

another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.”

(29) Applying the underlying objective of the expression “moral turpitude” it can be safely inferred that where the act of an employee is deceitful and does not reflect modesty, honesty or good morals, it has to be construed as an act of “moral turpitude”. Persons convicted for misappropriation of even his wife’s property and asking for dowry by using coercive methods, definitely indulges in an act of dishonesty and is contrary to all canons of modesty and good morals. It is the greed of the husband and greed can never be an honest approach and definitely leads to something which is against good morals.

(30) In view of the above instances, I am of the considered opinion that it was not necessary for the authorities to hold any enquiry against the petitioner after his conviction before passing the order of dismissal. There is no merit in the present petition and the same is hereby dismissed with no order as to costs.

P.S. Bajwa

Before K. Kannan, J.

TARA SING AND OTHERS,—*Petitioners*

versus

**THE ADMINISTRATOR, UNION TERRITORY,
CHANDIGARH AND ANOTHER,—*Respondents***

C.W.P. No.10811 of 1989

22nd March, 2011

Constitution of India - Art. 226 & 227 - Capital of Punjab(Development and Regulation) Act, 1952 - Ss.2(k), 8-A & 10 - Transfer of Property Act - Original transferee had died but had sold property - Vendee's name did not figure in record of Estate Officer though there was a registered sale deed in his favour - In the meantime, property which was residential in nature was resumed

because it was being used for non-residential purposes - In appeal and revision before authorities, it was contended that no notice was issued to vendee - Authorities held that for vendee to challenge resumption, his name as owner should be borne on record of Estate Office, and that notice was issued to person authorized to collect rent - Relying on S.2(k) of Act 1952, it was held that there was no notice to vendee - Order of resumption quashed.

Whether there was sufficient notice to vendee and whether mutation in record of Estate Office was necessary to bring vendee within meaning of transferee as contemplate under S.2(k) of the Act - Sufficient notice not given - Petition allowed.

Held, That when the order of eviction was, therefore, challenged, the appellate authority could not state that there was nothing to show that sale had been effected and, therefore, he would not entertain the appeal. In the revision, the authority has observed that unless the ownership of the plot was changed in the records of the Estate Office, the petitioner could not legally claim a right of hearing before the resumption of site in question. This again was setting out a wrong proposition, for, a transfer is made under the provisions of the Transfer of Property Act by registration of the sale deed. Mutation is merely an evidence of such transfer and does not per se constitute the transfer. The failure of the owner for some reason to have carried out a mutation cannot defeat his right, more so, particularly when the purchaser had brought to the knowledge of the authority the fact of transfer through a registered instrument.

(Para 4)

Further held, That Section 8A of the Capital of Punjab (Development and Regulation) Act, 1952 contemplates a power of resumption and forfeiture for the breach of condition of transfer. The action could be taken against a transferee and "transferee" is defined under Section 2(k) of the Act as follows:-

"(k) "transferee" means a person (including a firm or other body of individuals, whether incorporated or not) to whom a site or building is transferred in any manner whatsoever, under this Act and includes his successors and assigns."

This definition shows that a transferee includes successors and assigns. The petitioner's status as such successor or assign cannot be unilaterally foreclosed by the authority by observing that since in their records, the transferee's name had not been included, he would not be entitled to a right of audience.

(Para 5)

Further Held, That the learned counsel points out to the averment in the writ petition itself to the effect that the owner had by his own showing constituted Shri Nath Singh as his power of attorney and he in turn had appointed Shri Pindi Dass Bhasin to collect rent etc. from the tenant. It was brought out through record that Mr. Bhasin had notice and that would, according to the learned counsel, be sufficient compliance of the legal requirement. I am afraid, I cannot accept this plea for the only reason that a constructive notice to the owner by virtue of the fact that a notice had gone to Mr. Bhasin cannot be presumed unless it is brought out on record that the order of enquiry to Mr. Bhasin under an eviction was passed in his capacity as such power of attorney for the legal owner. The Administration cannot ride on two horses. It cannot contend that it will not recognize the fact of transfer and contend at the same time that notice to Mr. Bhasin must be taken as a notice to the owner in the capacity as such power of attorney.

(Para 6)

Further held, That the law that empowers an Administration expropriatory power to eject a person for misuse is intended in public interest to ensure a proper regulation of all uses within the limits of the Administration. If any complaint of misuse is made and if such misuse, on being established, will render a property liable for resumption, it shall be imperative that the Administration follows the letter of law punctiliously. At least, when the appeal had been filed and again when the revision was filed by the petitioner claiming himself to be the owner, the petitioner had been granted opportunity to explain his case, then the order could be seen to be just. When the petitioner was, on the other hand, knocked out at the threshold and denying him an audience on a specious that he had not established his ownership, it cannot contend now that no notice was necessary and that a notice to Mr. Bhasin was sufficient notice to the owner himself.

(Para 7)

Satya Pal Jain, Senior Advocate, with Mr. Dheeraj Jain, and Davesh Moudgil, Advocates, for the petitioners.

