

Scheduled Castes Co-op. Society Vs State of Punjab and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 15, 2004

Acts Referred: Constitution of India, 1950 " Article 226, 36, 38, 46

Nazool Lands (Transfer) Rules, 1956 " Rule 10, 11, 2, 3, 3A

Transfer of Property Act, 1882 " Section 54

Citation: AIR 2005 P&H 100 : (2005) 1 ILR (P&H) 367 : (2005) 139 PLR 665 : (2005) 1 RCR(Civil) 92

Hon'ble Judges: V.K. Bali, J; Jasbir Singh, J

Bench: Division Bench

Advocate: J.S. Toor, for the Appellant; Swati Gupta, A.A.G. and H.N. Mehtani, for the Respondent

Final Decision: Allowed

Judgement

V.K. Bali, J.

A parcel of "Nazool land", which as per its very definition is the one, which has escheated to the State Government and

which normally is an inferior land, was allotted way back in 1958-59 to the petitioner, a Scheduled Castes Co-operative Society, Village Jaula

Khurd and vide impugned order, An-nexure P11, dated 19.12.1994 has since been cancelled after the petitioner society had remained in

possession thereof by now for about 46 years and for 36 years, when order Annexure P11, came to be passed. It is his order, which has been

challenged by the petitioner society through present petition filed by it under Article 226 of the Constitution of India.

2. The present petition was admitted and ordered to be heard with Civil Writ Petition No. 6795 of 1995. We are informed that since significant

questions of law were involved in the writ petition aforesaid, same was admitted to DB. Inasmuch as, points involved in the present petition were

similar to the one giving rise to Civil Writ Petition No. 6795 of 1995, the same was ordered to be listed for hearing alongwith the writ petition

aforesaid. The said writ petition, however, it has further been informed during the course of arguments, was allowed on the short ground that no

notice or a proper notice preceding the order of cancellation was given to the petitioner in the said case, thus, leaving the questions of law to be

decided in the present case.

3. In the context of the facts and circumstances of the case, as shall hereinafter be given, what was primarily been debated before us is applicability

of the amended provisions of Nazool Lands (Transfer) Rules, 1956 to the allotments, that were made prior to such amendments. To be specific,

the question that requires adjudication in the matter is as to whether even if there was no provision of cancellation of allotment if transferee society

had sold a part of the land, subject matter of the allotment, under the rules when allotment was made the Government could yet cancel such

allotment on the dint of the provisions authorising cancellation in the event as mentioned above when power to cancel the allotment was conferred

by virtue of amendment of the rules. The backdrop of events culminating into filing of present writ petition requiring the answer to the question, as

posed above, need necessary mention.

Scheduled Castes, Co-operative Society, the petitioner herein, is a registered Co-operative Society, having been registered on-24.10.1958 at No.

372 as per the certificate of registration issued u/s 8(1) of Punjab Act, XIV of 1965. It is a Joint Farming Society. Petitioners 2 to 9 are the

members of the Co-operative Society and are permanent residents of village Jaula Khurd. There was available Nazool Land situated within the

revenue estate of village Jaulka Khurd, measuring 381 bighas and 8 biswas ownership whereof vested in the State of Punjab. The Government of

Punjab framed rules known as Nazool Lands (Transfer) Rules, 1956 (hereinafter referred to as "the Rules"), Annexure P2. It requires to be

mentioned that these rules were made by the Government of Patiala and East Punjab States Union and were adopted by the Punjab State after the

merger of States of Punjab and Pepsu with effect from 1.11.1956. It is not disputed that these Rules came into being by virtue of notification dated

28.5.1956 and became effective from 1.11.1956. It is also not in dispute that whatever changes or amendments were brought about, as shall be

specified insofar as these are relevant, the same were also by virtue of the notification.

4. It has been the case of the petitioner that the Nazool Lands, wherever existing, were to be transferred to Co-operative Society of Schedule

Castes, incorporated under the Co-operative Societies Act. Whereas, Nazool Land of less than the area of 10 acres could be transferred to

individual members, the Nazool Land with an area of more than 10 acres was to be transferred to the Co-operative Societies only. In wake of the

Rules, the petitioner society was transferred Nazool Land measuring 381 bighas and 8 biswas and the society was put in physical possession of the

land in the year 1958-59 details whereof have been given in paragraph 6 of the writ petition. The petitioner society, after taking the possession of

the land, started improving the same. They pooled their resources and joined their heads for making the land cultivable. In its meeting dated

23.9.1960, the petitioner society passed a resolution, Annexure P3, that the members of the society should, whatever agricultural implements they

have and which can be used for the purpose of the society, be evaluated and handed over to the society and the price thereof be considered as

trust money of the share holders with the society. As a result, number of bullocks, owned by the members, agricultural implements to be used for

agricultural purposes were evaluated and handed over to the society and it was resolved that a scheme be prepared for sowing the Rabi crop of

1961. It was on 24.9.1960 that Harbhajan Singh, Farm Supervisor of Cooperative Society, Patiala alongwith Hardyal Singh, Sub Inspector, Co-

operative Society, Lalru, visited the society, checked its records, physically inspected the fields and made a report in the proceedings book of the

society to the effect that he had visited the society alongwith Hardyal Singh, Sub Inspector, co-operative Society, Lalru, and called the general

body meeting, in which the possibilities of starting joint agriculture were discussed. The members put forward the difficulties of starting joint

cultivation at that stage. It was pointed out that 7 members were cultivating the land of the society as well as the land taken by them on lease in

varying amounts. It was also pointed out that those who have worked harder and taken the land on lease, cannot be compelled to share the fruits

of their labour at this stage. They, however, agreed to take up joint cultivation with effect from May, 1961, i.e. beginning of new agricultural year.

The visiting officer confirmed that the members have evaluated the bullocks and other implements of common use and pooled under the name of

the society. They also agreed to keep account of income and expenditure regularly. On the physical verification of the fields, the visiting officer of

the Co-operative Department, found the following areas under cultivation:-

Total Area = 79 Acres

Under cultivation = 75 Acres

Rabi Crop 1961

Wheat = 22 Acres

Wheat and gram = 16 Acres

Sarson (Mustard) = 5 Acres

Tarameera (kind of mustard) = 5 Acres

Cattle Fooder (Barley+Gram) = 5 Acres

Jagi (fodder) = 5 Acres

Total = 68 Acres.

5. The visiting officer suggested to the members of the society that they should sow wheat C-273, a kind of seed, after taking the same from Block

Development Officer and minimum seed per acre should be sowed 28 Seer. It was further suggested that those members, who cannot plough the

fields, should engage themselves in piggery, poultry, dairy farming and pasturing of cattle so that income of the society can be raised. A copy of

inspection report dated 24.9.1960 is annexed as Annexure P-4 with the writ petition. Although the society had decided to do joint fanning by

pooling their resources but it was found that it was practically not possible, as such the members of the society continued farming individually.

Inspection Note dated 25.4.1962, of the Inspector, Coop. Societies, Dera Bassi, would show that the society was in possession of 381 bighas

and 8 biswas of land out of which 27 bighas was barren and was not cultivable. It has been so mentioned in Item No. 16 of the inspection note,

Annexure P5. The society, in the manner aforesaid, continued to be in possession of the entire land. Meanwhile, the petitioner society tried to

obtain copy of the order of allotment of the land but could not do so, as the same was not supplied to it. The society, however, continued in

possession of the land as also continued paying the instalments.

