions of the allotment by including the names of the sons of the appellant along with her in the allotment letter, the learned Single Judge rightly dismissed the writ petition holding that interference by the Court in

49

LPA No.220 of 2011

[4]

exercise of its discretionary jurisdiction 35 years later was not warranted.

There is no illegality or infirmity in the aforesaid order.

The appeal is accordingly dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 27, 2019

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No



Harinder Singh Sidhu
16/08/2019