Lisa Gill, Advocate, *for the respondents.*

K. KANNAN, J. (ORAL)

(1) C.M. which is filed in Court is directed to be numbered by the Registry. It is allowed and the legal representatives are brought on record subject to all just exceptions. Registry shall carry out necessary amendment in the memo of parties

(2) The writ petition contains a challenge to an order of resumption passed in relation to a property that had been originally transferred in the year 1957 to one Malkiat Singh. It appears that the transferee from the Chandigarh Administration had purported to have effected transfer in favour of the petitioner-Tara Singh on 14.05.1973. The property had been assigned for a residential use but when the person, who had been in possession of the property, had been subjecting the property to a non-residential use, an action for eviction was issued under the Capital of Punjab (Development and Regulation) Act, 1952 by the Estate Officer. At the enquiry, it appears that the original transferee Malkiat Singh had filed his reply stating that he had transferred his property since long and that he had no concern with the property. The Administration had issued a notice to one Pindi Dass Bhasin and it bears out through the record that notice of enquiry had been sent to him as well as to the occupier on various occasions and ultimately, an order for eviction was made which is impugned in the writ petition.

(3) The complaint of the petitioner is that he had sent a copy of the sale deed on 03.03.1981 and had sought for bringing his name to be entered in the records and the name of the seller namely Malkiat Singh to be deleted. The Administration had its own response to reject this plea, that the property had already stood resumed and hence, the plea for mutation could not be entertained.

(4) The learned senior counsel for the petitioner points out that against the order of eviction, the petitioner had filed initially an appeal under Section 10 of the Capital of Punjab (Development and Regulation) Act, 1952, giving details of his purchase and claiming that the action for eviction without serving a notice to him would not bind him. The appellate authority rejected the plea stating that there was nothing on record to show that the site had been sold to the petitioner by the previous transferee through a

sale deed. This, in my view, cannot be a correct position, for, a notice had already been sent in the year, 1981 giving the details of transfer but mutation was not effected on the ground that an order of eviction had already been passed. When the order of eviction was, therefore, challenged, the appellate authority could not state that there was nothing to show that sale had been effected and, therefore, he would not entertain the appeal. In the revision, the authority has observed that unless the ownership of the plot was changed in the records of the Estate Office, the petitioner could not legally claim a right of hearing before the resumption of site in question. This again was setting out a wrong proposition, for, a transfer is made under the provisions of the Transfer of Property Act by registration of the sale deed. Mutation is merely an evidence of such transfer and does not *per se* constitute the transfer. The failure of the owner for some reason to have carried out a mutation cannot defeat his right, more so, particularly when the purchaser had brought to the knowledge of the authority the fact of transfer through a registered instrument.

(5) Section 8A of the Capital of Punjab (Development and Regulation) Act, 1952 contemplates a power of resumption and forfeiture for the breach of condition of transfer. The action could be taken against a transferee and “transferee” is defined under Section 2(k) of the Act as follows:-

“(k) “transferee” means a person (including a firm or other body of individuals, whether incorporated or not) to whom a site or building is transferred in any manner whatsoever, under this Act and includes his successors and assigns.”

This definition shows that a transferee includes successors and assigns. The petitioner’s status as such successor or assign cannot be unilaterally foreclosed by the authority by observing that since in their records, the transferee’s name had not been included, he would not be entitled to a right of audience.

(6) The learned counsel for the Administration strenuously contends that notice had been issued to the occupant as well as to Mr. Bhasin, who has been admitted to be a power of attorney. The learned counsel points out to the averment in the writ petition itself to the effect that the owner had by his own showing constituted Shri Nath Singh as his power of attorney and he in turn had appointed Shri Pindi Dass Bhasin to collect rent etc. from the tenant. It was brought out through record that Mr. Bhasin had notice and that would, according to the learned counsel, be sufficient

compliance of the legal requirement. I am afraid, I cannot accept this plea for the only reason that a constructive notice to the owner by virtue of the fact that a notice had gone to Mr. Bhasin cannot be presumed unless it is brought out on record that the order of enquiry to Mr. Bhasin under an eviction was passed in his capacity as such power of attorney for the legal owner. The Administration cannot ride on two horses. It cannot contend that it will not recognize the fact of transfer and contend at the same time that notice to Mr. Bhasin must be taken as a notice to the owner in the capacity as such power of attorney.

(7) The law that empowers an Administration ex-proprietary power to eject a person for misuse is intended in public interest to ensure a proper regulation of all uses within the limits of the Administration. If any complaint of misuse is made and if such misuse, on being established, will render a property liable for resumption, it shall be imperative that the Administration follows the letter of law punctiliously. At least, when the appeal had been filed and again when the revision was filed by the petitioner claiming himself to be the owner, the petitioner had been granted opportunity to explain his case, then the order could be seen to be just. When the petitioner was, on the other hand, knocked out at the threshold and denying him an audience on a specious that he had not established his ownership, it cannot contend now that no notice was necessary and that a notice to Mr. Bhasin was sufficient notice to the owner himself.

(8) The learned counsel for the Administration further contends that the misuse still continues. If it continues, it shall be open to the Administration to issue a notice to the petitioner and take appropriate action as the law permits. This judgment will afford to the respective parties a right to contend that the transfer is either valid or not valid. This order will not be taken as concluding the issue of entitlement of the petitioner to continue the present state of user in the manner that is complained of by the Administration. The impugned order is quashed, but, however the Administration shall be at liberty to take appropriate action for any violation that it claims as empowering the Administration to secure eviction of the property in accordance with law.

(9) In view of the fact that the transferee Tara Singh has already expired and his legal representatives have been brought on record, the action that the Administration may contemplate will proceed against the persons, who have been brought on record as legal representatives. The writ petition is allowed on the above terms.

P.S. Bajwa