6. On 14.9.1978, the society moved an application to the Deputy Commissioner, Patiala that it be supplied copy of the order under which, the

land was allotted to it, so that the society could know as to what was the total value of the land and how much more amount is to be paid. But this

request of the society was not acceded to and it is the case of the petitioner society that they are not able to produce on record the copy of the

allotment order. For about a period of 25 years, the petitioner society continued tilling the land by their own resources and shed their sweat and

blood for improving the land. Members of the society planted trees on some area which was of uneven surface and continued sowing crops on the

land, which they had levelled and brought under plough. Village Jaula Khurd being of sub-mountainous area of Morni Hills had not been cultivated

for centuries together because of its uneven surface and rare availability of irrigation water. Sub soil water in the area was very low and even if it

was found it was at a depth of 400-500 feet below ground level. Cost of procuring irrigation water in the area was very high and the members of

the society, being very poor persons, could not afford the installation of tubewells. They, however, decided to install four number of tubewells in

the land so as to make it fertile. For the purpose aforesaid, they approached certain financiers, who obtained their signatures and advanced money,

which the members of the society utilised for installing four number of tubewells. However, the persons, through whom the members of the society

had raised money, were found cutting the trees planted by the members of the society over the land. Members of the petitioner society objected to

it but were retorted with the information that they had purchased the land. Being surprised, the petitioner society filed a suit for permanent

injunction in the Court of Sub-Judge, 1st Class, Rajpura, seeking permanent injunction restraining the persons, who claimed to be purchasers of the

land, from cutting the trees. The suit was filed in December, 1994. In the plaint, it was clearly mentioned that they had never sold the land to any

person and that the documents might have been fabricated. They had not put any person in possession of the land. They produced copies of

revenue records to show that they are continuing to be the owner and in possession of the land. After perusal of the documents, learned Sub-

Judge, 1st Class, Rajpura, passed an order of injunction restraining those persons from cutting or removing the trees from the land in suit. Copies of

the plaint and stay order have been annexed as Annexures P9 and P10, respectively, with the petition. The petitioners then aver that they were

surprised when they received order, Annexure P11, from the Collector, Patiala, to the effect that the land allotted to the petitioner society had been

cancelled. It was mentioned in the order that possession of the land shall be taken after initiating proper proceedings under the law. It was also

mentioned that notice had been issued to the President of the society and that a copy of the same was delivered to certain members by the Peon of

the Naib Tehsildar, Sub Tehsil, Dera Bassi and on the basis of this, allotment had been cancelled on the ground that the petitioners have violated

Rule 7.1 of the Rules, because they had transferred some area of the land to the persons mentioned in the order. It is the positive case of the

petitioner society that no show cause notice had been served upon it and, thus, order cancelling the transfer of the land is contrary to the law,

arbitrary and violative of principles of natural justice. It is the case of the petitioners society that some persons highly placed had an eye on this land

because of the fact that Lalru area had developed into an industrial belt and they wanted to grab this land by one or the other means. It is further

the case of the petitioner society that it had not transferred any land to any person. Petitioners reiterate that so called sale deeds are only a made

up affairs as, in dire need of money they approached certain financiers, who obtained their signatures on certain papers and then later claimed to

have purchased the land. Besides challenging the impugned order, on the facts, as mentioned above, as also on the ground of not following the

principles of natural justice, it is then, on the basis of provisions of the Rules pleaded that even if assertion of the petitioners that they have not sold

the land is not believed, the alleged transfer is subsequent to the payment of last instalment and, therefore, there was no bar on the transfer of the

land after the payment of last instalment and further that the condition mentioned in the certificate of transfer for non-alienation of the land was void

and was not in accordance with law. The condition as incorporated in the last document, i.e. sale certificate is stated to be against the statute. The

petitioners have quoted the provisions of the Rules, which we shall take into consideration while considering the contentions raised by learned

counsel representing the petitioners, based on the same.

7. In response to the notice that has been issued by this Court, written statement has been filed on behalf of respondents 1 and 2 wherein, basic

facts of the case have since been admitted. In so far as, averments made in the petition with regard to the petitioners having been cheated by some

influential persons are concerned, same have been denied for want of knowledge. The fact that petitioner society had paid the entire money due

towards it by way of instalments has also been admitted. That the petitioner society continued to be in possession of the land has also been

admitted. It is then, pleaded that the petitioner society had, in fact, sold the land to various purchasers vide sale deeds dated 10.2.1983,

15.2.1983, 3.3.1983, 22.3.1983, 31.3.1983 and 12.4.1983. It is denied that the petitioner society was not issued any show cause notice. Rather

it is stated that show cause notice was received by the Society on 7.12.1993 through its Vice President Bachittar Singh and again show-cause

notice was issued on 24.8.1994, which was received by the President of the Society on 27.8.1994, against the signatures on the back side.

Despite the transfers said to have been made by the petitioner society, it is however, admitted that they are continuing to be in possession.

Alongwith the written statement, the respondents have annexed sale deeds said to have been made by the petitioner society and notice sent to the

President of the petitioner-society by the Collector (D.C.), Patiala dated 7.12.1993, Annexure R2, as also notification dated 22.10.1970, showing

the amendment brought about in Rules 7 and 11 of the Rules.

8. Having examined the pleadings of the parties, time is now ripe to deal with the question requiring an answer by this Court as framed in the earlier

part of the judgment. Before, we might, however, take that exercise into hand, it would be necessary to find out the relevant provisions of the Rules

and in particular, such provisions that deal with transfer of land and cancellation thereof.

9. Nazool Land, as per Rule 2(d) of the Rules, means the land situated beyond two miles of the Municipal limits, which has escheated to the State

Government and has not already been appropriated by the State Government for any purpose and such other land as the State Government may

make available for being transferred under the rules. By virtue of provisions contained in Rule 3, Nazool land may be allotted to members of

Scheduled Castes individually upto the limit of a unit of Nazool land, which is of 10 acres but where the land, subject matter of allotment is more

than 10 acres, it can be allotted to Scheduled Castes Land Owning Co-operative Societies, which may be formed by the heads of Schedule

Castes families in accordance with the rules. As per the provisions contained in Rule 5 of the Rules, as soon as a Co-operative Society had been

formed in a village, the Nazool Land in that village shall be transferred to it. Rule 6 of the Rules that deals with reversion of the land, reads thus:-

6. Reversion in the event of dissolution.- If at any time, before the payment of the last instalment of price a co-operative society to which Nazool

land has been transferred is dissolved, the Nazool land shall revert to the State Government on payment by the Government of the amount already

realised by it towards the price.

Rule 7 of the Rules dealing with bar of alienation, as it stood prior to the amendment of the rules, reads thus:-

Bar of alienating.- (1) No Co-operative Society to which land has been transferred shall at any time before the last instalment of price has been

paid, except with the express permission in writing of the State Government, alienate, whether permanently or temporarily, the Nazool land

transferred to it:

Provided that in granting permission the State Government shall have regard to the general interests of the Co-operative Society.

(2) Where the State Government permits a co-operative society to permanently alienate the Nazool land transferred to the society, the provisions

of Rule 4 shall not apply in respect of such land.

10. Rule 9 deals with payment of instalments towards price of the allotted land. The price of Nazool land transferred under the Rules is payable in

20 equal six monthly instalments. The procedure for transfer of nazool land has been prescribed under Rule 10 of the Rules. A co-operative

Society/individual member eligible under these rules for obtaining nazool land has to apply in form "A" appended to the Rules to the Collector of

the District in which, the nazool land to be transferred is situate. On receipt of application, the Collector may make or cause to be made such

enquiries as he may deem fit for the purpose of verifying the claim of the Co-operative Society/individual member and if the Collector is satisfied as

to the genuineness of the claim of the Co-operative Society/individual member, he shall record an order to that effect and thereafter take further

steps for transferring the land in favour of the society in accordance with the rules. An order of transfer shall then be issued by the Collector in

favour of the Co-operative Society/individual member. Rule 11, which deals with certificate of transfer, states that as soon as the first instalment of

price has been paid by the Co-operative Society/individual member, in whose favour the transfer has been made under these rules, the Collector

shall grant to the society under his signature and seal a certificate of transfer in form "B" appended to the rules.

11. By virtue of notification dated 8.5.1957 after Rule 9 of the Rules, following Rule 9(A) was inserted:-

(A)(i) The arrears of instalments due under these rules shall be recoverable as arrears of land revenue.

(ii) In case a Co-operative Society/individual member consistently makes default in making payment of two instalments of price of Nazool land, the

Collector may review the case and cancel the allotment of land to the Co-operative Society/ individual member whereupon the land shall revert to

Government.

(iii) The Co-operative Society/individual member concerned may file an appeal to the Commissioner against the Collector's order within sixty days

of the date of that order, and the Commissioner's order passed in appeal shall be final.

12. By virtue of notification dated 28.10.1970 for original Rules 7(i) and 11(i) of the Rules, the following rules were substituted:-

Bar of alienation.- (1) No Co-operative Society or the individual member of Scheduled Castes, as the case may be, shall, except with the express

permission in writing to the State Government, alienate, whether permanently or temporarily, the Nazool land transferred to it/him for a period of

ten years from the date of the said Co-operative Society or the individual member of Scheduled Castes gets all rights, title and interest in the said

Nazool land. Thereafter, its alienating shall be strictly restricted to the members of the Scheduled Castes only:

Provided that in granting permission the State Government shall have regard to the general interests of the Co-operative Society or individual

member, as the case may be.

11. Certificate of transfer.- (i) As soon as the last instalment of price has been paid by the Co-operative Societies or the individual member of the

Scheduled Castes, as the case may be, in whose favour the transfer has been made under the Rules, the Collector shall grant to it or him under his

signatures and seal a certificate of transfer of ownership in the revised form "B" appended to this Rules.

13. The relevant provisions of the Rules, reproduced above, would clearly manifest that Nazool land is the one, which has escheated to the State

Government and the same can be allotted exclusively to the persons belonging to the Scheduled Castes category, if the extent of the land may be

less than 10 acres and to the Co-operative Societies consisting the members of the Scheduled Castes if the extent whereof may be more than 10

acres. It is allotted to the individual member of the Scheduled Castes normally when such individual member does not own any land as a

proprietor. By virtue of the provisions contained in Rule 5 of the Rules, as mentioned above, as soon as a Co-operative Society had been formed

in a village, the Nazool Land in that village shall be transferred to it. As per the provisions contained in Rule 6 of the Rules, the land would revert to

the State Government if, at any time, before the payment of the last instalment of price a co-operative society, to which Nazool land had been

transferred, was dissolved. In other words, if the first instalment towards payment of price had been made over to the Government, the land could

not be reverted to the Government. Provisions contained in Rule 7 of the Rules, as originally stood, would show that no Co-operative Society

could alienate the land before the last instalment of price had been paid, except with the express permission in writing of the State Government.

Proviso to Rule 7 required general interests of the Co-operative Society to be taken into consideration if the Government was to permit alienation

of the land to a Co-operative Society. After the transfer, price of Nazool Land had to be paid in 20 equal six monthly instalments. There was no

provision for recovery of instalments if the same remained unpaid nor there was a provision to cancel the allotment on account of non-payment of

the instalments. Once, the land had been transferred after following the procedure as prescribed under Rule 10 of the Rules, certificate of transfer

could be issued as soon as the first instalment of price had been paid by the Co-operative Society, as would be made out from the provisions of

Rule 11 of the Rules, as mentioned above. The first significant departure from the original Rules came about when the Government issued

notification dated 8.5.1957 vide which Rule 9(A) was inserted by virtue of which, the arrears of instalments due under the rules could be

recovered as arrears of land revenue and further, in case a Co-operative Society was to make consistent default in making payment of two

instalments of price of Nazool land, the Collector could review the case and cancel the allotment of the land to the Co-operative Society. There

was no provisions under the Rules to recover the unpaid price towards the instalments nor there was a provisions for cancellation on account of

non-payment of the price. The land could revert to the Government only in the event when before the last instalment had been paid the Co-

operative Society, to which the land had been transferred, was dissolved. The second significant change came about by virtue of notification dated

28.10.1970, substituting the original Rules 7 and 11, as reproduced above. Whereas, by virtue of unamended provisions of Rule 7 of the Rules,

Co-operative Society, to which the land has been transferred could not, at any time before the last instalment of price has been paid, alienate the

land, except with the express permission in writing of the State Government, by virtue of substituted Rule 7, no Co-operative Society or the

individual member of Scheduled Castes, as the case may be, could alienate the land, except with the express permission in writing of the State

Government for a period of ten years from the date the said Co-operative Society or the individual member of Scheduled Castes had got all rights,

title and interest in the said Nazool land. Thereafter, i.e., even after ten years, its alienation was restricted to the members of Scheduled Castes

only. What, thus, transpires from the comparison of unamended and amended Rule 7 of the Rules is that whereas, there was no requirement of a

permission of the State Government to alienate the land after the last instalment of price had been paid, by virtue of amended provisions contained

in Rule 7 of the Rules, permission in writing of the State Government became a sine qua non for transfer before ten years from the date Co-

operative Society or the individual member of Scheduled Castes had got rights, title and interest in the property. Further whereas, under

unamended Rule 7 of the Rules, there was no embargo for sale of land before Co-operative Society or an individual member of Scheduled Castes

had got all rights, title and interest in the Nazool land, under the amended provisions of Rule 7, the sale could not be made till such time a Co-

operative Society or an individual member of Scheduled Castes was to get all rights, title and interest in the Nazool Land. Yet another significant

change came about in Rule 11 of the Rules. Whereas, as per unamended provisions contained in Rule 11, a certificate of transfer was to be issued

as soon as the first instalment of price had been paid by the Co-operative Society or individual member, as the case may be, by virtue of amended

provisions contained in substituted Rule 11, certificate of transfer could be issued after payment of last instalment.

14. Mr. Toor, learned counsel, who appears in support of this petition, vehemently, contends that in 1958-59 when the petitioner society was

transferred the land, unamended provisions of the Rules held the field by virtue of which, there was no embargo on the society so as not to alienate

the land before last instalment towards the price had been paid and concededly, in the present case, a part of the land was sold, assuming it that

the plea raised by the petitioner society that sale deeds were fraudulently converted on some signatures obtained by the financiers, to whom they

approached for obtaining loan, after payment of the last instalment of the price is not believed. Provisions as contained in amended Rule 7 of the

Rules could not possibly be applied in the case of the petitioners. To buttress this contention, learned counsel contends that even the respondents

were conscious of the provisions of law and, therefore, while ordering transfer of the land to the petitioner society on 22.7.1981 when,

concededly, all instalments towards price had been paid, no condition was imposed that the petitioner could not alienate the land for a period of

ten years. In this connection, learned counsel refers to order dated 22.7.1981 passed by the Collector, District Patiala, available at page 47 of the

paper book. The order aforesaid recites that it had been made to appear to the Collector by the Tehsildar, Rajpura that a piece of Nazool land,

measuring 381 bigas and 8 biswas, which was in possession of the petitioner society, should be transferred under the Rules as amended by

Revenue Department Notification No. 1046-J(12)60/2836 dated 10.2.1960. It has further been recited that price of the land worked out and

assessed by the Naib Tehsildar, Rajpura, which came to Rs. 9,240/- has since already been got deposited in the Government treasury. The society

is, thus, in possession of the land since long and comes under the category of lessee under the rules and the members of the society are actual tillers

of the land, as has been reported by the Tehsildar, Rajpura, Operative part of the order reads as follows:-

Therefore, in pursuance of the Nazool Land (Transfer) Rules 1956, as amended by the aforesaid notification, it is formally ordered that the above

noted land, measuring 381 bighas 6 biswas be transferred to the Harijan Co-operative Society of village Jaula Khurd, against the payment already

made by the Society, i.e. Rs. 9240/-.

The mention of words "aforesaid notification" in the part of the order, reproduced above, does clearly refer to notification No. 1046-J(12)60/2836

dated 10.2.1960, as that is the only notification reference of which has been given in the order dated 22.7.1981.

15. In the circumstances, as fully detailed above, learned counsel further contends that condition in the certificate of transfer, which was ultimately

issued to the petitioner society pertaining to bar of alienation of ten years from the date of issuance of sale certificate is invalid, ineffective and

inoperative in the eyes of law.

16. The other contention that has seriously been raised on behalf of the petitioner is that the transfer letter was issued in favour of the petitioner

society was back in 1958-59, all the instalments towards price had already been paid due to the petitioner society, the petitioner society had not

made any default in the matter of payment towards instalments. Issuance of sale certificate was a mere formality as the land stood transferred to the

petitioner society. The Society yet complied with all the terms and conditions of the allotment and, therefore, the sale certificate would date back to

the date when the petitioner society had paid its very first instalment. Learned counsel further contends that the right that was vested with the

petitioner society by payment the very first instalment, even though in the present case the entire price towards instalments has since already been

paid, could not be taken away on the basis of amended provisions of the Rules retrospectively. He also contends that there was no power under

the Rules, be it unamended or amended, to cancel the allotment of land and instrument of sale in the event of violation of the provisions contained in

Rule 7 and, therefore, the consequences of sale of part of land in contravention of Rule 7 could not result to such disastrous result so as to cancel

the entire allotment. Learned counsel further contends that the petitioner Society was not heard in the matter as no proper notice was issued to it

preceding the impugned cancellation order. Annexure P11.

17. Before we may give our finding on the contentions raised by learned counsel, as noted above, it would be appropriate to mention that it has

been consistent case of the petitioner society that despite best efforts made by it to secure copy of the allotment letter that came into being in the

year 1958-59, for which purpose oral and written requests were made, the same was not made available to it. Considering that the allotment order

might have some bearing upon the case, when the matter came up for hearing before us on 14.5.2004, we observed that after hearing the

arguments, we are of the view that initial allotment letter/order that came into being way back in 1958-59, whereby land measuring 381 Bighas

was allotted to the petitioner society may also have some bearing upon the controversy involved in the case. It was the positive case of the

petitioners that even though requests were made in writing vide application. Annexure P7, to obtain copy of the allotment letter/order, same has not

been made available to them. After so observing, we direct the respondent to keep the entire records of the case ready by the next date of hearing,

which would certainly in any case include the allotment letter/order qua land measuring 381 Bighas, so allotted to the petitioner society for a sum of

Rs. 9,240/-. Despite the specific order made to the effect aforesaid, learned Assistant Advocate General, Ms. Swati Gupta, was unable to

produce on records the initial allotment letter/order as she stated that part of the record that includes the initial allotment letter/order is not

traceable. Considering the fact that entreaties made by the petitioner society to obtain a copy of the allotment letter/order since long and in writing

even far before the impugned order. Annexure P11, came into being, and the attitude of the respondent-State, which has not supplied the same

and further not making the order or even a copy thereof available to the Court would certainly lead to form an opinion that the said allotment order

would not contain any condition with regard to non-alienation of the land of the petitioner society. We conclude so on yet another ground that the

rules prevalent to the relevant time were such that there was no embargo on the sale of the land so allotted after payment of the instalments, so

much so, if the land was to be sold after the payment of instalments, no permission was required. The other significant fact that needs to be noticed

is that even while passing formal order of transferring the land by order dated 22.7.1981, authenticity of which has not been disputed at any stage,

no embargo was put on the petitioner society so as not to alienate the land.

18. Having noted the facts of the case as also provisions of the Rules, time is now ripe to comment and adjudicate upon the points raised by

learned counsel representing the petitioner, as noted above. The first significant question that arises for determination is as to whether the petitioner

society was transferred the land when initial order with regard to the land came into being in 1958-59 or the order passed to that effect was only

an allotment order, there being a difference between a mere allotment letter and the order of transfer. In case, the petitioner society was transferred

the land way back in 1958-59 and that too without any embargo, different parameters would follow than that of when it was a case of mere

allotment. From the facts, as detailed above, as also the provisions of the Rules, in our considered view, a definite finding can be returned that the

petitioner society was transferred the land and it was not a case of mere allotment. Insofar as the actual order as such is concerned, the same has

not been produced. We have already mentioned above that entreaties made by the petitioner society to give them the order far before even the

impugned order came to be passed went a begging. Order passed by us directing the respondent State to produce the said order also met with no

success. A presumption has, thus, to be drawn that if the said document was produced, the same would have supported the cause of the petitioner

that it was not a mere allotment and was, in fact, an order of transfer. On the basis of available material on records as also on the basis of the Rules

governing the field, a finding that it was not a mere allotment order and, in fact, was a transfer order, has also to be returned. In that connection, it

may be recalled that when the Society had paid all the instalments towards the price of the land, an order came to be passed on 22.7.1981. The

same is available at page 47 of the paper book. The order clearly mentions that it had been made to appear to the Collector by the Tehsildar that a

piece of Nazool Land measuring 381 bighas and 8 biswas, which was in possession of the petitioner society, should be transferred under the Rules

as amended by the Revenue Department Notification dated 10.2.1960. It has further been recited that price of the land worked out and assessed

by the Naib Tehsildar, Rajpura, which came to Rs. 9,240/-, has since already been got deposited in the Government treasury. The Society is,

thus, in possession of the land since long and comes under the category of lessee under the Rules and the members of the Society are actual tillers

of the land. The order then recites that in pursuance of Nazool Lands (Transfer) Rules, 1956, as amended by the aforesaid notification i.e.

10.2.1960, as that is the only notification in the order, it was formally ordered that the above noted land, measuring 381 bighas 8 biswas, be

transferred to the Harijan Co-operative Society of village, Jauia Khurd. Despite the fact that by the time aforesaid order came to be passed,

amendments in the relevant rules had also come into being yet, mention in the order is with regard to the Rules that came into being by virtue of

notification dated 10.2.1960 and further that it was only a formality which was being done. Coming now to the rulers and the scheme of the rules

governing the field, it would be found out that the Legislature was conscious of the difference between allotment and transfer as, wherever only an

allotment was to be made, word "allotment" has been used and wherever a transfer was to be made, it is clear that word "transfer" has been

mentioned. Whereas, Rule 3 of the Rules deals with the allotment, the succeeding Rules deal with the transfer. As per the provisions contained in

Rule 3 of the Rules, in village where Nazool Land available is less than 10 acres and is being leased to members of Scheduled castes, it may be

allotted to the present lessees individually upto the limit of a unit of Nazool Land provided they do not own any land of their own. Those, who own

some land, they may be allowed such area as would make up the unit of Nazool Land as defined in the rules, when added to their own land, and

the rest may be allowed to others. The rule further recites that where Nazool Land available is 10 acres or more, the Scheduled Castes Land

Owning Co-operative Societies may be formed by the heads of the Scheduled Castes families in accordance with these rules and the Nazool Land

may be allotted to them. If a Co-operative Society cannot be formed, then the Nazool Land may be allotted to the present lessees, i.e., members

of Scheduled Castes individually upto the limit of Nazool Land as defined in the rules provided they do not own any land of their own. Those, Who

own some land, they may be allowed such area as would make up the unit of Nazool Land when added to their own area and the rest may be

allotted to other members of Scheduled Castes. The Rule further recites that in the matter of allotment of Nazool Land, Ex-servicemen Harijans

shall be given preference over other members cultivating the Nazool Land. The other sub-clauses of the Rule also talk of allotment and not of

transfer. Rule 3-A deals with mortgaged Nazool Land, whereas, Rule 3-B deals with the auction of the trees standing on the land. Rule 3-B was

inserted by notification dated 17.2.1972, whereas, Rule 3-A was substituted by notification dated 10.2.1960. Once the land is allotted, in the

manner as detailed in Rule 3, the heads of families then have to form themselves into Co-operative Societies, as would be made out from Rule of

the Rules. It recites that heads of Scheduled Caste landless families in a village may form themselves into a Co-operative Society, provided that the

land owning head of a Scheduled caste family may also become a member on surrendering his land to the Co-operative Society. Once, heads of

scheduled Caste landless families may form themselves into a Co-operative Society, the land is to be transferred to such Cooperative Society, as

would be clearly made out from Rule 5 of the Rules, which is reproduced below:-

5. Transfer of Nazool Land in Co-operative Societies.- (1) As soon as a Co-operative Society has been formed in a village, the Nazool land in

that village shall be transferred to it:

Provided further that when the excess is not more than two units of Nazool Land, the entire Nazool Land in the village shall be transferred to the

Co-operative Society of the village.

(2) The Nazool land which remains in excess under sub-rule (1) shall be transferred to the Co-operative Society or Societies, of the nearest village

of village in which units of Nazool land are less than the number of members.

19. After Rule 5 of the Rules, all other rules talk of transfer and not of an allotment. The rule pertaining to reversion in the event of dissolution i.e.

Rule 6, states that if at any time, before the payment of last instalment of price, a Co-operative Society, to which the land has been transferred is

dissolved, the Nazool Land shall revert to the State Government, even, though, instalments had not been paid, the word used in rule 6 is "transfer"

and not "allotment". Rule 7, which deals with bar of alienation , also contains in it word "transfer" and not "allotment". By virtue of Rule 7 of the

Rules, no Cooperative Society, to which land had been transferred, shall at any time before the last instalment of price has been paid, alienate the

land transferred to it. Once again, it is the word "transfer" which has been used in Rule 7 and not the word "allotment". Again in Rule 8 of the

Rules, which deals with determination of the price, the word that has been used is "transfer" and not "allotment". It clearly recites that the price to

be paid by a Cooperative Society for the Nazool Land to be transferred to it shall be mentioned in sub-clause (a) and (b) of the Rule aforesaid.

The next rule deals with the instalments and once again, it is the word "transfer" which has been used and not the word "allotment". There is also a

mention that price of Nazool Land transferred under these rules shall be payable in twenty equal six monthly instalments. Rule 10 of the Rules deals

with application for transfer, i.e. the procedure how an application shall be made for transfer of the land. It is stated that a Co-operative

Society/individual member eligible under these rules for obtaining Nazool Land shall apply in form "A" appended to these rules, to the Collector of

the District in which the Nazool Land to be transferred is situate and that on receipt of application, the Collector would make or cause to be made

such enquiries as he may deem fit for the purpose of verifying the claim of the Co-operative Society/individual member and if he is satisfied as to

the genuineness of the claim of the Co-operative Society/individual member, he shall record an order to that effect and thereafter he shall take

further steps for transferring the land in favour of the society in accordance with these rules and that an order to transfer shall be issued by the

Collector in favour of the Co-operative Society/individual member. Rule 10 followed by earlier rules from Rule 5 onwards, would clinch the issue

that on an application made by a Cooperative society, an order to transfer has to be issued by the Collector in favour of the Co-operative Society

and not an order of allotment. Form "A" appended to Rule 10, is titled as "Application for transfer of Nazool land". Once again, application is not

for allotment of land but it is for transfer of the land. A study of the Rules would demonstrate that the petitioner society was transferred the land

and it was not a case of mere allotment.

20. The legislature, it appears, was conscious in making Rules of 1956 in the matter of allotment and transfer. Wherever, legislature wanted initial

transfer of land to be tentative, the rules in beneficial legislation, like Rules of 1956, so prescribed.

21. The scheme of the "Nazool Rules bears a marked contrast to the Punjab Utilisation of Surplus Area Scheme, 1973, framed under the Punjab

Land Reforms Act, 1972. The said Rules deal with the allotment of land declared surplus of big landowners to the eligible tenants and land (SIC)

persons. The aforesaid scheme deals with the allotment of surplus land and as a first step to do the same, is to issue notice to sitting tenants. After

the procedure for allotment is gone into, it is an allotment, which is made to the eligible persons. A certificate is issued to an allottee and thereafter,

the possession is delivered. It is clearly recorded in Rule 10(c)(d) & (e) of the Scheme aforesaid that the allottee shall become the owner of the

land allotted to him when full payment of the amount due from him has been made and that the allottee shall not be competent to transfer his rights in

the land allotted to him to any person till he becomes the owner or before the expiry of a period of 15 years of the date of possession, whichever is

later. The ownership rights are, thus, conferred upon the allottee only when he makes full payment of the amount due from him and further that he is

not competent to transfer his rights in the land allotted to him to any person till he becomes the owner. Learned counsel representing the petitioner

society relies upon another set of rules dealing with allotment of evacuee property that has been allotted to the respective States by the Central

Government for disposal. This property is now allotted by virtue of the Act, known as Punjab Package Deal Properties (Disposal) Act, 1976.

There is no need to make an elaborate mention of these rules as suffice it, to say that whenever there is intention of the Legislature to vest as an

indefeasible right, which may become absolute only on some conditions, like payment of price or non-alienation of the land, the rules do deal with

such situation. Insofar as present set of rules under discussion are concerned, as mentioned already, the transfer is complete moment an order of

transfer is passed under Rules 5 and 11 of the Rules and insofar as price of the land is concerned, same can be recovered as arrears of land

revenue and it is only in case of consistent default that the transfer could be cancelled. Further, there is no impediment in the way of a transferee so

as not to alienate the land, in part or as a whole.

22. Examined from another angle, i.e., as to whether by virtue of the provisions contained in the unamended Rules, the Government had power to

cancel an order of transfer, the same result would follow as, in our view, after having transferred the land to Harijan Cooperative Society, the

Government had no power to cancel the same. The only provision with regard to the reversion of the land to the Government was in the event

when last instalment of price had not been paid and the Society, to which the land had been allotted, was dissolved. Rules of the Rules, pertaining

to transfer, states that as soon as a Co-operative Society had been formed in a village, the Nazool Land in that village is to be transferred to it.

Insofar as price of the land in the original rules is concerned, same was payable as per Rule 9 of the rules in twenty equal six monthly instalments.

There was no provision so as to cancel the order of transfer passed under Rule 5 or 11 of the rules for non-payment of instalments towards the

price of the land. It is only vide notification dated 8.5.1957 that rule 9(A) was inserted vesting powers with the Government so as to recover the

Instalments due as arrears of land revenue and to cancel the allotment, if there was consistent default in making payment of two instalments. In the

event, thus, when even the price had not been paid, the Government had first to resort to recovery as arrears of land revenue and it is only if there

was consistent default in making payment of two instalments that the transfer could be cancelled. Rule 7 of the Rules deals with bar of alienation of

price had been paid, except with the express permission in writing of the State Government. In other words, if the concerned society had to

alienate the land, having paid the entire price towards the instalments, there was no embargo for the same and no permission was either required

for the said purpose. Further, once transfer had been made under Rule 5 of the Rules, the certificate of transfer had to be issued on payment of

first instalment of the price as is clearly made out by reading of Rule 11 of the Rules. The Collector was enjoined with a duty to issue a certificate

of transfer moment the first instalment of price was paid by the Co-operative Society. Rule 11 of the Rules is mandatory and it casts a duty upon

the Collector to transfer the land.

23. From a conjoint reading of Rules 5, 6, 7 and 11 of the unamended rules, what, thus, transpires is that for transfer of land, issuance of certificate

of transfer is only a formality. The rights of parties crystallize the moment, an order of transfer is passed, which on deposit of initial price for the first

instalment was to be followed by a formal order of transfer. This transfer could be cancelled only in the event when Co-operative Society as such

had since been dissolved and that also before the payment of last instalment. If, therefore, last instalment also had been paid, even in the event of

Co-operative Society being dissolved, the transfer could not be cancelled. It is absolutely apparent that the concerned society would have all

rights, title and interest in the land after an order of transfer has since been made under Rule 5 of the Rules irrespective of the fact that the entire

price towards instalments had been paid or not. Certificate of transfer to be issued under Rule 11 of the rules was mere a formality. It may be

recalled at this stage that learned Collector while ordering that a certificate of sale be issued on 22.7.1961, did clearly mention that since, the price

of the land, worked out and assessed by the Naib Tehsildar, has already been deposited in the Government treasury and the society is in

possession of the land since long, a formal order of transfer was to be passed.

24. Upshot of the discussion made above would, thus, lead us to conclude that way back in 1958-57, all rights, title and interest of the land had

since already been passed over to the petitioner society. Concededly, an order under Rule 5 of the Rules for transfer of the land, which, as

mentioned above, has not been produced before us despite the order passed to that effect on the plea that the same was not traceable, was not a

mere order of allotment. Transfer of the land was complete when order to that effect was passed under Rule 5 of the rules. We may reiterate that

once the land had been transferred and the first instalment paid, order of transfer could not be cancelled for non-payment of the price. At the most,

the Government could resort to recovery proceedings as arrears of land revenue. It is only in the event when before payment of last instalment,

Co-operative Society as such is dissolved that the land could revert to the Government. In no other event, thus, transfer made to an individual or a

Co-operative Society could be cancelled. It is for the first time when notification dated 8.5.1957 inserting Rule 9(A)(i) came into being, that the

arrears towards the instalments could be recovered as land revenue and prior to that, even the arrears towards instalments could not be recovered

as land revenue. It is also for the first time that by sub-clause (ii) of Rule 9(A) of the Rules, power came to be vested with the Government as to

cancel the allotment if there was consistent default in making payment of two instalments towards price of the land. Rule 9(A), of course, came to

be inserted before the land was transferred to the petitioner society in 1958-59 but in the present case, it is conceded position that all instalments

towards price of the land have since already been paid before the impugned order, Annexure P11, came into being.

25. Sale has been defined in Section 54 of the Transfer of Property Act, 1882. It is a transfer of ownership in exchange for a price paid or

promised or part paid and part promised. A contract for sale of the immovable property is a contract that a sale of such property shall take place

on terms settled between the parties. The parties to the contract of sale are bound by an instrument drawn for the said purpose. Their rights and

liabilities flow from the terms of the contract incorporated in the deed. If, therefore, there was no embargo in the terms of the contract arrived at

between the parties while transferring on selling the land to the petitioner society that it shall not alienate the same for a specified period, the

petitioner society was at liberty and had every right to transfer it as per its choice.

26. The facts, as fully detailed above, do reveal that the petitioner society had complete title of the property transferred to it without there being

any embargo to alienate it, wholly or in part. In the facts and circumstances, as mentioned above, there was no justification for the authorities ,to

put an embargo on the right of the petitioner society to alienate the land, wholly or in part and, therefore, the condition mentioned in the sale deed

would and cannot be binding upon the petitioner-society. The authorities, it appears, have inserted the condition in the sale deed only on account of

change in the Rules 7 and 11 of the Rules had since been substituted by virtue of notification dated 28.10.1970, i.e. before the sale-deed came to

be executed. Once, the petitioner society was vested with complete title of the land and had a right to alienate the same being an absolute owner

far before notification dated 28.10.1970 came into being, condition of non-alienation incorporated in the sale-deed on the dint of amended

provisions of the Rules, could not be binding upon it.

27. The petitioner society, having become absolute owner having right, title and interest in the property, subject matter of transfer, and, thus, not

being fettered in its right of alienation, which automatically vests with every owner apart, we are further of the view that the amendments brought

about in the Rules could not apply with regard to the transfer made before such amendments, were brought about. The observation made above

has support of a Division Bench Judgment of this Court in State of Punjab and Ors. v. Chinder Pal and Anr. 1973 P.L.J. 478. This judgment, it is

significant to mention, came under the very rules, which are subject matter of discussion in the present case. Facts of the case aforesaid reveal that

one Attu Ram, a Harijan, was allotted 71 kanals and 2 marlas of land in the year 1962 by the Collector, Ferozepur, against price of Rs. 1, 777.50,

which was to be paid in 20 equated half yearly instalments when they fell due. He had deposited instalments upto Rabi 1968 and six instalments

were still due when the allotment was cancelled. For cancellation of the allotment, notice was issued to Attu Ram by the Collector, Ferozepur, on

24.12.1968, stating that allotment of Nazool Land made to him was not in accordance with law and the rules and he was required to show-cause

why the allotment of Nazool Land made in his favour on 4.5.1962 should not be cancelled. His reply was not found to be satisfactory and the

allotment was cancelled vide order dated 1.7.1969. Attu Ram died and the order of cancellation was challenged by his son Chinder Pal by way of

Civil Writ Petition. That writ petition was allowed and the impugned order was quashed. Against the order of learned Single Judge, the State filed

Letters Patent Appeal. Learned counsel, who appeared in support of this appeal, urged that the land, subject matter of allotment to Attu Ram, was

not Nazool Land and that the same was against Rule 3 of the rules. We are not concerned with the first contention of learned counsel, as noted

above, but the second contention has a pertinent bearing upon the controversy in hand.

28. Learned counsel for the appellant had urged that transfer of the land in favour of Attu Ram was against Rule 3 of the Rules. According to this

rule, the Nazool Land could be transferred in favour of Co-operative Societies formed by the heads of Scheduled Castes families in accordance

with the Rules. That Rule was amended by the Governor of Punjab by notification dated 10.2.1960, by substituting Rule 3 whereby, in a village

where Nazool Land available was less than 10 acres and was being leased to members of Scheduled Castes, it may be allotted to the present

lessees individually upto the limit of a unit of Nazool Land, provided they did not own any land of their own. There is no need to make a mention of

entire rules, suffice it, however, to say that this very rule was once again amended vide notification dated 16.8.1967. Previous Rule 3(b) was

substituted by the following:-

In the villages where Nazool land available is 10 acres or more, the Scheduled Castes Land-owning Co-operative Societies may be formed by the

heads of Scheduled Castes families in accordance with these rules; and the Nazool land may be allotted to them. In a village where no Co-

operative Societies of the members of the Scheduled Castes had been formed by the 16th May, 1964, the land should be allotted to individual

Harijans instead of Harijan Co-operative Societies, according to these Rules. For this purpose, members of Scheduled Castes who are already

cultivating such lands are to be preferred. In case there is more than one claimant for the same place of land, the allotment will be made by drawing

lots.

29. Contention of learned counsel for the appellant in short was that by virtue of the rules, that were in existence by virtue of the amendments, Attu

Ram could not be transferred the Nazool Land. This contention of learned counsel was repelled by observing that in view of the amendments in

Rule 3 from time to time, the transfers already made in favour of members of the Scheduled Castes could not be cancelled.

30. A right came to be vested with the petitioner society on transfer of the land to it way back in 1958-59, which was followed by a formal order

of transfer that came to be issued by virtue of the provisions contained in Rule 11 of the Rules. This vested right, it is well settled proposition of

law, cannot be taken away by the amendments brought about in the rules retrospectively. We need not support the aforesaid observations by

judicial precedents, the same being, as mentioned above, settled by now. However, we will only make a mention of one judgment on the issue in

Garikapatti Veeraya Vs. N. Subbiah Choudhury, , wherein, after holding that right of appeal was not a mere matter of procedure but was a

substantive right, it was further held that a vested right of appeal could be taken away only by a subsequent enactment, if it so provides expressly

or by necessary intentment and not otherwise. It was also held that a cardinal rule of construction while interpreting the statute is that, if possible,

vested rights have to be respected and the golden rule of construction is that in the absence of anything in the enactment to show that it is to have

retrospective effect, it cannot be construed to have the effect of altering the law applicable to a claim in litigation at the time when the Act was

passed.

31. The respondent-State of Punjab has, however, endeavoured to oppose the claim of the petitioner society, during the course of arguments, only

on two grounds. It is first urged by Ms. Swati Gupta, learned Assistant Advocate General, Punjab, who appears for the State of Punjab, that

under the Rules itself, there is a provision for filing an appeal and the petitioner society, having an alternative remedy, should be relegated to file an

appeal against the impugned order. It is conceded position that objection with regard to availability of an alternative remedy has not been raised in

the written statement. Further, availability of alternative remedy cannot be pleaded as an absolute bar for entertainment of a writ under Article 226

of the Constitution of India. We need not elaborate on this issue as the matter already stands settled by string of judicial precedents. Reference in

this connection be made to a Division Bench judgment of this Court in Jindal Strips Limited Vs. State of Haryana and Another, , decided by the

then Hon"ble Chief Justice and one of us (V.K. Bali, J.) wherein, entire case law has been discussed. Non-raising of objection with regard to

alternative remedy at the motion stage and admission thereof and when the matter may come up for hearing after long years is one of the grounds

on which the Court may not insist upon a party to approach alternative form for redressal of his grievance. Said principle applies to the facts of this

case inasmuch as, as mentioned above, no objection has been raised with regard to availability of alternative remedy in the written statement nor

such an argument, it is apparent, was pressed at the time of admission of the writ petition and the matter is pending in this Court since 1995. It

would be too iniquitous at this stage to dismiss this petition on account of availability of alternative remedy. That apart, Ms. Swati Gupta while

urging that alternative remedy is available, refers to Rules 4(3) and 9(A)(iii) of the rules. Relevant parts of the rules aforesaid read thus:-

4(3) Any person aggrieved by the decision of the Collector under sub-rule (2) may, within fifteen days of the decision, appeal to the

Commissioner, whose decision shall be final.

9(A)(iii) The Co-operative Society concerned may file an appeal to the Commissioner against the Collector's order within sixty days of the date

of that order; and the Commissioner's order passed in appeal shall be final.

32. Sub-rule (2) of Rule (4) of the Rules in turn deals with disputes arising as to who is the head of the Scheduled Caste family, which issue has to

be decided by the Collector. The appeal, thus, would not be competent in all the matters arising from the provisions of the Rules. The rules, as

mentioned above, deal with various things, like allotment, transfer, instalments of price but as the appeal is not competent with regard to all the

matters arising from the Rules, the same being confined to a particular provision only, the contention of learned State counsel with regard to

availability of alternative remedy and the petitioner society being relegated to the same has, thus, to be repelled. Some observations need to be

made with regard to Rule 9(A)(iii) of the Rules as well. Rule 9(A) deals with arrears of instalments and consistent default in payment thereof,

entailing an order of cancellation. The cancellation of allotment for non-payment of instalments can be subject matter of sub-rule (iii) of Rule 9(A)

of the Rules. The appeal is not competent with regard to other matters dealt with the Rules.

33. It is then urged by Ms. Swati Gupta that the Nazool Lands (Transfer) Rules, 1956, deal with vesting ownership rights upon weaker sections of

the society. It is with a view to augment the economic status of Scheduled Castes that the State with a view to render economic justice envisaged

in the Preamble and Articles 36 and 46 of the Constitution of India, confers a right to ownership of agricultural land upon them and if the land is

irrigated, the very purpose, for which the rules have since been made, shall be frustrated. In support of her contention, as noted above, learned

counsel relies upon a Supreme Court judgment in R. Chandevappa and Others Vs. State of Karnataka and Others, .

34. We have given our thoughtful consideration to the contentions raised by learned counsel. We are, however, of the view that judicial precedent

in R. Chandevappa's case (supra) relied upon by the counsel has no parity with the facts of the present case. Brief facts in R. Chandevappa's

case (supra) reveal that Dasana Rangaiah Bin Dasaiah was granted land to the extent of 2 acres on 16.11.1951. It was a Government vacant land.

The appellants before Hon'ble Supreme Court had purchased the property from the sons and widow of the assignee on 16.10.1968. On a

representation made by one of the sons on 27.2.1987 to the Assistant Commissioner contending that alienation was in violation of Scheduled

Castes and Scheduled Tribes Prohibition of Transfer of Certain Lands Act, 1978, the sale was set aside as violative of the Revenue Code, Rule-

43(5). The appellant carried an appeal before the Appellate Authority, thereafter, a Writ Petition and then Letters Patent Appeal and when he met

with no success, present appeal came to be filed before the Supreme Court. It was urged on behalf of the appellants that the prohibition for

alienation was only for ten years and, therefore, by necessary implication the grantee thereafter was free to alienate the land. This contention was

countered by the State counsel, who urged that cultivation chit given to the original assignee was only for personal cultivation subject to the

condition that he will be eligible to encumber the land only to improve the assigned land. But the prohibition for alienation of assigned land always

remained. The title always remained with the Government. It was also urged that limitation would not run against the Government since it was in

contravention of Rule 43(5) of the Revenue Code.

35. On the rival contentions, as noted above, Hon"ble Supreme Court observed thus:-

It is seen that the cultivation chit under which the assignee had come into possession prescribes that the assignee should be in personal cultivation

of the land and that it should not be alienated. It is also stated that he is empowered to encumber the land to secure loan to improve the assigned

land either from the Government or from the Co-operative Society for bona fide purpose of improving the land or for buying cattle or agricultural

implements for better cultivation of the land. That would clearly indicate the object of assignment, namely, the assignee should remain in possession

and cultivate the land personally from generation to generation to augment economic status so as to secure economic justice envisaged under the

Preamble of the Constitution and the Directive Principles.

The Hon"ble Supreme Court then also referred to a Division Bench judgment of High Court in Ammanamma v. Venkataiah wherein, the High

Court had considered the effect of Rule 43(5) of the Revenue Code and held that once relevant rules prohibit alienation of the property granted to

depressed class for all times to come, it cannot be got over by a grant contrary to the statutory rules and, therefore, prohibitory clause is absolute

in its terms and that alone will govern the rights of the parties. Hon"ble Supreme Court agreed with the view taken by the High Court.

36. The proposition laid down by the Supreme Court, in our considered view, would not apply to the facts of the present case. Not only that in the

allotment chit itself there was an embargo placed upon the allottee so as not to alienate the land, Rule 43(5) of the Revenue Code clearly

prohibited alienation of the assigned land for all times to come. If, in the present case, it was a conditional transfer with stipulation incorporated

therein i.e., the transfer order that the petitioner society in case of alienation would forfeit its right to continue with the possession of the land and

the order of transfer shall be cancelled or if there was otherwise a provision in the Rules at the time of transfer, different parameters shall follow.

The facts of the present case rather go to show that the petitioner society was transferred the land without any such stipulation. The contention of

learned counsel that sale of part of the land by the petitioner society was to run counter to the purpose, for which the Rules were framed, i.e. to

render economic justice envisaged in the Preamble and Articles 38 and 46 of the Constitution of India has to be viewed in the light of the

provisions of the Statute. That apart, as to whether the purpose of transfer of land to weaker sections of the society shall be frustrated or not shall

depend on the facts and circumstances of each case. The facts of R. Chandevappa's case (supra) relied upon by Ms. Swati Gupta would reveal

that even though the transferee had no right of alienation, he could encumber the land to improve the same. There was a provision available under

the Rules that the land, even though could not be alienated as such, could well be encumbered to improve the same. There is no such provision in

the Rules of 1956. The land, subject matter of transfer, is in a conceded position, was inferior. It was a (sub mountainous) area, unfit for cultivation

and had no resources for irrigation. Looked from the angle of purpose of framing the rules, i.e., to augment the income for the reconstruction of the

society, it cannot be said, in the facts and circumstances of the present case, that the said purpose had been frustrated. If, perhaps, the petitioner

society had not secured some income by sale of part of the land, even though, as noted above, the case of the society is that only a loan was

secured and that the land was not sold, the petitioner society would have never been able to bring the land under plough. It is in a conceded position

that the petitioner society did install four tubewells in the land and it is thereafter only that the land started yielding some income. Major part of the

land is still owned by the petitioner society. It is, thus, not a case where, purpose of the Rules might have been frustrated or defeated. Before we

may part with the contention of Ms. Swati Gupta, learned State counsel, we would certainly like to mention that one of the contentions raised by

learned counsel for the appellants in R.Chandevappa's case (supra) was also that the Act had no retrospective operation and the alienation

made prior to coming into being the Act, could not be set aside. However, the aforesaid contention was not discussed by Hon"ble Supreme Court,

it appears to us, primarily for the reason that there was an embargo so as not to alienate the land in their allotment chit and further that Rule 43(5)

of the Revenue Code was in existence even at the time when assignment was made in favour of Dasana Rangaiah Bin Dasaiah.

37. It shall further be made out from the reading of R. Chandevappa's case (supra) that it was a case of assignment. Whether an assignment was

on a price or on concessional price or without price is not known. In the present case, however, the petitioner society had purchased the land. The

Rules do not envisage transfer of the land on concessional rates. At the most, under the Rules, a right vests with the society comprising the weaker

sections of the society to get the land transferred in its name. In other words, this right could not be exercised by the people of other castes. It was

not a case of distribution of the land to weaker sections of the society for their economic development free of costs.

38. In view of the discussion made above, we are of the view that the land was followed by a formal order of transfer in 1981. There was no

embargo so as not to alienate the land, either in the transfer order, be it of 1958-59 or 1981, nor was there any impediment in the way of petitioner

society in selling the land under the Rules that were in existence at the time when transfer order was made and further that subsequent amendments

brought about in the rules could not apply retrospectively. We are further of the view that incorporation of the clause regarding non-alienation of

the land incorporated in the sale deed was wholly illegal and not binding on the rights of the petitioner society.

39. We are also of the view that setting aside transfer order with regard to a major chunk of land, which is still owned by the petitioner society,

after it remained in possession of the same by now for about half a century and 36 years from the date when it was transferred and which has since

been cultivated by them by the dint of their hard labour and spending lot of money and on which, fate of so many families depend, would be

iniquitous, unjust and unfair. Order, Annexure P11 has, thus, to be quashed. So ordered.

40. Before we, may however, part with this order, we would like to mention that even though, one of the contentions raised in support of this

petition was with regard to non-issuance of notice regarding passing of the impugned order, Annexure P11, learned counsel insisted upon having a

decision on merits of the case. The point has nonetheless been taken by it and thus needs to be commented upon. The petitioner society having

denied receipt of the notice, it could not prove a fact in negative. The respondent alone could prove the issuance and receipt of notice by the

petitioner society. A perusal of notice dated 7.12.1993, Annexure P-2, would show that it bears endorsement vide which two copies of the notice

are said to have been forwarded to the Tehsildar, Rajpura, with the remarks that compliance report be sent to the office of Collector (DC),

Patiala, after delivering the same to the President of Co-operative Society, Jauhla Khurd, Gurmukh Singh, Peon, vide his note dated 7.12.1993,

while attempting to serve this notice upon the society, has mentioned that ""It is requested that President, Harijan Co-operative, was not available

and a copy of the notice has been delivered by hand to the Vice President Bachitar Singh and Bachan Singh s/o Shri Prabhu Singh, Treasurer,

Harijan Society, and they have been informed about the order."" Under the noting aforesaid of Gurmukh Singh, Peon, there appears to be

signatures of Niranjn Singh, President, LTI of Bachan Singh, Treasurer and LTI of Bachittar Singh, Vice President of the Society of the even

date. Tehsildar, Rajpura, at the end, has mentioned as follows:-

Forwarded in original to the Collector (DC), Patiala with the remarks that copy of the show cause notice has been served through Naib Tehsildar,

Dera Bassi. After compliance the report is sent to you.

41. When the original notice with the endorsement, as mentioned above, reached the Deputy Commissioner, Patiala, he addressed a letter to Naib

Tehsildar, mentioning therein that an order was passed by him that one copy of the notice be delivered to the President, Harijan Co-Operative

Society and if the President was not available, the same be delivered to other office bearers. It is then mentioned that the notice was sent to him to

deliver the same to the President, Harijan Cooperative Society, Village Jauhla Khurd, through Tehsildar, Rajpura, but the Tehsildar, Rajpura, had

reported that the letter/notice has been delivered to Niranjn Singh, President, whereas, as per the office record, Niranjn Singh is not even an

office bearer of the society and in case he was the President, then the Tehsildar should have certified while sending the report because, on the

registered letter, that was sent to the President, it has been reported that the President had died. The Tehsildar was asked to explain his position

for this negligence. On the aforesaid letter of the Deputy Commissioner, Patiala, Peon in Sub Tehsil, Dera Bassi, mentioned as follows:-

It is requested that the President, Harijan Co-op. Society, Johan Khurd Shri Som Pal has been informed. Previous President has died. The

Society made Shri Niranjn Singh as acting President but society as per its rules has elected Shri Som Pal as its new President, who is still

working. Rest of the members Treasurer and Vice President have been informed and notice in duplicate has been served upon them and

concerned has been informed about the date of hearing, hence report.

Below the stamp, as mentioned above, signed by Peon, Sub Tehsil Dera Bassi, there appears to be the signatures of Niranjn Singh, Member, LTI

of Bachan Singh, Treasure, LTI of Som Pal, President LTI of Bachittar Singh, Vice President and LTI of Gurbux Singh son of Mehar Singh.

42. On the facts, as fully detailed above, it was urged before us by learned counsel for the petitioner society that notice was to be issued or, in fact,

had to be issued to the petitioner society through its President and inasmuch as, as per the records, mention whereof has been made above, the

President of the Society had since died, service upon the Treasurer or the Members was not a proper service. He further contends that in any

case, while endeavouring to serve the petitioner society on the second attempt, as directed by the Deputy Commissioner, Patiala, the notice

contained no date for appearance nor it was mentioned that if no reply is given within the stipulated time, it would be presumed that the Society

had no objection in cancellation of the allotment and ex parte proceedings for cancellation of allotment shall be initiated, as was mentioned in the

first notice.

43. Once, office-bearers of the petitioner society were served, it shall be presumed that the society had the notice even though it was not served

through the President but at the same time, if the notice contained no date for appearance before the concerned authority nor it is mentioned that if

no reply is given within the stipulated time, it would be presumed that the society had no objection in cancellation of the allotment and ex-parte

proceedings for cancellation of allotment shall be initiated, as was mentioned in , the first notice, it cannot be called a proper service. We comment

no more on this issue.

44. We have been informed that some vendees from the petitioner society have also filed applications for their being impleaded as a party. We do

not wish to comment upon their rights. We also do not wish to comment upon their plea that they are bonafide purchasers against consideration

and without notice of the defective title of their vendor. Such a plea needs to be agitated independently by giving proper facts.

For the reasons, as mentioned above, this petition is allowed, in the manner as indicated above. There shall, however, be no order as to costs.